Shift

Putting Principles into Practice

Bringing a Human Rights Lens to Stakeholder Engagement

Shift Workshop Report No. 3, August 2013

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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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1. Introduction

Stakeholder engagement is foundational to effective implementation of the United Nations Guiding Principles on Business and Human Rights. Meaningful stakeholder engagement is particularly essential in a business' efforts to meet its corporate responsibility to respect human rights. An increasing number of companies have sophisticated systems and processes for conducting a wide range of stakeholder engagement activities, and there is a substantial body of guidance around effective stakeholder engagement.

However, in practice, many human rights impacts can be linked back to challenges related to stakeholder engagement. It appears that more effective stakeholder engagement often could have prevented or mitigated them. According to one expert in human rights and stakeholder engagement, *"Effective stakeholder engagement is one of the most powerful and under-utilized tools we have in addressing human rights risks."*

"Effective stakeholder engagement is one of the most powerful and under-utilized tools we have in addressing human rights risks."

-- Workshop Participant

On 23-24 May 2013, Shift held the third in its series of workshops with companies participating in its Business Learning Program, co-hosted with the Corporate Social Responsibility Initiative of Harvard Kennedy School. The workshop focused on the issue of stakeholder engagement in implementation of the UN Guiding Principles on Business and Human Rights. It sought to generate practical guidance for companies on what it means in practice to bring a human rights lens to stakeholder engagement.

2. Stakeholder Engagement and the Guiding Principles

The theme of stakeholder engagement runs across the UN Guiding Principles on Business and Human Rights, and is critical to a company's efforts to meet the corporate responsibility to respect human rights. Stakeholder engagement is understood to be *'an ongoing process of interaction and dialogue between a company and its potentially affected stakeholders that enables the company to hear, understand and respond to their interests and concerns, including through collaborative approaches.'*[1] The Guiding Principles reference the importance of consulting with affected stakeholders at several key moments: in identifying and assessing actual and potential human

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[1] United Nations High Commissioner for Human Rights, The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, p. 8.

rights impacts; in tracking and reporting on company efforts to prevent and manage those impacts; and in designing effective grievance mechanisms and remediation processes.

Affected stakeholders may include not only staff (employees and contract workers) and communities directly affected by a company's operations, but also more physically remote stakeholders affected through business operations in a company's supply chain, or customers or end-users of a particular product or service who may be even more dispersed, such as in the ICT or financial services sectors. Increasingly, companies also engage at the broader policy level with expert stakeholders: individuals whose human rights are not themselves affected by a company's activities, but who can provide insights into identifying and addressing human rights challenges, and with whom it may be important for companies to communicate about their overall performance on human rights issues.

External engagement processes are essential to ensuring that stakeholder perspectives can appropriately inform company policies and practices. However, this often raises an equally significant challenge for company staff: engaging internal stakeholders to ensure the feedback received is taken on board in the company's operations. Without this, external engagement can never be truly meaningful.

> ### *Common Pitfalls in Stakeholder Engagement*
>
> *Many companies …*
>
> - *Have no strategy*
> - *Do not conduct stakeholder analysis*
> - *Have no ongoing schedule of meetings*
> - *Have 'chats' without being purposeful*
> - *Have poor tracking and documentation systems*
> - *Lack staff with consultation competencies*
> - *Apply a 'one-size-fits-all' approach to engagement.*
>
> *-- Expert in Stakeholder Engagement*

While there is a substantial body of guidance around how to conduct stakeholder engagement activities more effectively, many companies still face significant challenges in getting stakeholder engagement 'right'. Often, the consequences of ineffective stakeholder engagement lead directly to adverse human rights impacts on affected stakeholders, or to the failure to address stakeholder concerns early and effectively, before they escalate into more serious impacts.

The Shift/CSRI Business Learning Program Workshop

The objective of the May 2013 Shift/CSRI Business Learning Program workshop was not to revisit or restate existing guidance on stakeholder engagement, of which there is already a substantial body. Rather, it was to generate practical guidance for human rights leaders within companies in helping to ensure that a human rights lens is brought to the design and implementation of stakeholder engagement approaches.

Participants in the workshop included company representatives,[2] expert practitioners in fields related to company-stakeholder engagement and human rights, and members of the Shift and Harvard CSRI teams. The workshop was conducted under the Chatham House Rule to encourage frank and open

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dialogue, meaning that workshop conversations could be shared publicly, but without attribution of specific comments to specific individuals.

3. Bringing a Human Rights Lens to Stakeholder Engagement

The sections that follow highlight a number of key ideas that help to answer the question of what it means to bring a human rights lens to the design and implementation of stakeholder engagement:
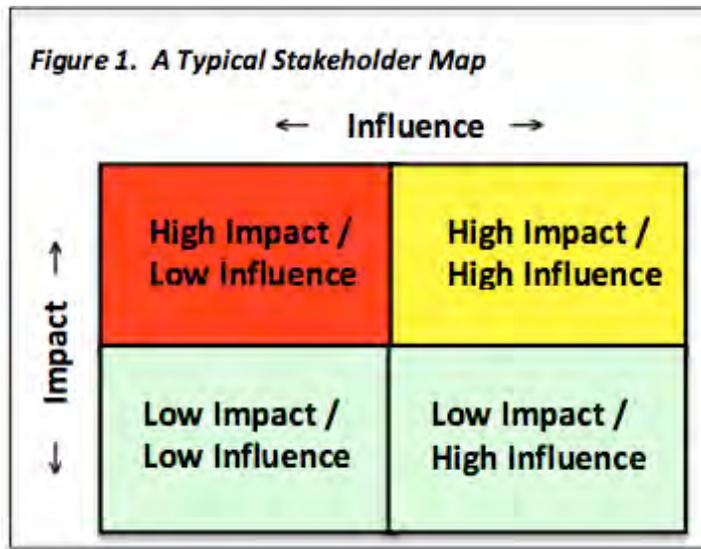
A. **With Whom** companies need to engage;

B. **About What** issues companies need to engage;

C. **How** engagement should take place;

D. **When** engagement should take place;

E. **Corporate/Policy Level** engagement;

F. **Internal** engagement; and,

G. **Engaging Neutrals** when necessary.

The report concludes in Section 4 with a set of diagnostic questions that companies can ask to begin to assess whether their stakeholder engagement strategies are consistent with their human rights commitments.

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[2] Participating companies included AngloGold Ashanti, Codelco, Ericsson, GE, Herbert Smith Freehills, Hitachi, and Total.

A. Engaging the Right Stakeholders

In the Guiding Principles, a stakeholder is understood to be 'any individual who may affect or be affected by an organization's activities,' whereas an affected stakeholder 'refers here specifically to an individual whose human rights have been affected by a company's operations, products or services.'[3] According to one expert at the workshop, one of the common pitfalls in corporate stakeholder engagement approaches is a focus on engaging with those stakeholders who can affect a company's business activities, at the expense of engaging those stakeholders who may be affected by its activities. This challenge can be illustrated in the following diagram, mapping stakeholders against these two criteria:

Figure 1. A Typical Stakeholder Map

← Influence →

	High Impact / Low Influence	High Impact / High Influence
Impact ↑ ↓	Low Impact / Low Influence	Low Impact / High Influence

There is a clear business case for companies to engage with stakeholders in the yellow upper-right quadrant, as this represents stakeholders who have influence over the business's activities. Failing to engage these stakeholders poses a clear 'business risk' to the company. However, there is less of a clear business case for engaging with stakeholders in the red upper-left quadrant, as this represents stakeholders with low or limited influence over the company's activities. This trade-off is often reflected in practice. However, the red quadrant – stakeholders who may be subject to significant impacts but have low influence – represent a critical stakeholder category when assessing human rights risk. This quadrant includes members of particularly vulnerable groups, who often have limited voice to raise their concerns effectively with a company, but who may still experience significant human rights impacts.

Applying the human rights lens to stakeholder engagement requires that companies address whether and how they have effectively engaged with these stakeholders, including vulnerable stakeholders, in the red upper-left quadrant. Doing so requires shifting the focus from 'risk to business' to 'risk to people'. As one senior representative from a company with relatively sophisticated stakeholder engagement systems reflected: *"We're still approaching these issues*

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[3] Refer to Footnote 1.

through a business risk lens. We probably don't spend enough time engaging stakeholders in that upper-left quadrant."

> **"We're still approaching these issues through a business risk lens. We probably don't spend enough time engaging stakeholders in that 'upper-left 'quadrant."**
>
> *- Business Participant*

This raises the further challenge of how to identify the specific stakeholders that may fit within this "high impact/low influence" category and find effective ways to reach them. Almost by definition, potentially vulnerable individuals or groups may be less visible and vocal in society. In practice, low levels of trust may prevent them from speaking out, and/or they may be more remote and difficult to reach. In such instances, many companies turn to trusted third parties to broker engagement with such stakeholders. Where that proves unworkable, one strategy that some companies have used is to identify 'high-quality proxies': individuals with sufficiently deep experience engaging with the people from a particular region or context – eg, women workers on farms, indigenous peoples, or migrant workers, for example – that they can help to effectively convey the likely concerns of and challenges faced by those groups more generally.

However, before turning to those 'high-quality proxies', companies can often think more creatively about how to directly reach affected stakeholders. One company with an extensive supply chain found that its traditional audit processes were failing to engage workers effectively. The company realized that it needed to place workers at the center of the process, and shift from a traditional compliance-based audit to an inclusive assessment process. This required asking what skills their internal auditors would need to be able to engage with workers directly and effectively, which led to the establishment of training in how to conduct participatory worker interviews.

> **The 'Upper-Left' Quadrant: An Example of Vulnerable Groups in Practice**
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> *One common category of vulnerable stakeholders is migrant or contract workers. Their vulnerability stems from the fact that they often:*
>
> - *Have lower levels of legal protections;*
> - *Lack awareness of their rights as workers;*
> - *Cannot join trade unions at their workplace, and lack other channels for effective representation and collective bargaining; and*
> - *Face real fears of losing their job (and sometimes being deported) if they speak up.*

B. Engaging About the Right Issues

In many stakeholder engagement contexts, companies are in a powerful position to decide the agenda for engagement, in part due to an information asymmetry between what companies know and what their stakeholders know. One understandable tendency among companies is to be more comfortable highlighting the positive impacts of a particular business activity ('pitching' the project), but where this leads to a failure to engage about the potential negative impacts of the project ('disclosing') then the company is missing a critical purpose of stakeholder engagement from a human rights perspective (see Figure 2 on Page 9).

Bringing a human rights lens to stakeholder engagement requires companies to engage with stakeholders around issues of potential harm. This can pose real challenges: companies may perceive internal tension between proactively disclosing issues of potential harm to stakeholders and its business interests; disclosing potential negative impacts may lead to short-term project delays and, more fundamentally, it may simply be a difficult and unpleasant conversation to have. According to one company participant: *"Historically, we've talked a lot about positive impacts on human rights from our industry – how our industry can help to fulfill certain rights. We've just recently begun looking at the negative impacts and assessing those."*

> ### *Knowing the "Business of the Business"*
>
> *"Initially, we sent out the public relations department to communicate our agenda. As we reshaped our approach, we learned early in the process that – while that was necessary – we also [needed] to send out the team from the company that really understood the business."*
>
> *-- Business Participant*

A company's stakeholder engagement professionals must therefore know "the business of the business", in order to be able to engage with stakeholders about potential salient impacts flowing from those business activities. According to one company, *"Initially, we sent out the public relations department to communicate our agenda. As we reshaped our approach, we learned early in the process that – while that was necessary – we also [needed] to send out the team from the company that really understood the business."*

Engaging with affected stakeholders about potential negative impacts may in turn help the company with the difficult task of prioritizing its actions. The Guiding Principles recognize that companies may find it necessary to prioritize which impacts to address first, but they make clear that the focus should be on those impacts that are or would be the most severe. Yet this still leaves considerable room for judgment, and many businesses have expressed substantial discomfort about how to make those kinds of decisions. Engaging stakeholders in the prioritization process can substantially alleviate the discomfort and improve the quality of the judgments being made. It engages stakeholders in a discussion that recognizes that not

everything may be able to be done at once, while giving them real influence over decisions about which issues to address first (and how).   So bringing a human rights lens to stakeholder engagement in this way can also benefit company processes, providing more confidence in making difficult decisions.

What Stakeholders Want: Insights from Shift's Field Research in Myanmar

Shift's recent report on stakeholder engagement in Myanmar highlighted some of the expectations that local communities have of foreign companies that are looking to engage in business in Myanmar. Stakeholders interviewed as part of that research reported that they could not say what meaningful consultation would mean, having had no prior experience under an autocratic regime. And yet, they were very clear about one thing: they want complete information from companies, so they can understand how a company's activities might affect them. In short, they want companies to put themselves in the shoes of affected stakeholders, and share whatever information they would want to know if the roles were reversed.

For the report, see: http://shiftproject.org/publication/conducting-meaningful-stakeholder-consultation-myanmar

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C. Engaging in the Right Way

Stakeholder engagement encompasses a broad variety of methodologies, from 'pushing' information out to stakeholders ('pitch' or 'disclose' in the figure below), to 'pulling' information in from stakeholders ('consult'), to engaging in a problem-solving dialogue with stakeholders ('collaborate'), to sharing decision-making power in certain instances ('agree').

Figure 2: Spectrum of Engagement
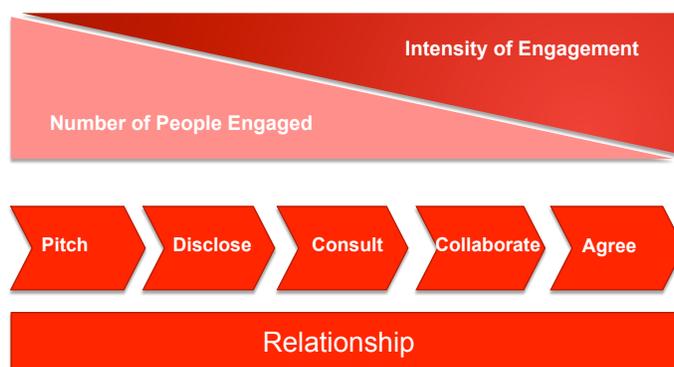
Each of these methods may be valid with specific stakeholders, for specific purposes, on specific issues, or in specific instances. Implementing the Guiding Principles effectively likely involves employing all of these approaches at various moments in time, with the caveat that 'pitching' will never be sufficient on its own. For example:

- Companies have a responsibility first to **disclose** information to affected stakeholders about potential adverse human rights impacts, during which they may **'pitch'** some human rights benefits, in the context of, and in proportion to, potential negative impacts;

- Companies then need to **consult** with affected stakeholders about the identification and assessment of impacts; they may **collaborate** in joint fact-finding processes with local communities or workers; and it will be important for indigenous communities, in particular, to **consent** (or 'agree' in the schema above) to certain activities, on a free, prior and informed basis.

- Companies will want to **collaborate** with affected stakeholders around effective remediation processes and the design of grievance mechanisms, and engage with complainants through legitimate processes to seek to **agree** on appropriate remedies where they have caused or contributed to a negative impact.

Ultimately, across all stages of implementation of their responsibility to respect in line with the Guiding Principles, companies should be seeking to build and strengthen their underlying **relationships** with stakeholders, which can enable more meaningful engagement at all of the points outlined above.

There are many possible modes of engagement, from formal, structured, public meetings, to multi-stakeholder settings, to informal but purposeful private engagement. Multiple modes of engagement may be necessary to ensure that the company has sufficient 'feedback loops' to understand a broad range of perspectives from affected stakeholders.

Engaging about Engagement

How can companies ensure that their processes for engaging with affected stakeholders are effective in enabling them to hear, understand and respond to those stakeholders' concerns?

- *At the front end, it is helpful to engage with stakeholders to clarify and agree on processes for engagement, in order to align expectations.*
- *Throughout the relationship, ongoing engagement with stakeholders can help the company assess the quality of their engagement through regular stakeholder feedback about engagement processes.*

According to experts that participated in the workshop, challenges often arise in practice either because a company has chosen an inappropriate form of engagement for a particular set of stakeholders and/or issues, or because of a misalignment between company and stakeholder expectations over what type of engagement was intended or required, and what the purpose of that engagement was or should be.

According to one participant, companies need to learn how to "engage about engagement": in other words, clarifying and agreeing on the process up front, and aligning expectations about how stakeholder engagement will take place.

Likewise, participants stressed the need for companies to have systems and processes to verify and assess the quality of their engagement processes over time, in order to ensure that their platforms for engagement are effective. One company for example uses 'community scorecards' to enable its stakeholders to periodically assess the performance of the company and share their perceptions about how well the company is listening.

Ultimately, 'engaging in the right way' means that companies have to identify forums and approaches that enable them to listen and respond to stakeholders in a meaningful way. One participant shared the view that true listening requires 'the suspension of coercive power', which includes recognizing the inherent power imbalances that often exist between companies and stakeholders, and choosing methods and venues of engagement that seek to address that imbalance.

D. Engaging at the Right Time

Much of the practice of stakeholder engagement tends to be both reactive and transactional. Participating companies discussed various internal reasons why this is so often the case. Some have observed a tendency in their companies to equate stakeholder engagement with delays in the implementation of business activities. Others perceive, in their companies or industries, a fear that engaging with stakeholders when there is still substantial uncertainty about a project or investment will open a 'Pandora's box' of issues, for which the company cannot provide clear responses. According to one business participant, *"If I don't have the confidence to use what I hear, I've created expectations for stakeholders and uncertainty for myself; if I have the confidence to do something with what I've heard, then it may be less frightening."* Another participant shared that his company is opening a new office in a high-risk country context, initially with only one staff member on-site. That puts a lot of pressure on that individual to have an understanding of the important role of early stakeholder engagement and the skills to implement relevant engagement activities.

As a result of these internal drivers, companies often engage with stakeholders too late in the process, when impacts have already occurred, or when the company 'needs' something from stakeholders. Applying a human rights lens to stakeholder engagement, however, requires early, proactive and ongoing interaction with potentially affected stakeholders. That interaction is necessary to help the company identify actual and potential human rights impacts – as well as the

importance of perceived impacts in the eyes of affected stakeholders – even in the face of uncertainty about a particular project or investment.

> **The Business Case for 'Drinking Tea'**
>
> *In some cases, the purpose of stakeholder engagement should be to strengthen underlying relationships with affected stakeholders. This can enable meaningful consultation when specific moments for stakeholder engagement arise under the Guiding Principles. One participant called this 'making the business case for drinking tea.'*

One practitioner in the workshop emphasized the importance of early engagement in building and/or strengthening the relationship between a company and affected stakeholders to enable meaningful future engagement. This relationship can be called upon later when impacts occur or when particular needs arise, but it cannot be built by engaging only at those times. Building it requires engaging with stakeholders when they see a need but the company does not, or when neither party has a transactional need to engage. The practitioner referred to this as *'needing to make the business case for drinking tea.'*

The kinds of relationships built through 'drinking tea' with stakeholders are essential for creating the trust, understanding and communication channels needed to be able to deal with any impacts that do occur - as they so often do in complex situations, even with good policies and practices in place. Strong relationships have the 'absorptive capacity' to handle these 'exogenous shocks', so that companies and stakeholders have the means and the will to collaborate swiftly on mitigation and remediation measures. Moreover, in the absence of this kind of ongoing engagement, stakeholders may feel that they only receive attention when they create a specific need or have an agenda. *"You also have to create the space simply for building trust."*

E. Engaging at the Policy Level

At the corporate headquarters level, companies increasingly engage with a constellation of stakeholders who may not be directly affected by a company's operations, but who nevertheless play important roles in the business and human rights arena as advocates and experts. A growing number of companies proactively engage with trade unions, NGOs, socially responsible investors, and other expert actors in structured forums to seek advice on human rights policies and practices. Some do this through one-off or ad hoc meetings, some through regular meetings with a set group of individuals on a broad agenda, and some use a stakeholder group to focus on a particular time-bound, issue-specific, or geographically-specific challenge. While many of these stakeholder advisory bodies began as part of companies' public reporting and assurance processes on their sustainability performance, more are now being established to provide strategic advice to companies on sustainability goals or targets, or to act as a 'sounding board' on specific issues or geographies.

One participating company began such a stakeholder dialogue four years ago, with the twin goals of helping the company to identify its own salient risks and of educating internal executives about broader business and human rights issues. Another set up a stakeholder advisory body in a particularly complex geographic location to deal with specific issues related to company impacts. Others are using these forums to test and inform the development of corporate human rights policy commitments.

Roles for Policy-Level Stakeholder Engagement

- *Testing and informing corporate policy commitments on human rights*
- *Identification of salient human rights risks*
- *Educating internal company leadership*
- *Issue-specific or geographically-specific sounding boards*
- *Strategic advice on sustainability issues*
- *Public reporting and assurance on company social performance issues*

Companies may not need to establish a specific stakeholder group to focus just on human rights. Rather, they can 'embed' this role in existing advisory groups, by ensuring that they are both mandated to address issues related to the company's human rights impacts and have within their membership the necessary technical capacity and expertise on these issues. One participant noted that it is not always necessary to have panel formats: *"In the investment context, you don't always bring your most important investors together. You identify your ten most important investors and meet them [individually] on a regular basis to provide updates, test ideas, and understand concerns."*

Building Effective Stakeholder Panels: Views from Expert Stakeholders

Several participants in the workshop are frequently invited by companies to serve on various types of stakeholder panels. What questions do they ask to determine the credibility of the effort and assess the 'return on investment' for their time?

- *Will the group have access to the executive team and the 'C-suite' leadership?*
- *Will the group have exposure to business units and/or will site visits be included?*
- *Will the group be engaged in analysis of the materiality of issues and risks?*

(continued on next page)

> ### *Building Effective Stakeholder Panels: Views from Expert Stakeholders*
> *(continued)*
>
> - *Will the group be empowered to provide independent analysis, and have a public voice?*
> - *Will the group be a collection of individual voices, or a body that – to the extent possible – forms shared views and/or recommendations?*
> - *What will the group be expected or enabled to do between meetings?*
> - *Will the group be facilitated or self-managed, and what are the implications for its ability to act as a group?*
> - *What 'feedback loops' exist for the company to report back to the group on follow-up actions?*

F. Internal Engagement

As significant as the challenges are in engaging with external stakeholders, for many companies, the challenges can be just as great (if not greater) in engaging with internal stakeholders around human rights impacts. The broad purpose of external engagement is to ensure that key stakeholder perspectives are appropriately informing company action – and that purpose typically cannot be met without effective internal engagement. Internal engagement is crucial to gaining the broad buy-in to any changes in policies, processes and practices that may be needed to ensure respect for human rights through a company's operations.

Company participants reported that part of the challenge of internal engagement is often one of 'translation' across the many different 'languages' spoken in the business and stakeholder contexts: the languages of social welfare; of human rights; of business risk; or of technical business processes.

For company staff, the language of human rights may not be comfortable or seen as immediately relevant. One participant pointed to the barriers that can often be created when leading with the language of human rights.   Another offered: *"In order to have the discussion in a meaningful way, you have to break it down so you don't lose people."*

Even when framing issues in human rights terms, business representatives talk of the need to translate these issues into the language of the business. One company practitioner has framed it as follows: *"Putting it in software terms, it's as if communities talk in graphics, corporate responsibility staff in Word, and technical staff in Excel. I have to range across all three – and then put the results into PowerPoint for top management."*

> ### The Capacity to 'Translate'
>
> *"Putting it in software terms, it's as if communities talk in graphics, corporate responsibility staff in Word, and technical staff in Excel. I have to range across all three – and then put the results into PowerPoint for top management."*
>
> *-- Company Practitioner*

Another participant referred to the common challenge in internal engagement of mobilizing middle management -- what he referred to as "the marshmallow effect". *"Senior leadership in companies is increasingly sensitized to issues related to human rights impacts, and young people in the company think these issues are very, very important. But we're left with the marshmallow effect: the top is pushing down, the bottom is pushing up, but the middle isn't moving."*

Companies reported many strategies and practices for gaining traction internally around human rights. Many spoke of the importance of helping people to 'connect' to the issues in a more personal way. For one company representative, the breakthrough came – after years of struggling to engage senior leadership around a supply chain monitoring program – with a simple photo depicting workers in supplier operations and their working conditions projected onto a screen for senior management during a meeting. One company supports a free legal aid program in a number of developing country markets in which it operates: in addition to providing value to the local communities, *"It made our people much more sensitive to the market we were operating in."*

Another company developed a system of 'human rights champions' embedded throughout the company's business units and field functions. Others have sought to make executive leadership more accountable, by tying company performance on these issues to individual performance metrics and compensation. One company's human rights lead was recently elevated into a position reporting directly to the CEO. Other efforts have looked at translating the costs to a company of conflict with stakeholders due to human rights impacts or poor stakeholder engagement into financial terms, helping to make the 'business case.' Other companies reported success using external benchmarking against leading practices of industry competitors and the relevant guidance emerging from industry associations.

Internal engagement is critical to a company's ability to integrate and act on what is learned through external stakeholder engagement. However, in practice, those responsible for a business's external engagement often lack the seniority or leverage within the company – or there are inadequate structures and processes –to support systemic integration of external perspectives into internal company decision-making.

One company shared its practice of conducting 'ethical audits' of its subsidiaries, which it has found serve as key opportunities to catalyze internal engagement. The audits, which are conducted by a credible third party organization, involve interviews with external stakeholders about how the company's Code of Conduct is being implemented. The audit findings and recommendations become the basis for internal dialogue among the most senior leadership of the company.

> ***Integrating and Acting on External Stakeholder Engagement***
>
> *One company uses external 'ethical audits' of its operations as a key moment to catalyze internal engagement among its most senior leadership with external stakeholder perspectives.*
>
> *Another company requires 'community permits', in addition to its legal permits, before changes to business activities can proceed.*

Another participant referenced one company's practice of requiring 'community permits' for any changes to existing business plans, with an internal control system that prevents work from moving ahead unless that 'community permit' from stakeholders has been obtained.

G. Engaging Neutrals

There are many circumstances in which effective stakeholder engagement can face fundamental challenges: from low levels of trust between the parties; to representational questions about who speaks for whom; to concerns that there is an inherently un-level playing field, with companies 'dictating' the terms of engagement. There is an increasing number of case examples where companies have used neutral third parties in a variety of roles to design and facilitate more effective engagement processes. However, participants from across different industries confirmed that there is often a built-in reluctance by companies to engage such third parties. This can be due to a perception that doing so represents either a 'loss of control' over the process or some acknowledgment of failure of the company's own processes.

One participant, a professional mediator who works in situations of company/stakeholder conflict, noted that neutral third parties are usually only brought into a process when trust is already extremely low between the parties. *"We're not usually the first people that get called when a situation starts to deteriorate. Companies call their internal experts and consultants, and communities turn to local and international NGOs. The issue escalates, and people start thinking that a mediator can solve the problem… and that is not very realistic. I don't think it's reasonable to expect that neutrals will resolve a conflict; conflict does not go away… A mediator can help shift*

> **"I don't think it's reasonable to expect that neutrals will resolve a conflict; conflict does not go away… A mediator can help shift the conflict to a more collaborative and constructive conversation."**
>
> *-- Professional Mediator*

the conflict to a more collaborative and constructive conversation."

Facilitated dialogue between companies and stakeholders can help to drive the conversation towards root cause analysis and a longer-term focus on rebuilding the relationship between the parties.

The immediate tasks for the neutral often involve addressing issues of representation – who participates in the dialogue, whether all interested parties are effectively represented, and who can credibly speak for whom. *"Then we need to talk about how we will be talking: 'Are we talking about one issue, or are we putting all issues on the table? What are our ground rules? How does our dialogue affect what is happening outside between the parties? How will the media be handled?' And then, before moving to the issues, we will probably need to talk about de-escalation first."*

Some human rights impacts and a certain level of conflict between companies and their stakeholders may be highly predictable. Discussions focused on the steps companies can take to be better prepared for those circumstances can help to ensure that efforts to manage those impacts are more effective when they arise.

> **Becoming an Informed Consumer of Neutral Third Party Services**
>
> - *Jointly identify with stakeholders a mutually acceptable local convener early in the relationship, in case recourse is required.*
> - *Ensure senior company representation at the dialogue table.*
> - *Act immediately to implement agreements reached at the table.*
> - *Use a financial intermediary trusted by all parties to safeguard the process from perceptions of bias.*

While it may not be possible to identify a mediator in the early stages, the parties can jointly identify a local *convener* – an individual or institution, trusted by all parties, that can use its 'good offices' in support of the parties by bringing them to the table if that should become necessary. This is a distinct role from that of mediator, which requires specific process design and facilitation skills. An appropriate mediator can be identified at a later stage, should it become necessary, but the role of convener and mediator should never be confused.

Moreover, companies can increase the potential for a successful process by ensuring that they are represented by someone from senior management, with the authority to make decisions. According to the professional neutral, *"If it is the community or public relations person, it probably*

won't go well." And finally, the company can act immediately to implement any agreements reached at the table, as part of rebuilding trust between the company and its stakeholders.

Finally, who pays for the process can be important. If the company is seen to be 'holding the purse strings', this can erode trust. There is an increasing number of examples where an appropriate local convener, national ombudsman, or third party NGO acts as a financial intermediary, in order to safeguard the process from perceptions of bias.

4. Diagnostic Questions: Bringing a Human Rights Lens to Stakeholder Engagement

Meaningful engagement with affected stakeholders is essential to effective implementation of the Guiding Principles and corporate respect for human rights. Whether companies have extensive and sophisticated systems for managing engagement with external stakeholders, or limited processes and platforms for doing so, there is a need to assess whether the purposes, methods and results of those stakeholder engagement processes are aligned with the Guiding Principles. Below is an initial set of diagnostic questions, based on the discussions at the workshop, that human rights leaders within companies can ask about their company's stakeholder engagement approaches to begin to review those strategies with a human rights lens.

> ### *Company Diagnostic Questions: Bringing a Human Rights Lens to our Stakeholder Engagement Approaches*
>
> - *What are the underlying assumptions on which our approach to stakeholder engagement is based? Could those assumptions be challenged?*
> - *Is our engagement ongoing? What is the long-term engagement plan?*
> - *Has our company understood 'the business case for drinking tea'?*
> - *How do we use our engagement with stakeholders to inform our understanding of our impacts? Is our engagement a strategic objective that informs our operations, or a 'box to be ticked'?*
> - *Through what forums and with what kinds of approaches do we conduct engagement with stakeholders? In what ways do these reflect stakeholder preferences?*
> - *Have we reached all relevant potentially affected vulnerable groups through our engagement processes? How do we know?*
> - *How do we know that we have the 'right' information and an accurate reflection of stakeholder perspectives?*
> - *Have the results of our external engagement been integrated into our business decisions? How, and in what ways?*
> - *How do we assess whether our stakeholder engagement has been effective?*