January 2017

# NBIM Workshop Report

# Implementing the UN Guiding Principles on Business and Human Rights

The leading center of expertise on the UN Guiding Principles on Business and Human Rights

## Rights and Permissions



# About Shift

Shift is the leading center of expertise on the UN Guiding Principles on Business and Human Rights. Shift's global team facilitates dialogue, builds capacity and develops new approaches with companies, government, civil society organizations and international institutions to bring about a world in which business gets done with respect for people's fundamental welfare and dignity. Shift is a non-profit, mission-driven organization.

Shift was established following the 2011 unanimous endorsement of the Guiding Principles by the UN Human Rights Council, which marked the successful conclusion of the mandate of the Special Representative of the UN Secretary-General for Business and Human Rights, Professor John Ruggie. Shift's founders were part of Professor Ruggie's core advisory team that helped develop the Guiding Principles. Professor Ruggie is the Chair of Shift's Board of Trustees.

# I. Purpose

The purpose of this report is to summarize the discussions from a half day workshop on the UN Guiding Principles on Business and Human Rights (UNGPs), facilitated by Shift for Norges Bank Investment Management (NBIM) and investee companies on December 2, 2016 in London. Representatives from ten investee companies from the apparel and footwear and food and beverage sectors participated in the workshop, along with a number of NBIM staff. Participants had varying levels of experience implementing the UN Guiding Principles within their business. The objective of the workshop was to explore the key concepts of the UN Guiding Principles on Business and Human Rights and their practical application to improve human rights risk management.

The workshop consisted of three sessions and a working lunch presentation. Session one introduced business and human rights and the Guiding Principles. Sessions two and three focused on the identification, prioritization and mitigation of human rights risks. The lunchtime presentation focused on company experiences applying the UN Guiding Principles Reporting Framework.

The following section summarizes key discussions during the workshop, which focused on the application of a range of key concepts and their relevance to human rights risk management and reporting.

# II. Key Discussions

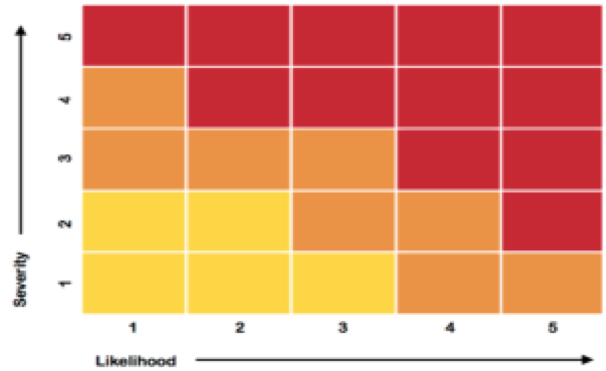
## A. Identifying and prioritizing salient human rights issues

**Presentation of key concepts**
Shift outlined the main concepts of the corporate responsibility to respect human rights, as set out in the UN Guiding Principles on Business and Human Rights. They highlighted approaches and tools that can help companies uncover human rights risks in their business activities and relationships. As a short summary, some of those approaches Shift discussed include:

- When getting started, it is often necessary to work out where to begin due diligence efforts, based on a general review of likely high risk areas. This might point to certain areas of operations, such as supply chain management or data management, certain high risk geographies, or high risk commodities such as palm oil, sugar or cotton.
- Within these higher risk areas, companies can then map out their business relationships to get a better idea of where specific risks to human rights may be occurring, before reviewing how those business relationships and the company’s own activities might impact different stakeholder groups such as employees, supply chain workers, local communities or others.
- With this broad picture of potential impacts, the company can then prioritize them for action.

The concept of **salience** – the human rights at risk of the most severe negative impact through the company's activities and business relationships – was introduced. Shift provided an overview of a heat map of salient human rights issues, based on severity and likelihood – the key factors for prioritizing human rights risks.

Under the UNGPs, **severity** is based on how grave and how widespread the impact would be, and how hard it would be to put right the resulting harm. **Likelihood** depends on whether certain factors (such as operating contexts, business relationships or business activities) increase or decrease the likelihood of the impact occurring. It may also factor in the presence or absence of existing controls. A human rights risks heat map places greatest weight on severity, thereby placing high severity, low likelihood impacts in the priority zone. This is signified by the red area of the heat map to the right that extends to the top left hand corner.




**Discussion**

Various participants shared lessons they have learned when identifying the greatest risks to people associated with their business operations and value chains.

- There was discussion of the assumptions that companies sometimes make about their human rights risks when using the lens of **materiality**, whether because they assume these are the issues with the greatest public profile (e.g., child labor), areas of the business that have been a traditional focus of attention (e.g., the supply chain) or areas that are closest to the company and most readily within its control or influence (e.g., strategic or first tier suppliers). Shift highlighted that, in practice, the identification of salient issues can provide a better method for understanding material risks to the business stemming from human rights issues than do typical materiality analyses. By surveying the broader landscape of risks before prioritizing based on the severity of impacts on people, companies can avoid blind spots.
- Participants also highlighted that it can take **time**, often many years, to build up this broad picture of risks. That should not hold up action on the immediately evident priorities, but it might mean companies' human rights risk management plans need adjusting as their understanding of their risks improves.
- Participants discussed the relevance of **feedback from stakeholders** such as local trade unions, workers or community representatives when assessing human rights risks. Engaging with potentially affected stakeholders to gather information and perspectives can allow companies to obtain a better understanding of their potential impacts. These can then inform cross-functional discussions within the company, to build a shared appraisal of the issues and their prioritization. And the conclusions from this risk assessment can be tested and verified with expert stakeholders, including NGOs, trade union confederations, academics and others.
- Participants underlined the importance of having a **company culture** that accepts human rights as an important issue. This enables the various functions and departments (e.g., procurement, marketing, human resources) to play their part in both identifying and later implementing measures, as relevant, to prevent or reduce risks. There was some discussion of the challenges that arise when priorities are dictated largely by the campaign issue or headlines of the moment, making it hard to take a strategic and consistent approach to human rights. Companies with experience prioritizing salient human rights issues felt this had them helped focus internal discussions, establish a solid rationale for priorities, and offset some of the pressures to redirect resources to new or changing issues without adequate reason. On the other hand, it was recognized that there may still be certain issues raised by influential stakeholders that would have to be addressed by the company, regardless of the company's own risk assessment, due to the reputational risk.

## B. Mitigating salient human rights issues

**Presentation of key concepts**

Shift highlighted the distinction between situations where companies' own decisions or actions result in human rights impacts, and where such impacts are linked to their products without any contribution on their part.

Companies can take **direct action** to control for and avoid contributing to negative impacts on people. For example, companies can:

- **review and adjust strategic decisions** that pose risks to human rights, for example, increased labor outsourcing or introduction of high speed delivery services);
- **align staff incentives** with human rights expectations, as well as **aligning their own purchasing practices** with expectations they set for suppliers, distributors, caterers, guards and others whose products and services they procure;
- ensure consumer and employee **data is protected and used appropriately**.

**In situations where it is the actions or decisions of others that lead to human rights impacts, the use of leverage becomes central.** Shift provided examples on how leverage can be used to stimulate change, based on five broad categories: (i) traditional commercial leverage; (ii) broader internal business leverage; (iii) leverage together with business peers; (iv) leverage through bilateral engagement with various others; (v) leverage through multistakeholder collaboration.

**Discussion**

Some companies reflected that their own leverage may be underutilized, while others noted the importance of embedding leverage sufficiently early in business relationships or processes, such as at the point of establishing a joint venture, or within the context of mergers and acquisitions (M&A). It was noted that human rights experts in companies have limited access to non-public information during an M&A process, but could draw on public domain information. M&A lawyers themselves could also think beyond their traditional scope of risks when providing internal advice.

**Responding to scenarios**
A breakout session allowed for participants to consider case scenarios tailored to some of the challenges their sector can face when trying to mitigate human rights risks in supply chain contexts.

- The first scenario was based on a fictional UK-based food and beverage company expanding into the African market and facing challenges related to community conflicts over land-related and health impacts, allegations regarding child labor in its packaging supply chain, and questions about service providers in the UK.
- The second scenario was based on a fictional Spanish sports apparel company with a global supply chain. The fictional company was expanding its online sales. At the same time, the company was facing allegations of child labor and harassment of women workers in its Asian supply chain, of forced migrant labor at factories in the Middle East, as well as questions about the effectiveness of complaints mechanisms for workers.
- Both scenarios raised issues regarding the number, seniority and functional location of key human resources at HQ and regionally.

In the food and beverage scenario group, participants explored the risks of assuming that legal title to land on which commodities are grown provides sufficient confidence that that title was legitimately acquired.
- They discussed the opportunities and limitations of **using technical experts** to conclude whether communities' access to water has been harmed. This may not defuse a situation where pre-existing distrust of a company leads communities to assume that any research the company pays for must be biased in its favor. Approaches such as **joint fact finding or joint selection of experts** were discussed as potential ways to better manage these issues.
- The group also reflected that, in this scenario, the relatively junior person at corporate may struggle to assert concerns about risk management with more senior staff in a regional office. There was discussion of the reality that **internal leverage can be as important as external leverage** in achieving the mitigation of human rights risks.

In the apparel and footwear scenario group, participants reflected that their scenario felt like a "standard Monday morning in the office."
- Again, there was discussion about the **allocation of responsibilities**. In this case, a better split of labor between headquarters and country offices might have eliminated a number of issues, putting more people in the field where they would better pick up illegal sub-contracting and other risks.
- Participants also discussed that it made no sense to have the CSR team reporting into the sales and marketing department. Participants underlined the need for a **strong relationship and engagement with suppliers**. This cannot be a superficial, annual exercise.
- Some participants also felt a tougher line should be taken with the suppliers: that **contracts should be terminated** if they do not appropriately resolve the issues that were uncovered (child labor, passport retention, housing fee deductions).
- The value of a **worker hotline** was questioned based on the small number of calls received. This would suggest workers may not know about it or may not trust it, particularly since NGO allegations had not surfaced through this mechanism.
- There was also discussion of the challenge that manufacturers can face with **high worker turnover**. Initiatives that seek to improve morale and reduce worker attrition can also improve business continuity by reducing turnover.

## C. Common challenges and opportunities

Participants shared many common challenges in their efforts to tackle human rights risks.

- There was a shared sense that **audits were of limited help** in driving change and did not always accurately measure risks or impacts. While audits were clearly felt to have a continuing role to play, many participants saw a need to use other tools, and move away from an exclusive audit focus. It could nevertheless be difficult to do so when systems were set up around audit processes and alternatives may not be as easy to scale or to measure.

- Participants noted that for many brands and retailers the greatest human rights risks were often **remote in their supply chains**, making it harder to address the issues. Collective action with other companies and stakeholders was seen as an essential tool in such situations. Where collective initiatives were not already in place, it took time and resources to develop them. It was suggested that **investors could both bring and gain value by participating in such initiatives**.
- Participants highlighted the **importance of collective leverage when lobbying for change**. Examples included the role the British Retail Consortium and Ethical Trading Initiative took, lobbying the UK government in favor of the Modern Slavery Act The value of such legislation to generate useful dialogue and high level attention to issues inside the company was also discussed. At the same time, participants highlighted that poorly designed regulations could be unhelpful and even counterproductive if they did not allow for the fact that human rights risks and mitigation approaches vary by sector and context. Regulation was seen as being helpful in creating a level playing field, but also observed as challenging if human rights became a compliance or tick-box exercise, rather than a process by which companies are able to innovate ever better ways to address risks to people.
- There was discussion of the **significant pressure on consumer facing brands whose reputations were more exposed** than companies that might fall under the radar due to the lack of name recognition. Within this context, news and social media were discussed as a force that can often be unhelpful and unreliable, making it harder to argue inside companies to move away from a compliance-based or legalistic approach to human rights. Some participants felt that if a company "raised its head above the parapet" by trying new approaches to tackling a risk – even a well-known and common risk in its industry – some media actors may call the (long existing) risk "news" and criticize the company for its connection to the risk.

### D. Reporting on human rights risk management

Four participating companies had already used the **UNGP Reporting Framework** to improve the human rights content of their public disclosure. Two had produced a standalone human rights report in their first year of applying the Reporting Framework, while two had used it to improve the human rights information in their broader sustainability report. These companies discussed how this exercise had not just contributed to better disclosure, but had also helped them advance internal conversations and understanding about how human rights are relevant for their companies. They shared experience of how it had enabled their companies to focus more clearly and deliberately on salient human rights issues, explain this internally and improve aspects of their human righs due diligence.

Some participants also noted that using the Reporting Framework had helped them establish a more robust basis for dicussions with external stakeholders about their identified priorities and mitigation efforts. Participants identified challenges, such as concerns – particularly among legal and communications colleagues – about disclosing certain information about human rights impacts.

That said, while there was limited evidence of civil society organizations praising companies for better reporting, there was also no evidence of any liability or other negative results arising from it. Meanwhile, some reflected that using the Reporting Framework had improved their engagement with investors and civil society actors. There was also evidence that it had helped raise awareness within companies both about human rights risks and positive recognition for initiatives underway to address these risks. Using the UNGP Reporting Framework, participants felt, could be a motivating and culture-enhancing exercise in this regard.

## III. Conclusions

Participants offered closing reflections on issues they would like to explore further, based on the workshop discussions.

- The topic of **stakeholder engagement** featured prominently. Some commented that engaging with stakeholders to test the company's conclusions from its risk prioritization process could generate more value than some of the current approaches to those conversations.
- Various participants felt that more could be done to demonstrate **which initiatives to mitigate risks are working well** and how instances of good practice could be replicated.
- A number of company participants underlined that indicators and tools used by third party organizations to measure, compare and rank companies' human rights performance were often superficial and could misrepresent reality. There was a general consensus that **stepping up efforts to effectively track performance would be useful**. A stronger set of metrics would

enable time and resources to be allocated more appropriately, to better inform senior management on progress and to provide investors with more reliable data on which to base their decisions.

- Some participants highlighted the **value of integrated reporting**, particularly in merging social and environmental information, which often sit in silos, while human rights impacts are intertwined with both.
- Participants also touched upon the **UN Sustainable Development Goals** and the need to ensure that efforts to advance respect for human rights by implementing the UNGPs is clearly understood as a significant contribution to sustainable development.
- Finally, various participants called upon **investors to be more active in supporting company efforts to address human rights risks**, not least with those companies that are lagging behind. One company noted that investors had recently begun raising human rights issues in calls with the company's top management, which was helpful to gain senior management and Board attention for these issues internally. Participants expressed appreciation for NBIM's dialogue with them through this workshop and stated their interest in continuing the conversation.