Guidance Note
Board Duties in Ensuring Company Engagement with Affected Stakeholders

BY THE GLOBAL FUTURE COUNCIL ON HUMAN RIGHTS

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Board guidance note

This guidance note gives a brief overview of the role of corporate boards of directors in relation to the concept of "affected stakeholders". This is the essence of stakeholder capitalism, in which companies seek long-term value creation by considering the needs of all of their stakeholders, and society at large. This note sets out five key questions any board might reflect upon and five steps each company should take when addressing this issue. It is accompanied by a supporting report, which clarifies concepts and provides specific examples of effective practices already in place within some businesses. Most of these issues are then delegated to senior staff to manage on a day-to-day basis. However, board members are the people at the end of a long chain linking those affected by a company's actions with those ultimately responsible for the decisions and actions taken. Therefore, board oversight of the relevant mechanisms for managing these issues is essential.

Five key questions for any board to ask itself

The relationship between business and society is dynamic, and no one company has all of the answers in terms of how its board should engage with the interests of affected stakeholders. But there are a number of clear steps every board should take. Not doing so misses key opportunities and runs against the increasing societal expectations of business, growing investor ESG demands, and emerging regulations relating to the human rights and environmental due diligence responsibilities of companies.

Five questions

A board should ask these five questions to determine how well it responds to the interests of those most affected by company operations:

1. Does the company know who its affected stakeholders are?
2. Does the company have the appropriate mechanisms in place to understand the potential adverse human rights impacts on affected stakeholders and how to respond appropriately?
3. Is the board sufficiently engaged in overseeing these mechanisms and ensuring their effectiveness?
4. Does the board have the right skills, experience and knowledge to undertake these tasks?
5. Does the board have the right monitoring and review mechanisms in place to undertake these tasks?

The purpose of the board

The purpose of a board of directors is "to ensure the company's prosperity by collectively directing the company's affairs, while meeting the appropriate interests of its shareholders and relevant stakeholders". This is also reflected in terms such as "stakeholder capitalism", an approach spearheaded by the World Economic Forum. But the term "stakeholder" can be open-ended and amorphous: it can contain a vast category of individuals, communities, business partners and interest groups. With increasing non-financial expectations of boards (through concepts such as ESG), boards will need to be more precise about who these stakeholders are and whose interests take precedence. Doing so can mitigate some of the risks a company faces in its operations, build social licence and provide early warnings of things going wrong.

'Affected stakeholders'

The term "affected stakeholders" is referenced in and has become more widely used since the adoption of the UNGPs, but it has an older pedigree. It is based upon the principles endorsed unanimously by the UN Human Rights Council in 2011, which are now the global standard for understanding the societal impacts of business. Affected stakeholders are understood to be individuals or groups whose human rights have been or may be affected by a company's operations, products, services or supply chains. They should be the first consideration in any stakeholder approach; in particular, through the prevention of harms (for example, through due diligence) and the provision of effective, timely and adequate remedies when harms do occur. An increasing number of governments are requiring businesses to undertake human rights due diligence, whereby companies need to thoroughly understand the risks and potential impacts they might have on affected stakeholders, how they might disclose such information and how they will act upon it. Understanding the concept of affected stakeholders is increasingly becoming a legal requirement as well as an expectation of investors.

The nature of the relationship

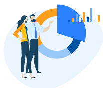
The connection between board members and affected stakeholders is fundamentally between those ultimately responsible for a company's actions and those most directly affected by them. It is between the two people at either end of a chain of impacts: those who bear the responsibility for the impacts of those acts, and those whose rights are affected by those acts. In reality, however, the relationship is rarely a direct one. A board supervises the executive management team, to whom the operational control of a company is delegated. The management, in turn, delegates certain specific tasks to operational staff with human rights expertise. Affected stakeholders might be represented by organizations (such as trade unions, community organizations or NGOs) that may speak for them or represent their interests. Those affected by a company and those responsible for the company are often separated by many steps. Affected stakeholders can feel distant from the boardroom, and boards are often a remote concept for those affected the most by the company's actions. The relationship is mediated by a range of mechanisms a company puts in place to manage its interactions with affected stakeholders, examples of which are set out below.

Five key steps the board should take

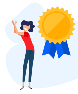
Every board should take the five steps below to ensure effective company engagement with affected stakeholders:

1. Be clear about who the company's affected stakeholders are

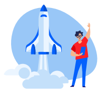
2. Decide what kinds of engagement mechanism might be relevant to identify, assess and address risks to, and impacts on, the human rights of affected stakeholders



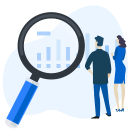
3. Establish the correct level of board engagement and oversight



4. Ensure the board has the necessary skills, knowledge, diversity and experience

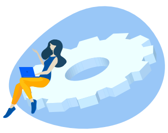


5. Monitor, evaluate and disclose progress



1. Be clear about who the company's affected stakeholders are

The first step any board should take is to ask itself whether the board is clear about who the company's affected stakeholders are. This will involve analysing the groups or individuals most directly related to a company's activities, but also their level of vulnerability to human rights harms and whether the company's actions increase or decrease this vulnerability. For global companies, these affected stakeholders might number in the thousands or even millions, and so individuals cannot be known directly (although in some circumstances they may be); however, a company should still be clear about the profile of its affected stakeholders and identify and listen to organizations that legitimately represent the interests of specific categories of these stakeholders. Companies might consider including human rights in enterprise risk registers, where the profile of a company's affected stakeholders is refreshed at regular, appropriate intervals or when significant business decisions are made.

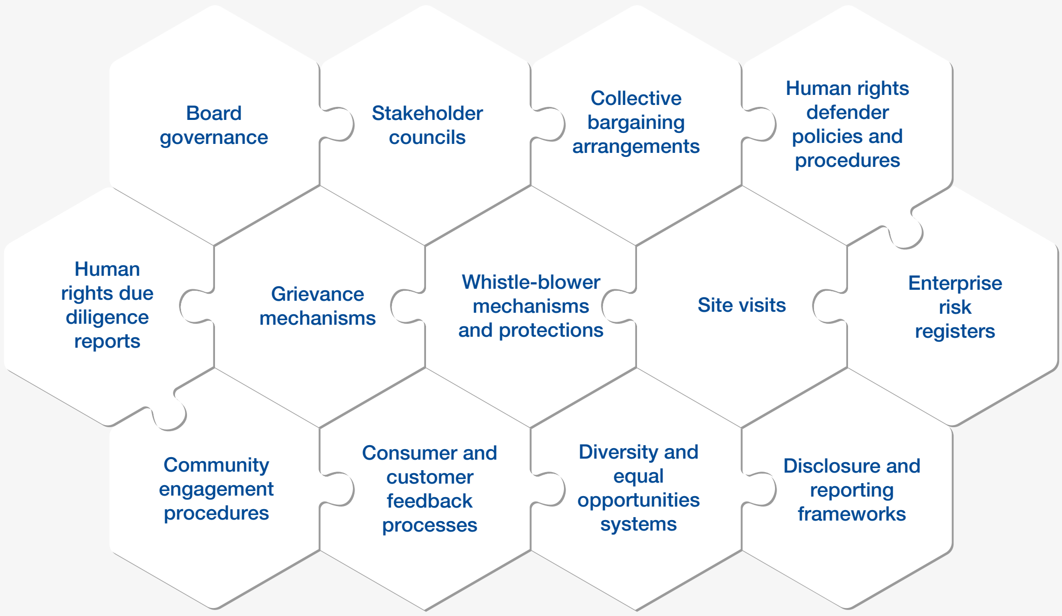


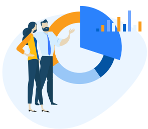
2. Decide what kinds of mechanisms might be relevant and appropriate

Companies might have a broad range of mechanisms that relate to the interests of affected stakeholders. The following list has been prepared following interviews with corporate board members; their relevance would depend on the nature of a particular business. Boards should consider which of the mechanisms mentioned are in place within the company (including any additional mechanisms) and whether they span the interests/have the capacity to respond adequately to the concerns of all affected stakeholders. For more information on each of the mechanisms, please refer to the main report.

Having a list of mechanisms alone does not guarantee that those mechanisms are effective in raising the interests of affected stakeholders to the board. Boards need to ask how often the company consults with affected stakeholders, and their representatives, about the mechanisms themselves and whether the stakeholders feel that the mechanisms are effective in respecting their human rights.

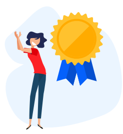
Appropriate mechanisms might include:





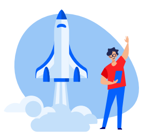
3. Establish the correct level of board engagement and oversight

Research undertaken for this report suggests a significant difference between companies and sectors in the level of board engagement in such mechanisms, from direct involvement and regular oversight to sporadic or limited engagement. Even in large companies, boards should review the effectiveness of existing mechanisms as well as draw on the advice of external advisers, including, to the extent possible, affected stakeholders themselves or their representatives.



4. Ensure the board has the necessary skills, knowledge, diversity and experience

In order to carry out the necessary oversight of such mechanisms, as well as act in the interests of affected stakeholders, boards need the right composition, structure and work culture. The role of the chair is critical in securing this, allowing the board to play the role of "critical friend". The board should include executive and non-executive members with the right skill sets and experience. A diverse group of board members should be capable of monitoring the work of committees tasked with overseeing all relevant sustainability and governance issues, and should exercise the appropriate level of oversight of senior executives within the company.



5. Monitor, evaluate and disclose progress

Maintaining a company's effective relationships with affected stakeholders is an ongoing endeavour for any board. Mechanisms should be regularly evaluated and so, too, should the board's involvement and oversight. The views of those most affected by the company should be regularly sought to establish and assess whether progress is being made. Boards should ensure that the company discloses its performance on engagement with affected stakeholders in line with the process recommended above as well as all other relevant non-financial issues as part of an integrated approach to ESG, while ensuring the safety and security of the affected stakeholders.

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This report was researched and written by the World Economic Forum's Global Future Council on Human Rights (2020–2022).

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