

In collaboration with the Institute for  
Human Rights and Business



# Engaging Affected Stakeholders: The Emerging Duties of Board Members

INSIGHT REPORT  
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# Foreword



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It is with great pleasure that we present this supporting document for the World Economic Forum's guidance note on board duties in relation to affected stakeholders, including the four-page guidance note itself. This represents the result of 18 months of discussions and research by the members of the Forum's Global Future Council on Human Rights (a list of Council members is contained in the document).

Boards are increasingly aware of the need to maintain their company's social licence in relation to shifting societal expectations and, particularly in the context of Europe, increasing mandatory requirements. While it is understood that managing the variety of mechanisms used by companies to engage with affected stakeholders is mainly delegated to executives, boards need to maintain oversight and be sure that the portfolio of existing

mechanisms is fit for purpose – and fill any gaps. Recent high-profile cases in a number of industries suggest that even in companies with developed human rights policies, processes and procedures in place, there can be a lack of strategic overview in terms of identifying who the most vulnerable stakeholders are and establishing how best to manage relationships.

Our hope is that this guidance note affords each and every board the opportunity to take stock and exercise better oversight of their most important stakeholder relationships.

We would like to thank everyone on our Council for their hard work and dedication, and the staff at the World Economic Forum for their guidance and support.

# Executive summary

Companies face increasing scrutiny of their social and environmental performance from investors, consumers, communities, workers and governments. Business leaders are being urged to consider the needs of society at large and of all “affected stakeholders”, in addition to the requirements of their shareholders. This evolving landscape is becoming more apparent for corporate boards the world over. Boards therefore need a diverse set of directors with the skills and insights essential to understand social and environmental issues from the perspective of others. Ideally, the board itself should have awareness of the lived experience of those most vulnerable to adverse impacts associated with the company’s activities.

“Affected stakeholders” refers to all those who may be significantly affected by a company’s operations, products, services and supply chains. Business activities can be positive but may also potentially harm the agency, dignity and human rights of individuals and communities. The challenge for a corporate board is to ensure that the company knows who these affected stakeholders are and takes the necessary steps to understand and address the impacts, in particular for the most vulnerable.

Companies will already have some of the mechanisms in place to manage these relationships, ranging from collective bargaining to risk registers and whistle-blower protections. But how does a company know if these are fit for purpose and how can it gain insight into what may be missing? This is particularly important in the emerging regulatory context. In the European Union, for example, businesses will soon be

required to undertake mandatory human rights and environmental due diligence, as well as due diligence in relation to sustainable finance. This will require gathering information about the risks to and impacts on stakeholders’ human rights, then determining how to act upon this material and disclose it. It is likely, given current proposals, that board oversight and director duties will be essential parts of these new approaches.

This report provides advice and information to support boards in managing their relations with affected stakeholders. It draws on research undertaken by members of the World Economic Forum’s Global Future Council on Human Rights between 2020 and 2022, including interviews with senior business leaders and representatives of civil society.

The report supports a board guidance note (Appendix 1) that sets out five questions the board should ask itself, including whether it can accurately identify affected stakeholders and whether it has mechanisms in place to act on potential adverse impacts on stakeholders’ human rights. The note also identifies five important steps to be taken, including ensuring the board itself has the necessary diversity, experience and knowledge to perform this role and that strategies are in place to monitor, evaluate and disclose progress in this area. In Appendix 2, the report provides details of the steps some boards have already taken to improve communication with stakeholders, such as introducing stakeholder councils and consumer panels, collective bargaining arrangements and policies to protect human rights defenders, whose role is examined in Appendix 3.

# 1

# Introduction

Corporate boards have the ultimate responsibility for engaging affected stakeholders.

A corporate board has the ultimate responsibility for the actions of a company. This responsibility is of even greater importance today, given growing societal expectations concerning the environmental and social performance of major companies.<sup>1</sup> Concepts such as “stakeholder capitalism”<sup>2</sup> frame contemporary understandings of the many groups that need to be considered, in addition to shareholders, when a board exercises its oversight of a company’s policies and practices. But which stakeholders should a board prioritize and what mechanisms should a company have in place to mediate these relationships?

The standards that the United Nations (UN), the Organisation for Economic Co-operation and Development (OECD) and many governments have developed call on companies to prioritize their “affected stakeholders” – that is, those upon whom their business operations, products and services have the greatest impact. This includes some of the most vulnerable workers, communities and groups in our societies. Affected stakeholders need to be a key consideration in board oversight and expectations of executive management.

This report supports and explains a “board guidance note”<sup>3</sup> (included in the Appendix) addressing board relationships with affected

stakeholders. It recognizes the developing regulatory, investor, employee, consumer and competitive space and the increasing need for boards to focus on these issues. Central to this is the understanding that affected stakeholders are people with their own inherent dignity, agency and, importantly, human rights. The report outlines why managing relations with affected stakeholders is important, drawing on research and interviews undertaken by members of the World Economic Forum Global Futures Council on Human Rights. It offers examples of how some boards are already moving in this direction, including specific company mechanisms that might be useful for others. Particular attention is given to what board members need to know in relation to human rights reporting and transparency, as well as board-level awareness of, and engagement with, human rights defenders (HRDs) in specific contexts.

## Methodology

This report has been developed by the World Economic Forum’s Global Future Council on Human Rights and builds on the extensive knowledge of Council members as well as in-depth interviews with senior business and civil society representatives.



# Board composition, competencies and practices

## How can human rights be built into corporate boards from the start?

A corporate board is responsible for stewarding a company's strategy, providing oversight of executive management and ensuring that the company delivers for shareholders. Boards are also increasingly focused on the environmental and social impacts of their companies' activities, and respecting human rights is an essential element of this important evolution.<sup>4</sup> To ensure that companies maximize long-term value for all stakeholders,

including acting in a manner that is consistent with well-established human rights principles, boards need to enhance their understanding of how those people most affected by a company's operations, supply chains, products and services may be affected and the human rights responsibilities this involves. Achieving this goal means that boards need the right mix of skills, expertise and perspectives to exercise these responsibilities effectively.

### 2.1 Who should sit on the board?

Each board member brings and applies individual knowledge, skills, experience and values to the collective activities of the board. For a board to manage human rights issues effectively, it needs to include or access the perspectives of affected stakeholders, ensure diversity of thought and experience, and understand relevant subject-matter expertise, in addition to other, more traditional qualifications and perspectives.

**Diversity.** As well as the skills and perspectives that have long been considered essential for board members (such as finance, operations and strategy), it is increasingly important that board composition considers the broader social impacts of a company's activities, including those relating to human rights. Broadening the perspectives and expertise of a board enables a more comprehensive and inclusive ability to anticipate important questions, manage risk, prevent and mitigate adverse impacts, and enable the conditions for positive contributions to the wider enjoyment of human rights. Many companies have experienced mistakes or missed opportunities because of insufficient understanding of the adverse impacts of operations, supply chains, products or services on people and communities. It is therefore essential that all boards take steps to broaden

the perspectives present in their discussions, to ensure a more complete understanding of impacts on people and communities affected by business activity. A board that adopts these perspectives will enhance its ability to understand the trade-offs and competing priorities that are critical to the development and delivery of company strategies. To achieve these goals, it is also essential that board search firms are well-equipped to identify candidates who can make valuable contributions on human rights issues; this may require going beyond the usual search criteria and networks.

**Board structure.** In addition to board composition, one question that companies frequently debate is what constitutes the best structure for addressing environment, social and governance (ESG) issues, including their roles and responsibilities with respect to human rights. There is no single "right" answer to this question: some companies have ESG committees; some add ESG oversight to existing committees; some address ESG questions in plenary sessions. The key is undertaking ESG-related actions comprehensively, with the right level of attention and with the necessary expertise. This can be achieved with a variety of models, recognizing that the full board is ultimately responsible for all these issues.

## 2.2 | What does the board need to know?

Overseeing business performance related to human rights requires a board to know who the company's affected stakeholders are, how they are affected by its activities and relationships, and what steps the company is taking to prevent, mitigate or remediate harms to these stakeholders. Equally important, the board must have a baseline understanding of core human rights principles and

standards, including those listed in this report. Basic fluency in international human rights standards and corporate responsibilities will help board members identify potential issues and make good decisions in the context of legal requirements, existing and emerging standards, and the evolving norms of expected corporate behaviour.



3

# Why affected stakeholders are material to any board

Stakeholder capitalism requires the inclusion of all affected stakeholders in board activity.

Building on the overview of board responsibility previously outlined, and the expectation to create value for stakeholders beyond shareholders, turning to the idea of stakeholder capitalism can provide a needed perspective on who matters to boards.

“Stakeholder capitalism” is defined as:

“ A form of capitalism in which companies seek long-term value creation by taking into account the needs of all their stakeholders, and society at large.”<sup>5</sup>

This builds on earlier ideas such as “shared value” or even “corporate social responsibility” (CSR), but unlike these earlier terms, stakeholder capitalism implies a social contract between business and society. However, it questions who in fact these stakeholders are and who gets to decide on this. Is it the business itself, is it governments or can stakeholders have the autonomy to decide for themselves?

## 3.1 Affected stakeholders

This conundrum can be largely resolved by following the “stakeholder” definition of the UN Guiding Principles on Business and Human Rights (UNGPs), which was unanimously endorsed by the UN Human Rights Council in 2011. Here, priority should be given to “affected” stakeholders – those people (individuals, groups and communities) affected the most by the activities of a business. Since 2011, the term “affected stakeholders” has formed the bedrock of responsible business conduct standards within the UN, the OECD and the 40 or so national governments that have developed national action plans on business and human rights.<sup>6</sup> The commentary to UNGP18 says:

“ To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In

situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society.”<sup>7</sup>

This is also the definition adopted by the European Commission in February 2022 in its Corporate Sustainability Due Diligence Directive:

“ The definition of ‘stakeholders’ in Article 3(n) of the draft, defined as being the company’s employees, the employees of its subsidiaries, and other individuals, groups, communities or entities whose rights or interests are or could be affected by the products, services and operations of that company, its subsidiaries and its business relationships.”<sup>8</sup>

Given that the UN, OECD and EU all now agree that affected stakeholders are the priority for any company’s ESG responsibilities, the concept should be seen as central to any agenda on “stakeholder capitalism”.

## 3.2 Business and human rights

Internationally recognized human rights include civil, political, economic, social and cultural rights as set out in a range of international legal instruments that have been developed and ratified over the past 70-plus years. A human rights lens is vital to understanding which of those affected should be considered first based on vulnerability. UNGP18 states:

“... Business enterprises should pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization, and bear in mind the different risks that may be faced by women and men.”<sup>9</sup>

Even before human rights due diligence become a mandatory requirement in countries such as France, Germany, Norway, the Netherlands and soon – it seems likely – the European Union, it has made intrinsic sense to many international companies. Non-financial risk cannot be viewed through the lens of “risk to business” alone. While the interests of business and society might well converge over the longer term (humans are consumers; climate change is an existential risk to profit and planet alike), they do not always coincide in the short term. Incentive structures in businesses that focus on short-term performance might overlook or even run counter to the human rights of some of the most vulnerable people in any society. This is why many investors support initiatives such as the Corporate Human Rights Benchmark<sup>10</sup> or the Principles for Responsible Investment,<sup>11</sup> both of which frame affected stakeholders and a human rights due diligence approach as symbiotic and intrinsically linked.

If stakeholder capitalism calls for a new social contract between business and society, then the “societal partners” need to have the freedom and agency to enter into a meaningful relationship. They can do this only if they are free from fear of reprisals or coercion, in an environment where their fundamental human rights are protected by governments and respected by business. This is particularly true for human rights defenders who can play a vital role in human rights due diligence and in supporting companies to understand the concerns of affected stakeholders.

There are three prime reasons why human rights are an increasingly essential topic for boards to consider in relation to their affected stakeholders. First, regulatory requirements are increasing for performance, reporting and disclosure. Second, many businesses have experienced significant financial and operational issues when human rights considerations were overlooked. Finally, societal expectations of business are rising substantially, both from communities and employees. To meet

the needs presented by these changes, boards should evolve their composition, expertise and practices. This includes taking three different aspects into consideration:

**Tackling some of the urgent issues of our time**, including addressing the climate crisis, meeting the UN’s Sustainable Development Goals (SDGs) and, now, tackling the effects of the COVID-19 pandemic, and the implications of these for business responsibilities for human rights. The pandemic highlighted the vulnerability of workers, and the importance of “strengthening the ‘S’” – which is, by all accounts, the most neglected pillar of ESG. Any company that takes the “S” in ESG seriously needs to grapple with its potential contributions to inequality. Forced labour in the supply chain is one well-known pitfall. But a company may also contribute to inequality more subtly – for example, by failing to offer fair compensation to outsourced workers in its global supply chain.

**Changing societal expectations**, as well as shifting consumer, shareholder and public expectations of responsible business and corporate citizenship. Stakeholder dialogues/surveys, other survey data and focus groups can provide useful inputs to help board members understand how the wider world sees human rights issues and their relationship to a company, industry or operating environment.

**Meeting international standards and national regulations**, starting with the UNGPs, including familiarity with the process of human rights due diligence and the provision of remedies.<sup>12</sup> The UNGPs are grounded in the International Bill of Human Rights (which includes the Universal Declaration of Human Rights [UDHR], the International Convention on Civil and Political Rights [ICCPR] and the International Convention on Economic, Social and Cultural Rights [ICESCR]) and other relevant international human rights instruments, such as the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>13</sup> In addition, this requires complying with the evolving regulatory environment, including the European Union’s mandatory human rights due diligence legislation and corporate sustainability reporting: the issue of board oversight is integral to both.<sup>14</sup>

There is no “one size fits all” competency that makes for a human rights-aware board. One place to start is by identifying the core human rights issues relevant to the affected stakeholders (e.g. the most salient rights) and where gaps might exist within the board in terms of its understanding of the issues and their impact on company strategy, investments and operations.

## 3.3 Delegating to executive management

It is the executives within any company, not the board, who have the day-to-day responsibility for implementing human rights due diligence within business activities, including in relation to affected stakeholders. It is also mostly the case that it will be executives themselves who bring issues relating to affected stakeholders to the attention of board members. The executive managerial role is central, but this needs to be understood as delegated authority from the board. No board can directly engage with all of the affected stakeholders of a company.

However, its oversight role must extend to ensuring that the right mechanisms are in place for executives to carry out the board's responsibilities in the context of relationships with affected stakeholders and the related human rights due diligence requirements. It is the board's role to question whether the company has the correct range of mechanisms to manage its relationships with all affected stakeholders – in particular, the most vulnerable – and whether those in place are operating effectively and meeting the needs of the affected stakeholders.

## 3.4 The rise of ESG

As more countries continue to move towards some form of legislation concerning mandatory due diligence, boards worldwide are already increasingly exposed to ESG issues. For example, responding to the climate crisis is an existential issue for society and business everywhere, and 2050 net-zero commitments will not be reached unless company boards align their performance with these goals. Given that responses to climate change involve environmental and social dimensions, national governments are placing ESG requirements on high-carbon sectors to manage the transition effectively. Investors have shown an increasing

willingness as well to flex their muscle at AGMs if boards are perceived to be too slow in addressing issues of gender equality, diversity or climate action. Competitive access to finance is also increasingly predicated by strong ESG performance and board-level commitments.

Not all of these approaches will place affected stakeholders at the centre of business actions yet, but developments over the past 10 years suggest that this is clearly the direction of travel. Boards can choose to wait until legal requirements emerge or take positions of leadership now.

### BOX 1 The specific role of human rights defenders

Human rights defenders play important roles in identifying adverse impacts of business activities on human rights. The UNGPs note that companies should consult human rights defenders

as an important expert resource as part of their human rights due diligence, as defenders have a key role as watchdogs, advocates and voice for affected stakeholders.

**Source:** Business and Human Rights Resources Centre and International Service for Human Rights, "Shared Space Under Pressure – Business Support for Human Rights Defenders", September 2018, see Appendix 3: <https://media.business-humanrights.org/media/documents/fdfe07e3d812cfcfd4235fbfbf820a3d77599b13.pdf>



# 4

# Research findings

These insights derive from the Global Future Council’s interviews with corporate boards and civil society.

The document “Board Guidance Note: Board Duties in Ensuring Company Engagement with Affected Stakeholders”<sup>15</sup> that accompanies this report sets out an illustrative list of mechanisms that can support efforts by corporate boards in their oversight responsibilities on human rights-related issues, including effective engagement with affected stakeholders. This list is also included in Appendix 2 of this report. These examples are meant to be illustrative, and not all of the mechanisms listed function in the same in every business sector, but it is a good place to start.

The essential role for any board is indeed one of oversight: to ensure that the company has the right range of mechanisms and that these address the relevant issues at the level of detail required. Critically, such mechanisms must be accessible to the affected stakeholders they claim to serve. A board might decide, for example, that an annual investigation into the functioning and effectiveness of one or two of the mechanisms the company has in place is a good way to familiarize the board, or its sustainability committee, with how specific mechanisms work in practice. For some industries, these exercises might also take the form of a “site visit” – where the board meets within a specific business operation. If this is the case, then meetings with a range of affected stakeholders should be an important part of such visits, and so, too, should discussing their perception of the effectiveness of mechanisms.

Potential mechanisms of this kind include:

- Board governance
- Representative councils
- Collective bargaining agreements
- Human rights defender policies and procedures
- Human rights due diligence reports
- Grievance mechanisms
- Whistle-blower mechanisms and protections
- Site visits
- Enterprise risk register
- Community engagement procedures
- Customer and consumer feedback processes
- Diversity and equal opportunities systems
- Disclosure and reporting frameworks

## 4.1 The human rights competence of boards

Boards should also reflect the lived experience of what it means to be an affected stakeholder. As part of the research undertaken for this report, individuals representing a range of backgrounds, including those with experience of serving on corporate boards, were asked whether the boards with which they were familiar currently have the right skills, experience and knowledge to undertake human rights-related oversight tasks. Overall, current board composition is reportedly diverse, with varied sets of knowledge, skills and expertise;

however, it is commonly accepted that many board members require additional information and guidance in order to effectively address increased attention on ESG and mandatory due diligence-related requirements. While a small number of boards have members who are attuned to ESG opportunities, material ESG risks demand integration of the ESG parameters to the company’s vision and business strategy, yet many engage only on compliance, ethics and direct risks to their business.

This seems, however, to be changing. In fact, as one business representative put it, “understanding of the human rights risks, climate change risks ... [and] ... ESG and mandatory human rights due diligence” are some of the criteria employed in selecting new board members for companies. Another interviewee stressed that “it is essential to have one or two board members championing the cause so that the ESG journey is well understood, followed and integrated into the company’s long-term strategy”. Board diversity in terms of expertise in these areas is therefore of growing importance.

Board members with sector expertise and experience in stakeholder engagement appear to be more focused than others.

Interviewees emphasized the importance of peer learning and believed that the presence of board members with an appreciation of the changing landscape and importance of stakeholder engagement could be used more effectively. None of the companies interviewed reported the presence of affected stakeholders on the board, or other individuals holding specific human rights expertise.



**People tend to be influenced by their peers, and by their status. This can be leveraged for larger purposes by creating groups of like-minded members.**

Business representative

## 4.2 Are human rights an issue for boards?

The rapid acceleration of ESG – in particular during the COVID-19 pandemic – has illustrated that there is a tidal change under way: boards themselves are increasingly embracing the need for human rights and environmental awareness and expertise. This is happening alongside movements such as MeToo and Black Lives Matter asking pertinent questions about board diversity and minority representation. It remains true in almost every market in the world that board compositions are more likely to represent the power structures and wealth distribution of the societies in which a business is based than those upon which the business has the greatest impact. If boards are to meaningfully embrace stakeholder capitalism or ESG, this must change.

Each interview included a question on the functional responsibility of the management team and the board in the context of engagement with affected stakeholders. All interviewees perceived the board’s role to ensure not only good governance but also that strategies and policies are in place to respect human rights and engage sensitively with affected stakeholders. Interviewees believed that the role of the board is to guide the company’s executive leadership based on their expertise, external knowledge and experience.

The significance of inclusive, participatory and meaningful engagement with affected stakeholders in ensuring good corporate behaviour and maintaining the social licence to operate was affirmed by all interviewees. However, interviewees emphasized that stakeholder engagement should sit with the executive management and functional teams, with the board providing oversight and guidance. Interviewees elaborated on the role

of the board in managing partnerships with stakeholders. As one business representative stated, “You could argue that there are other things and stakeholders that are incredibly important for the board to understand. For example, consumers – how our products are performing ... should they have relationships with our vendor base or our wholesale customers – they are all incredibly important for our business. But it is neither practical nor the best use of the board’s time in managing these relationships with stakeholders across the enterprise – it is the role and function of the executive leadership.” Civil society organization (CSO) representatives interviewed for this report shared similar concerns regarding the suitability of board-level conversations with affected stakeholders, particularly in the absence of suitable expertise or lack of preparation, as well as the complexities of power imbalances. As one interviewee noted, “The board needs to go where the defenders are but before the board does that – they need to invest heavily to understand affected stakeholders’ issues, their interests ... conduct site visits, and meet [proxy] representatives of affected stakeholders before they directly engage.”

It is interesting that, despite concerns that references to board oversight and director duties might have been removed from the European Commission’s February 2022 Corporate Sustainability Due Diligence Directive, these references remain in the current draft. There exists in Europe, and arguably in all global regions, an expectation that those who are ultimately responsible for a company’s actions need to have some oversight with respect to its societal impacts – in particular, the company’s impacts on the most vulnerable.



“ The role of the board at the fundamental level is to ensure good governance and strategy ... and ensuring adherence to the governance strategy that integrates human rights.

CSO representative

“ It is the responsibility of the C-suite to understand the landscape in which we are operating and the board has the responsibility to have an appreciation of the landscape and guide executive leadership based on their knowledge and experience.

Business representative

## 4.3 How does the board address human rights?

In addition to composition and knowledge base, there are several distinct activities that may be useful for a board to undertake to deliver on its ability to make good decisions that take human rights into account.

- **Integration into other board activities:** Concern for human rights can and should be integrated into other activities of the full board or board committees. As more and more boards establish ESG performance as an element of executive compensation and key performance indicators (KPIs), human rights criteria should be considered for inclusion, along with other topics such as climate and diversity, equity and inclusion (DEI), as such performance targets are established. Nomination committees should also include the characteristics listed above as candidates for open board seats are considered. Risk committees should integrate human rights considerations into their activities as well.
- **Scenarios:** The use of scenarios has come into widespread practice through the activities of the Task Force on Climate-Related Financial Disclosures (TCFD). This process can be equally valuable for identification, anticipation and action related to human rights risks. Scenarios can be a uniquely valuable tool for the board to manage risks that might otherwise be missed or underestimated, and can provide guidance to management for risk mitigation and strategy development.
- **Briefings from experts:** Boards can benefit from expert briefings on important developments overall on human rights issues, and/or specific questions that may affect operations or issues of relevance to a company's operations. Examples could include briefings on countries with problematic human rights records, locations where important

company operations face a challenging human rights environment, gender or racial equity, evolving understanding of the intersection of technology and human rights, and the links between human rights and climate change.

- **Advisory boards:** Many companies have looked to augment their perspectives and expertise by establishing advisory boards, sometimes across all ESG issues, and sometimes with an area of focus such as human rights. Many advisory boards are in regular contact with the formal governing board, and this can provide an additional mechanism for more diverse perspectives to be included in board deliberations.
- **Site visits:** For some companies, site visits by board members to locations with material importance and relevant human rights questions will prove valuable. This is particularly true for companies in the energy and extractives sector, or others where a single location or country presents challenging issues. Such visits also offer opportunities to exchange with experts, community representatives and other relevant stakeholders.
- **Board effectiveness:** Adding ESG issues, including human rights, to the annual board effectiveness assessment is crucial. This ensures parity with other issues and helps identify areas of improvement for future years.
- **Engaging in difficult conversations:** Thorough and effective discussions of human rights issues may depend on reconciling or hearing significantly different points of view. Boards may consider establishing norms or best practices for such conversations. In the long run, investing in these difficult conversations can lead to benefits not achievable with more superficial forms of engagement or dialogue.

## 4.4 Does the company know who its affected stakeholders are?

Overall, company representatives interviewed for this report noted the steps they take to map their stakeholders. However, the focus remains on those with employment relationships, including contractual and migrant workers. Though companies report mapping “affected stakeholders” in their operations and supply chains, there remains

ambiguity about the precise definition of “affected stakeholders” and “rights-holders”. These are most often understood as being limited to individuals employed by the company directly or indirectly and are rarely focused on the wider communities that may be affected by company activities, except among businesses in the extractives industry.

When considering who their affected stakeholders might be, board members should:

- Think about how workers are paid and treated by their company at every level, and including throughout the global supply chain.
- Think about how business practices may affect suppliers, and how suppliers under pressure to reduce costs may fail to uphold the rights of their workers.

- Think about the real-world effects that operations – as well as operations in the supply chain – have on neighbouring communities, the environment and society.
- Think about the real-world effects that company products or services have on customers, the environment and wider society.

“ **From the beginning, we focus on guest workers ... we have a responsibility towards these guest workers who come to work here in our company.**

Business representative

## 4.5 Does the board oversee a full range of human rights mechanisms?

“ **Information to the board flows through the sustainability committee and meetings with the executive management.**

Business representative

All corporate interviewees affirmed that their respective boards are fully informed of the strategies and various mechanisms available to engage with affected stakeholders, but did not comment on the effectiveness of identifying all relevant human rights defenders (HRDs).

The frequency varies from quarterly to annual meetings, while almost all company interviewees reported sharing reports and briefings with their boards every quarter. Boards reportedly engage on a regular basis with the executive committee, although conversations remain largely focused on compliance. Board members with a background and expertise in sustainability or corporate social responsibility appear to be more

engaged in understanding the interests of affected stakeholders, though engagement by others has reportedly increased recently in anticipation of the EU's directive on mandatory environmental and human rights due diligence as well as the broader ESG discourse.

Some boards, particularly those whose companies have human rights policies, are actively engaged and reportedly ask questions about affected stakeholders more often than others. However, at large, the engagement of the board on issues relating to grievance mechanisms to address harms to individuals linked to company actions or inactions remains limited and could be strengthened along with that of C-suite executives.

“ **At a minimum, we get together every quarter; however, over the past years, the meetings have been frequent, since issues related to labour have come to the fore.**

Business representative

“ **There is active engagement by the board with very focused and persistent questions, trying to understand operational risks and other perspectives, not only how we are managing the risks, but also how we are delivering sustainable value for the company.**

Business representative

5

# Reporting and transparency

## What do board members need to know?

A corporate board holds critical roles in providing strategic guidance to and oversight of a company and its management. This supervisory role sits alongside fiduciary responsibilities, including ensuring due care in how board members exercise their duties in a context of increasingly stringent corporate responsibility regulations.

In recent years there has been a marked growth in business and human rights standards, including those translated into legal mandates. Even more notable is the sharp rise in demand for companies to address ESG criteria.

Public disclosure of sustainability-related information through reporting is integral to ensuring

that accurate data flows to users who need it for decision-making. Data from public corporate reports is used by investors seeking to understand sustainability risks in their portfolios and ensure that their allocation of financial capital goes to sustainable businesses, products and activities; this signals openness to wider stakeholder engagement.

Board members should be aware of evolving societal, investor and legal expectations and, in the exercise of fiduciary responsibilities and oversight, ensure that the necessary policies, systems and incentives are in place to encourage a corporate culture where respect for human rights throughout the company and in business relationships is an expected practice.

### 5.1 Reporting obligations relating to board oversight

Companies are increasingly required to report on a wide range of human rights issues, with various implications across international markets. While these requirements might generate additional legal and financial risks, engaging proactively can also bring strong reputational benefits, in a time of increased stakeholder expectations on businesses.

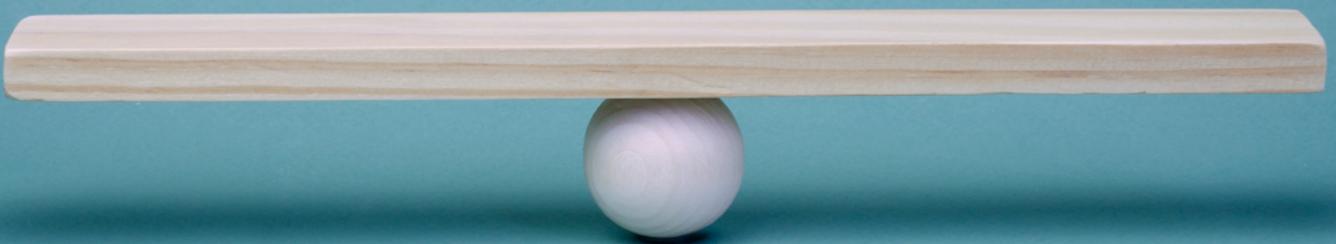
This brief overview of laws passed over the past decade illustrates how expectations have been ramping up globally for companies to be more transparent:

- Section 1502 of the Dodd-Frank Act (2010) requires disclosure of steps taken to address conflict minerals sourced from the Democratic Republic of the Congo and surrounding areas.
- The California Transparency in Supply Chains Act (2012) requires disclosure of verification, audit, certification, internal accountability and training efforts.
- The UK Modern Slavery Act (2015) mandates the publication of modern slavery statements, which must be approved by the board with a clear date of approval.

- The Securities and Exchange Board of India Listing Obligations and Disclosure Requirements Regulations (2015) makes disclosure on human rights and environmental risks mandatory for India's 1,000 largest publicly listed companies.
- The French Duty of Vigilance Law (2017) requires companies to publish an annual vigilance plan, establishing measures to identify risk and prevent severe human rights impacts, including for subcontractors and suppliers.
- The Australian Modern Slavery Act (2018) requires modern slavery statements approved by the principal governing bodies of the reporting entity.
- The EU Non-Financial Reporting Directive (2018) is the first law to require companies to report on both the sustainability impacts and the risks posed to companies, as well as those impacts on people and the environment ("double materiality").
- The Dutch Child Labour Due Diligence Law (2019) requires companies to identify and prevent child labour in their supply chains and

appoint a regulator who publishes human rights due diligence statements in an online public registry. Notably, the law includes criminal sanctions for failure to exercise human rights due diligence.

- The Hong Kong Stock Exchange Enhanced Requirements for ESG Disclosure (2019) has newly introduced social KPIs, including how companies manage social risks across supply chains.
- The Norwegian Transparency Act (2021) applies to a large range of companies and their entire supply chains, requiring due diligence activities and responses to information requests about how they address potential and actual impacts on human rights.
- The US Uyghur Forced Labour Prevention Act (2021) requires issuers to disclose any knowing engagement with entities in or affiliated with the Xinjian Uyghur Autonomous Region of China.
- The German Act on Corporate Due Diligence in Supply Chains (2021) obliges companies to identify risks of human rights and environmental violations at their suppliers, take countermeasures and document them to the Federal Office for Economic Affairs and Export Control.
- The EU's Sustainable Finance Disclosure Regulation (SFDR) (2021) aims to improve transparency on sustainable investments and claims, and requires standardized disclosures on how ESG factors are integrated at entity level and product level.



# Conclusion

## What is on the horizon for corporate boards?

Boards will need to play increasing attention to the non-financial requirements of business over the months and years ahead. In part, this will come from the climate change agenda; in part, from societal expectation of how business is run. Central to this is the concept of “affected stakeholders”: those upon whom a business has the greatest impact – including those most vulnerable to adverse impacts but who are also most likely to benefit from the effective mitigation and prevention of harms, and the provision of remedies where necessary. While it is executive management that needs to manage a company’s relationship with affected stakeholders on a day-to-day basis, board members also need to exercise effective oversight of these mechanisms.

Different approaches to the issue of business responsibility for affected stakeholders are being taken in different parts of the world. The European Union, for example,<sup>16</sup> is in the process of introducing landmark regulation covering not only EU companies but also third-country companies with significant turnover in the EU and companies with established relationships with EU companies.

In February 2022, the European Commission published its draft directive on corporate sustainability due diligence,<sup>17</sup> kicking off the legislative review process. The draft proposal notes that company directors are responsible for putting in place and overseeing due diligence actions that must be reported to the board of directors. When fulfilling their duty to act in the best interest of the company, the directors will need to consider human rights, climate change and the environmental consequences, both in the short and long term. They will also need to ensure their corporate strategy considers the actual and potential adverse impacts identified.<sup>18</sup> Furthermore, companies will be required to take measures to prevent, mitigate and end adverse impacts. They need to communicate the due diligence measures taken in a yearly statement on their website.

Legal advisers are noting the opportunity for companies to position themselves better in terms of these upcoming regulations by already disclosing how sustainability considerations are integrated into their strategies, policies and procedures and reviewing the extent to which their boards and teams are equipped to address supply chain risks.<sup>19</sup>

If adopted by the European Parliament and Council, the Corporate Sustainability Reporting Directive (CSRD)<sup>20</sup> is also due to come into effect in 2023 to replace the Non-Financial Reporting Directive. The CSRD aims to address previous gaps, reduce the burden of preparing multiple different reports and make data comparable and easier to access and use by multiple audiences. One new area in this reform will be the development of mandatory standards that will accompany the legislation to make it simpler to focus on what is most relevant (see Appendix 1). Advisers are highlighting how important it is for companies to prepare for this upcoming change as the sustainability data required will influence access to loans and investments to finance the energy transition.<sup>21</sup>

Corporate boards are ultimately responsible for the company and the direction it takes to address various ethical, legal and strategic challenges. The landscape of business and human rights standards and expectations for companies to act on and report expands each year. Boards need to understand that there is not just a strategic imperative for all companies to implement human rights due diligence, but also an increasing legal, investor and broader stakeholder expectation. Greater focus on such topics will require building these skills in boards, both through targeted training and recruitment of directors who are able to effectively integrate sustainability into company strategies, resilience and transition plans.

# Appendices

## Appendix 1: Guidance note: Board duties in ensuring company engagement with affected stakeholders

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.



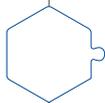
## Appendix 2: Examples of relevant mechanisms for board oversight

This appendix describes some of the mechanisms that any company might have in place to ensure the company is respecting the human rights of affected stakeholders. Not all of these mechanisms will be explicitly labelled “human rights”, but they deal with specific aspects of human rights nevertheless. The board’s oversight role of these mechanisms needs to ask the following questions:

- Does the range of mechanisms adequately cover the salient human rights of those stakeholders most affected by the company’s activities?
- Are they working effectively from the perspective of the affected stakeholder as well as the company?

- Does the board regularly engage in thorough investigations to better understand specific mechanisms?
- Does the board periodically review the appropriateness of such mechanisms and any emerging gaps?

This list of potential mechanisms is not exhaustive but hopefully gives some indication to boards of where to focus as well as providing illustrative examples from companies. The selected material is based on publicly available examples that have already been rated as good practice through independent and impartial initiatives such as the Corporate Human Rights Benchmark.



### Board governance

Companies can draw on human rights experience and expertise in different ways. Increasingly there will be at least one board member, usually a non-executive director, who is the ESG lead and who might chair the board’s sustainability committee, although it is quite possible for the board’s chair or chief executive officer to preside over this committee. Some jurisdictions allow for supervisory committees on which workers and other affected stakeholder representatives might sit (e.g. Germany). Some companies might also create advisory boards (focused specifically on sustainability, ESG or human rights), which might also include affected stakeholder representatives and advise the corporate board directly.

#### Example: Ford Motor Company

The company indicates that its Board Sustainability and Innovation Committee has the “primary responsibility for assessing the company’s progress on strategic economic, environmental and social issues as well as the degree to which sustainability principles have been integrated into the various skill teams (see the Committee’s Charter); evaluates and advises on innovations and technologies that improve our economic, environmental and social sustainability”.

According to the Committee’s Charter, the sustainability strategies involve “human rights, working conditions and responsible sourcing”. In addition, in its UN Guiding Principles Reporting Framework (UNGPRF) Index 2020, it states, “Human rights issues are monitored throughout the year and brought to the attention of the Sustainability and Innovation Committee of the Board of Directors for review and

oversight as they arise. We have a corporate meeting structure to improve how we operate the business today and prepare us for the future, framing how we think, inspect, decide and learn.”<sup>22</sup>

#### Example: Total

The company’s Human Rights Internal Guide, which contains Total’s human rights commitments, contains a message from chief executive officer Patrick Pouyanne: “The group is committed to respect internationally recognized human rights standards in the countries where we work.” Furthermore, the company’s Safety Health Environment Quality Charter, which outlines a commitment to comply with voluntary principles on security and human rights, is signed by Pouyanne.

The Human Rights Coordination Committee directs the initiatives and actions taken by the various Total business units relating to human rights. It is led by the Ethics Committee chair. The Ethics Committee’s mission is to ensure that its code of conduct (which contains human rights policy commitments) is shared, understood and implemented across the company. The chair of the Ethics Committee reports regularly to the Executive Committee and to the Governance and Ethics Committee of the board of directors on the implementation of the code of conduct that includes human rights policy commitments.

The company’s Human Rights Briefing Paper states that consultation with internal and external stakeholders on the code of conduct and human rights guide identified “three broad and important

focal (salient) human rights areas”. These include Human Rights in the Workplace, Human Rights and Local Communities and Human Rights and Security. The Human Rights Coordination Committee oversees the initiatives and action taken by the various Total business units relating to human rights. It is led by the Ethics Committee

chair. The Ethics Committee’s mission is to ensure that the code of conduct is shared, understood and implemented across the company. Its chair reports directly to Total’s chief executive officer and presents an annual report to Total’s executive committee and Board of Directors.<sup>23</sup>



## Stakeholder councils

Boards may have oversight of panels specifically created to hear the views of affected stakeholders. These might be: community representatives in relation to a specific activity such as infrastructure, energy or mining; consumer panels in relation to specific products; or worker representation in relation to workplaces and supply chains.

### **Example: Adidas**

Adidas has made a long-standing commitment to engage with its stakeholders, reflected in its Stakeholder Relations Guideline. The definition of stakeholders included in this document is the following: “People or organizations who affect, or are affected by, our operations and activities.” They include employees, business partners, community members and workers in suppliers’ factories, among others.

The company quotes several programmes and initiatives that show how it engaged stakeholders in the development or monitoring of its human rights approach. One example is its work with the Fair Labour Association (FLA) as part of the multistakeholder forum Americas Group focused on freedom of association issues or its work with the United Nations High Commissioner for Refugees (UNHCR), and the Turkish Ministry of Labour and Social Security to advocate for the rights of Syrian refugees and discuss the challenges in integrating them into the labour market.<sup>24</sup>



## Collective bargaining arrangements

Collective bargaining with workers and their representatives is a key mechanism for ensuring the respect of many workplace rights, including the ILO Core Conventions.

### **Example: Unilever**

The company declares in its Human Rights Policy Statement: “We recognize the importance of dialogue with our employees, workers and external stakeholders who are or could potentially be affected by our actions. We pay particular attention to individuals or groups who may be at greater risk of negative human rights impacts due to their vulnerability or marginalization and recognize that women and men may face different risks.” It also states: “We believe that working through external initiatives and partnerships, for example with other industry, NGO, trade union, supplier and other business partners, is often the best way to address shared challenges.”

In its human rights report, the company indicates that, in addition to day-to-day interactions between its leadership teams and union representatives in the factories, it has formal consultations with unions. “We conduct a biannual consultation forum with the IUF (International Union of Food, Agricultural Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations) and IndustriALL, a face-to-face engagement between our senior industrial relations leaders and IUF leadership. Worker representatives discuss local and global rights issues which then can be addressed by our senior team; these discussions also give us a platform to communicate our own business context, and new policies and programmes that impact workers. We discuss rights issues in our own operations, in joint ventures, and involving our suppliers. We also focus on our key commodities such as palm oil and tea, and particularly on working conditions for women in those sectors.”<sup>25</sup>



# Human rights defender policies and procedures

Nearly 30 companies now have policies specifically addressing some of the most vulnerable of all affected stakeholders: human rights defenders (HRDs). A specific report on the role of boards in relation to human rights defenders was produced by the Business & Human Rights Resource Centre.

### Example: Human Rights Defenders and Civic Freedoms Portal<sup>26</sup>

HRDs' work is essential to the business and human rights movement because of their critical importance for ensuring corporate responsibility and accountability. Yet attacks on them are growing. This hub brings together news about these advocates and communities – specifically land, environmental and labour defenders, guidance for companies and investors and supportive business

actions. It also links to the Business & Human Rights Resource Centre's database of attacks and an interview series.<sup>27</sup>

“One of the most important and urgent opportunities for responsible business is to support civic freedoms – freedoms of association, assembly, expression and privacy – and the people who exercise the rights to defend all human rights. There is a clear normative responsibility for companies to respect human rights, as set forth in the UNGPs, and companies also have a discretionary opportunity to go above and beyond these defined responsibilities and expectations. The UNGPs are a hard floor, not a low ceiling, for company action to support civic freedoms and HRDs.”

The following international companies have issued human rights defender policies:

<a href="#">Adidas</a>	<a href="#">Analog Devices</a>	<a href="#">Barrick Gold Corporation</a>	<a href="#">BHP</a>
<a href="#">Diageo</a>	<a href="#">Ericsson</a>	<a href="#">Freeport-McMoRan</a>	<a href="#">GAP</a>
<a href="#">Inditex</a>	<a href="#">Intel Corporation</a>	<a href="#">Kellogg's</a>	<a href="#">Kering (Gucci)</a>
<a href="#">M&amp;S</a>	<a href="#">McDonald's</a>	<a href="#">Micron Technology</a>	<a href="#">Microsoft</a>
<a href="#">Murata Manufacturing</a>	<a href="#">Newmont</a>	<a href="#">Nokia</a>	<a href="#">NXP Superconductors</a>
<a href="#">Pernod-Ricard</a>	<a href="#">Repsol</a>	<a href="#">Tesco</a>	<a href="#">Vale</a>
<a href="#">VF Corporation</a>			

The following international companies have issued human rights defender statements:

<a href="#">Apple</a>	<a href="#">Chevron</a>	<a href="#">Coca-Cola Company</a>	<a href="#">Eni</a>
<a href="#">Heineken</a>	<a href="#">Isagen</a>	<a href="#">Rio Tinto</a>	<a href="#">Tiffany &amp; Co.</a>
<a href="#">Unilever</a>	<a href="#">Vattenfall</a>	<a href="#">Walmart</a>	<a href="#">Woolworths</a>

The following institutions and initiatives also have human rights defender statements:

FIFA	FMO (Dutch Development Bank)	The Independent Consultation and Investigation Mechanism	International Council of Mining and Metals
International Finance Corporation	Investor Alliance for Human Rights	Multilateral Investment Guarantee Agency	Office of the Compliance Advisor Ombudsman
Roundtable on Sustainable Palm Oil	World Bank Inspection Panel		



## Human rights due diligence reports

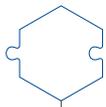
Human rights due diligence is a requirement under the UNGPs, and hundreds of companies have committed themselves to undertaking such work. They are also now a legal requirement in a number of European countries and the European Commission has developed a proposal for mandatory human rights and environmental due diligence. Such reports are an important tool for management and boards alike, as they should identify the most salient human rights issues for a company to manage and also who the company's affected stakeholders are. The UK Modern Slavery Act requires the boards of about 20,000 companies with operations in the UK to sign off an annual statement based on due diligence focused on forced labour and human trafficking in the global supply chain. The European Commission's proposal also calls for board oversight and director duties in relation to mandatory due diligence.

### Example: Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence (23 February 2022)<sup>28</sup>

Article 25, on directors' duty of care, requires that: "Member States shall ensure that, when fulfilling their duty to act in the best interest of the company, directors of companies referred to in Article 2(1) take into account the consequences of their decisions for sustainability matters, including, where applicable, human rights, climate change and environmental consequences, including in the short, medium and long term." It goes on to require that: "Member States shall ensure that their laws, regulations and administrative provisions providing for a breach of directors' duties apply also to the provisions of this Article." The positive aspect

here is that the proposal makes the requirement a strategic one, even if it is not specific about the time frames involved – how short is short term, how medium is medium term and so on? This is especially important in business sectors such as commodity trading, apparel and other fast-moving consumer goods, which seem resistant to long-term planning, whether on sustainability issues or otherwise. When it comes to environmental and climate issues, long term can mean the very long term, and the Commission needs to clarify whether it wishes business to address intergenerational considerations. The Article also calls on member states to ensure that not taking into account the consequences of their decisions would be a breach of director duties, even though it permits states themselves to define what a breach might look like at the national level.

The question of board oversight of due diligence is dealt with in Article 26 and sets out that: "Member States shall ensure that directors of companies referred to in Article 2(1) are responsible for putting in place and overseeing the due diligence actions referred to in Article 4 and in particular the due diligence policy referred to in Article 5, with due consideration for relevant input from stakeholders and civil society organizations. The directors shall report to the board of directors in that respect." It also dovetails this requirement with other aspects of the proposal: "Member States shall ensure that directors take steps to adapt the corporate strategy to take into account the actual and potential adverse impacts identified pursuant to Article 6 and any measures taken pursuant to Articles 7 to 9."



## Remedies and grievance mechanisms

Operational-level grievance mechanisms are also a requirement of the UNGPs and can provide both remedy to the victim and invaluable information for management and boards.

### Example: Anglo American

The company's Human Rights Policy indicates that "where we have caused or contributed to adverse human rights impacts we will contribute to their remediation as appropriate". Also, its "Social Way" document indicates that effective social performance is linked to respect for human rights, meaning "avoiding, preventing, mitigating and, where appropriate, remediating adverse human rights due diligence". The "Social Way" document states that managed sites shall ensure "clear communication that the existence of the complaints and grievance mechanism does not preclude the right of stakeholders to engage in judicial or other legitimate processes, in which Anglo American is committed to cooperate".<sup>29</sup>

### Example: Microsoft

The company responded in a detailed letter to Amnesty International in October 2017, addressing the questions put to it regarding Amnesty's investigation into its supply links to the DRC and Huayou Cobalt. The response provides detailed information on the changes that Microsoft says it has undertaken in response to the report previously released by Amnesty, and just prior to the release of Amnesty's follow-up report, Time to Recharge, in November 2017. These changes by Microsoft relate to both the mapping of the company's supply chain and the increased expectations placed on suppliers.<sup>30</sup>

### Example: Accord on Fire and Building Safety in Bangladesh<sup>31</sup>

In October 2018, a signatory company to Bangladesh's Accord on Fire and Building Safety mechanism requested that the company's steering

committee release it from responsibility for one of its suppliers, arguing that the supplier had violated the company's zero-tolerance policies on harassment and excessive working hours, and had as such triggered the application of 2018 Accord Art. 22(a). The signatory company provided evidence suggesting that the supplier had repeatedly failed to comply with a number of action points jointly agreed by the brand and the supplier to ensure that excessive/forced overtime is no longer practised (e.g. raise the percentage of skilled workforce, increase the number of leave days/workers and improve the factory's human resources policy to address workers' complaints).

The Accord's steering committee agreed that the company should use the mechanism to exercise due diligence as outlined in the UNGPs and the OECD Guidelines for Multinational Enterprises. The company signatory was therefore asked to engage with the Accord's Secretariat and other signatory companies sourcing from the same factory, with a view to increasing its leverage in an attempt to remedy the alleged rights violations.

As a result, the Accord Secretariat investigated the harassment and excessive work hours allegations through its complaints mechanism, and found that the allegations had merit. In accordance with the Accord's protocols, the Secretariat kept all of the responsible companies informed throughout the process of investigation and issue of resolution.

The factory management notified the Accord Secretariat that it had addressed the issues raised in the complaint, including by conducting training and awareness-raising sessions with the workers. The management's assertion was corroborated by the Accord with a sample of workers. The signatory company that brought this case to the attention of the steering committee in 2018 remains responsible for the supplier.



## Whistle-blower mechanisms and protections

Boards will be familiar with whistle-blower mechanisms and protections; they are a vital way in which the views and concerns of affected stakeholders can be heard.

### Example: OECD's initiative on effective whistle-blower protection in the public and private sectors<sup>32</sup>

Whistle-blower protection is integral to supporting transparency, promoting integrity and detecting misconduct. Past cases demonstrate that corruption, fraud and wrongdoing, as well as health

and safety violations, are much more likely to occur in organizations that are closed and secretive. In many cases, employees will be aware of the wrongdoing, but feel unable to say anything for fear of reprisals, concerns about acting against the organization's culture, or lack of confidence that the matter will be taken seriously. The negative implications of this are far-reaching for both organizations and society as a whole. Effective whistle-blower protection supports employees in "blowing the whistle" on corruption, fraud or wrongdoing. The OECD has nearly two decades of

experience in guiding countries to review whistleblower protection measures, increase awareness and develop policies founded on satisfactory international practices. The OECD pioneered the first soft law instrument on public-sector whistleblower protection, with the 1998 Recommendation on Improving Ethical Conduct in the Public

Service. In 2009, the OECD Council adopted its Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions, requiring the 41 parties to the Anti-Bribery Convention to put in place public- and private-sector whistle-blower protection measures.

## Diversity and inclusion (D&I) policies

Boards should be responsible for, and accountable to, their organization's diversity and inclusion agendas. Board composition should reflect wider society.

### Example: The Ingka Group Equality Plan<sup>33</sup>

The Ingka Group Equality Plan focuses on three components: (1) reflecting the diversity of its communities and creating an inclusive work environment for co-workers; (2) embedding equality into business practices and ways of working, including policies, processes and interactions with customers; and (3) advocating for a more equal society and helping to bring about positive change beyond the company. Part of the Equality Plan includes a commitment

to increase ethnic, racial and national diversity at all levels of leadership in 30 countries by 2024. Special attention will be given to representation on management and company boards.

One of the ways of reaching the commitments in the Equality Plan is partnering with other stakeholders such as the World Economic Forum's Partnering for Racial Justice in Business<sup>34</sup> initiative. Participants in the initiative aim to build equitable and just workplaces for professionals with under-represented racial and ethnic identities. Participating companies are committed to ensuring that racial and ethnic justice is on their board's agenda, to taking at least one firm action and to setting a long-term strategy to become an anti-racist organization.

## Community engagement procedures

The "social licence to operate" is a vital concept for businesses that have direct physical relationships with affected stakeholders, such as in the mining sector. Maintaining this consent is a prime consideration for boards.

### Example: The International Council on Mining and Metals: Understanding Company-Community Relations Toolkit<sup>35</sup>

The toolkit claims to offer the following advantages for mining companies:

- Building and maintaining positive relationships with local communities is vital to the success of mining and metals operations. The toolkit is designed to help companies understand the nature of their relationships with communities, irrespective of whether these are supportive or otherwise. Ultimately, the emphasis is on helping companies achieve supportive relationships.
- The toolkit aims to help companies understand the factors that influence community support and measure the level of community support for a particular project or operation.

- It provides a tool to visualize that level of community support and offers practical guidance on how the tool can be used to monitor and strengthen community support and, ultimately, community-company relationships.
- The approach outlined in the toolkit recognizes that a company's attitudes and behaviours towards host communities, and the context in which it operates, play a fundamental role in determining the degree to which communities support a particular project or operation and the quality of relationships between the company and the community.
- The toolkit has also been adapted to provide training materials for companies to use to support their communication of key concepts and tools internally to different audiences, including senior leadership, non-community relations specialists and new community relations practitioners. The slide decks include speaking points and suggested facilitated exercises.



## Disclosure and reporting frameworks

There are several sustainability and ESG reporting frameworks. From a human rights perspective, it is important that all benchmarking is undertaken by an independent third party against a publicly agreed methodology. Engagement with affected stakeholders should be an explicit component of the methodology – benchmarks based on effective reporting can be a vital tool for boards to monitor the progress of their company.

### Example: The Corporate Human Rights Benchmark<sup>36</sup>

Now in its fifth year, the Corporate Human Rights Benchmark ranks 330 of the world's largest companies against explicit human rights criteria, including engagement with affected stakeholders.



## Appendix 3: The role of human rights defenders

Stakeholder expectations are rising around the proposition that companies have both a responsibility and an opportunity to support civic freedoms and those who defend them in certain situations. Two main frameworks have been developed for companies to understand their responsibilities and opportunities to respond to situations in which civic freedoms and human rights defenders are under threat: the report “Shared Space Under Pressure – Business Support for Human Rights Defenders” (2018) and the UN Working Group on Business and Human Rights’ Guidance on Business and Human Rights Defenders (2021). These two frameworks reflect and reinforce the re-emergence of this agenda at the forefront of the broader human rights agenda. Stakeholder expectations will further intensify globally as country-level activists and the international business and human rights community focus on this agenda with increasing priority and urgency.

### ‘Shared Space Under Pressure – Business Support for Human Rights Defenders’<sup>37</sup>

The report “Shared Space Under Pressure – Business Support for Human Rights Defenders”, published in September 2018, was commissioned by the Business and Human Rights Resource Centre and International Service for Human Rights.<sup>38</sup> A response to the growing pressure on civic freedoms and civil society around the world – and the increasing attacks on human rights defenders, it offers an analytical and operational framework to guide companies as they determine whether – and if so how – to act in support of this agenda.

The report draws on more than 90 interviews with company and industry association representatives, responsible investors, civil society advocates and human rights defenders, as well as the leaders of multistakeholder initiatives, academic experts and government and UN officials.

It offers an analytical and operational framework to guide companies as they determine whether to act in support of this agenda, and if so how:

- The **normative responsibility** based on the UN Guiding Principles **plus the discretionary opportunity** to act to support human rights defenders and the shared space
- A **spectrum of actions and flexible pragmatism** to guide companies on whether and how to act
- Analysis of the **relative risks of action versus inaction**

- A set of “**spotlights**” highlighting how companies in different sectors and countries have addressed civic freedoms and human rights defenders in addition to initiatives/actors making a difference

### The UN Working Group on Business and Human Rights: the UNGPs – guidance on ensuring respect for human rights defenders<sup>39</sup>

The UN Working Group’s guidance, published in June 2021, emphasizes the need to address the adverse impact of business activities on human rights defenders. It “unpacks” for states and business the normative and practical implications of the UNGPs in relation to “protecting and respecting the vital work of human rights defenders”. The guidance is informed by engagement with diverse stakeholders, including human rights defenders, civil society, businesses and states, as well as making a public call for contributions.

The Working Group guidance is based on the UNGPs as the authoritative normative framework for respect for human rights in business and aligns with the UN Special Procedures with respect to business impacts and human rights defenders.

The guidance addresses both states and business. It is structured around the three pillars of the UNGPs and clarifies the implications of the UNGPs for states and companies under each of the pillars:

- **Pillar 1:** The guidance highlights how protecting the rights of human rights defenders is part of the duties of states under Pillar 1, emphasizes the relevance to SDG 16 on peace, justice and strong institutions, and offers recommendations for states to improve protection of human rights defenders in the context of business activities.
- **Pillar 2:** This section is based on the UNGPs pillar 2/the responsibility to respect human rights; it highlights the need to integrate consideration of risks to human rights defenders into human rights policies and due diligence processes.
- **Pillar 3:** This section outlines the obligations on the part of state and responsibilities of business to ensure access to effective remedies for human rights defenders whose rights have been harmed in the context of business activity.

The Working Group guidance to business focuses primarily on the implications with respect to human rights defenders arising from the corporate responsibility to respect human rights as articulated in the UNGPs. As such it does not elaborate much on the “business case” for companies

to act to defend or protect the rights of human rights defenders when the UNGPs do not apply. However, it refers to the Shared Space framework for the articulation of the business case and also recognizes that business benefits from engaging human rights defenders as “partners”.

The guidance emphasizes the need to include respect for human rights defenders in a standalone policy or integrated into the company’s overall

human rights policy. The guidance also elaborates on the need to integrate consideration of the rights of human rights defenders – and risks to their rights – into human rights due diligence processes, including through consultations with defenders. It provides illustrative examples of practical company actions (many of which are also in the Shared Space framework) but does not elaborate on the decision-making processes involved in evaluating different possible actions.



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# Endnotes

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