

# Your Right to Know

## Beyond corporate transparency

The right to know in the electronics industry

GoodElectronics Network

Centre for Research on  
Multinational Corporations (SOMO)

Business, Human Rights Environment  
Research Group (BHRE)

March 2020



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**Layout** Frans Schupp – [www.fransschupp.nl](http://www.fransschupp.nl)

**ISBN** 978-94-6207-148-3



This publication has been produced with funding from the European Union and the Dutch Ministry of Foreign Affairs. The content of this publication is the sole responsibility of the authors and can in no way be taken to reflect the views of the funders.



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The Centre for Research on Multinational Corporations (SOMO) is a critical, independent, not-for-profit knowledge centre on multinationals. Since 1973 we have investigated multinational corporations and the impact of their activities on people and the environment. We provide custom-made services (research, consulting and training) to non-profit organisations and the public sector. We strengthen collaboration between civil society organisations through our worldwide network. In these three ways, we contribute to social, environmental and economic sustainability.



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The Business, Human Rights and the Environment Research Group (BHRE) is based at the School of Law, University of Greenwich, and led by Professor Olga Martin-Ortega. It researches “the impact of commercial activities and business working methods on the enjoyment of human rights and the environment.” BHRE’s work on Transparency and Human Rights in the Electronics Supply Chain focuses on the rights and working conditions of those who manufacture the electronic goods we consume. BHRE works closely with [Electronics Watch](#) and the [GoodElectronics Network](#) in researching, designing and implementing tools to hold corporations to account, support public buyers and improve working conditions in this complex supply chain.



The [GoodElectronics Network](#) strives for “a global electronics industry characterised by adherence to the highest international human rights and sustainability standards”. The network and its members are working to ensure that labour rights and environmental norms are protected and respected throughout the entire production cycle, from mining to manufacturing to recycling and disposal of electronics waste. Founded in 2006, the GoodElectronics Network has grown to include over 100 organisations and individuals worldwide, including civil society organisations, trade unions, labour and human rights organisations, environmental groups, universities, academics and researchers. Members bring a rich variety of expertise, perspectives and approaches to the network.

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# Acknowledgements

This report has been written in a collaborative manner and subjected to consultation with experts and civil society organisations working in the field of labour rights, business and human rights and chemical and hazardous substances. In December 2018, the writing team conducted an expert consultation and we are indebted to the participants for their insights and suggestions. Representatives of a number of expert organisations attended our consultation, including Bread for All (Switzerland), Center for Trade Union and Human Rights (Philippines), Clean Clothes Campaign, Electronics Watch, Fafo Institute for Labour and Social Research (Norway), Fairphone, IndustriALL Global Union, International Corporate Accountability Roundtable, International Campaign for Responsible Technology, Labour Education and Service Network (Hong Kong), Solidar Suisse, and the University of Edinburgh. Further input was provided during discussions at the 2019 Electronics Watch annual conference where the draft report was presented.

Furthermore, we are particularly grateful to Peter Pawlicki of Electronics Watch and Jing Bian of BHRE for their comments to previous drafts. Mark Taylor of Fafo and the UN Special Rapporteur, Başkut Tuncak, were both instrumental in shaping our thinking and in building our arguments for a right to know, for which we are particularly grateful. Mark Taylor also lent us the beautiful metaphor of “pushing more workers into the darkness of production risks” which we have used to open our report to express the risks in the supply chain of electronics. Ted Smith, Amanda Hawes and Sanjiv Pandita insights and expertise were instrumental for writing the section on workers’ right to know in connection to toxic chemicals and health and safety at work. Thanks too to Johanna Hoekstra and Marisol Bernal for their input during the process and to Fatimazahra Dehbi (all with BHRE) for her work in the final editing phase. All the mistakes remain exclusively the responsibility of the authors.

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## Executive summary

The global electronics industry is a huge, complex, fast-growing, immensely profitable production network, employing millions of people around the world. It is, on the other hand, also an industry where fundamental rights of workers are violated on a massive scale. Workers around the world are working under precarious and toxic conditions, resulting in poor livelihoods, and high rates of despair, injury and even death. The electronics industry is only going to grow more, with information technology becoming essential to all aspects to our lives, pushing more workers into the darkness of its production risks. There is not only a need to address the social impacts of the industry, but an urgency to do so.

Corporate secrecy around and of business operations and trade relations plays a key role in perpetuating these harms. Workers in the global electronics production network, their families and communities are deprived of all sorts of vital information and access to decision-making processes with regard to their working lives and conditions. Such barriers are based on corporate concepts of confidentiality that fail to properly take into account the rights of workers

Current corporate policies and practices with regard to transparency take disclosure as a voluntary gesture to workers, consumers and the general public. Transparency provided currently is superficial at best, and under the exclusive control of companies who are the ones who decide what, when, how and to whom to disclose. States fail in requiring business to exercise their responsibilities. Initiatives and standards developed by civil society groups are more inclined to take a rights-based approach, but still limited in scope and impact.

In this report, we demand disclosure based on workers' right to know. We make the argument that the right to know is the norm. We stand up for the right to know as a key enabling right, understood as the right to access all information that may impact or is necessary to realise workers' rights, including all information that affects their lives and livelihoods. Protecting and respecting the right to know provides workers in the electronics industry, their families and communities with the means to defend themselves against human rights violations that business cause, contribute to, or are linked to. The right to know is enshrined in international law and in domestic legislation that deal, for example, with on occupational health and safety.

Only in possession of the information regarding the conditions in which they do their work can workers and other relevant parties understand and demand the protection of their rights. Only by making supply chain information available can corporate actors be held accountable when they fail to respect human and labour rights. Only by having access to information about the adverse impacts of irresponsible business conduct can society ensure that states regulate and enforce laws to respect, protect, promote and fulfil the rights of all those adversely affected by such corporate impacts.

This report calls for transparency in the global electronics production network from a rights-based approach whereby access to information is a right for workers, their families and members of their communities, and whereby providing information is a duty both of states and businesses. Workers, their families and communities, are the owners of rights, including the right to know, or "rights-holders". In turn, states and businesses have duties and are therefore "duty bearers". They have specific obligations towards workers, their families and communities, as well as wider duties regarding public rights to information and participation in decision-making processes,

which are well defined in national and international law. Furthermore, businesses also have a duty to disclose information and be transparent as part of their human rights due diligence responsibilities; this includes providing information to rights-holders (workers, their families, and communities), to other duty bearers (state authorities) and to other related parties such as workers representatives and representative organisations.

This report is driven by the need for systematic, coherent and mandatory disclosure and transparency in the global electronics industry. It focuses on workers, their families, and members of their communities as main rights-holders with respect to the right to know. While a *rights-based approach* to transparency applies to the entire electronics production network, this report mainly focuses on the manufacturing and final assembly phase of electronics hardware.

Our analysis is based on the human rights framework including the workers' right to know and the corresponding state obligations to protect such rights; labour standards as codified by the International Labour Organisation; international standards on corporate human rights due diligence; national regulations in labour laws, and the corresponding obligations of states to demand and monitor such due diligence as laid out in the UN Protect, Respect and Remedy framework and the UN Guiding Principles on Business and Human Rights; and existing civil society and multi-stakeholder initiatives that promote transparency in other sectors and supply chains.

Disclosure of information on a wide number of aspects related to workplaces, production processes, business corporate policies, practices, strategies and relationships should be the norm, and confidentiality the exception. A *rights-based approach* to disclosure and transparency, centred in the right to know, means that making certain information available and guarantee access to it to rights-holders-in a systematic, coherent and usable way- is an obligation and not a discretionary decision. The right to know is both a right in itself and a precondition for the realisation of other fundamental rights, hence an enabling right. The proper implementation of disclosure and transparency is key for the fulfilment of the right to know and therefore to guarantee the respect and protection of human and labour rights in the global electronics production network in particular and in global supply chains in general.

Correlative to this right are both the state's duty and business' responsibility to protect and respect human rights.

- States have the duty to protect human rights through establishing the adequate regulatory frameworks for the disclosure of such information and the monitoring of compliance, as well as sanction for non-compliance by other duty bearers.
- Businesses have a responsibility to respect human rights in their own operations as well in the context of their business relationships, including their supply chain. As part of businesses' responsibilities to conduct human rights due diligence, they must assess their actual and potential impacts, address them and communicate their findings and actions to address such risks. Therefore, providing transparency to right holders is an explicit element within the businesses' responsibility to communicate and engage with rights-holders and other stakeholders. This includes the responsibility to disclose the information workers have a right to and to communicate the processes undertaken to address the impact of their activities. This is a duty, not a discretionary and voluntary choice by businesses.

## Who are the rights-holders?

Persons whose rights can be impacted by businesses have a right to know and to access relevant information. These potentially affected persons are right-holders and include workers, their families and communities.

Besides workers as primary rights-holders of the right to know, followed by their families and communities, there are several other parties that are in different degrees entitled to information. Transparency instruments tend to refer to the ambiguous and wide category of “stakeholders” or generally call for public disclosure. To be able to specify down duties and rights, we need to further identify those stakeholders.

For the purposes of this report, the main rights-holders are:

- Workers (primarily), with special consideration of sub-groups of workers, such as women, migrant workers, students, young workers, apprentices, workers on temporary contracts, labour agency workers, etc.
- Families of workers
- Members of communities that workers belong to or members of communities that are potentially affected by businesses’ operations.

Other relevant parties that in varying degrees are entitled to information include:

- Trade Unions
- Other organisations and initiatives that assist or rightfully advocate for the interests of workers and communities, with their free, prior and informed consent
- Multi-stakeholder initiatives
- Investors
- Public buyers of electronics products
- Consumers of electronics products
- The general public.

## What are rights-holders entitled to?

Rights-holders have a right for information that directly or indirectly affects workers, families and communities to be disclosed. Such right encompasses all information that affects or may affect the working lives and livelihoods of electronics workers, and the information that electronics workers, their families and communities need for the full enjoyment of their human and labour rights. This includes information on corporate structures, policies, procedures and practices; production, trading and purchasing conditions and workplace conditions.

Various standards exist that attempt to collect this information through different data sets. In this report, we make an effort to systematise these data sets. We identified and added key data points that we think should not be left out.

This report presents a break-down and detailed list of the information that should ideally be disclosed and communicated, grouped in seven data sets, each with a varying number of data points. This list is long, but not exhaustive, as these are matters of ongoing debate. Not all data points are applicable or relevant to all types of corporations in the global electronics production network. Not all data points are relevant for all workers. This detailed list is meant to illustrate what information we are talking about.

## Unpacking the right to know and the duty to disclose

For information to be useful it needs to be made available and accessible in a way that functions to protect the rights of impacted or potentially impacted rights-holders, i.e. workers, their families and the members of their communities. This is a fundamental aspect of the right to know. If duty bearers do not make information available in this way they are defaulting in their obligations.

States have an obligation to protect workers' right to know and must ensure that corporate duty bearers live up to their responsibility with regard to disclosure of information

Information needs to be meaningful and allow for substantive engagement between rights-holders and corporate duty bearers. For workers, their families and community members to be able to engage meaningfully, they need to be aware of their rights and of the actual and potential adverse impacts that the actions of duty bearers may have on the enjoyment of such rights. Information must be functional and made available to rights-holders in a proactive way, involving a two-way communication; in good faith; timely; accessible (physically and understandable); and ongoing. In this report we dive deeper into this, providing specific criteria for qualitative disclosure which fulfils the right to know.

We understand there may be obstacles in the pathway to achieving full transparency. We are aware of companies' constraints, including the legal obligations to respect commercial confidentiality. However, such obligations cannot be used as an excuse to deprive rights-holders of their right to know and exclude them from the decision-making processes that will directly or indirectly affect their working conditions and entitlement to enjoy their human rights and those of their families and community members.

States have a duty to safeguard that businesses confidentiality claims are legitimate. States have an obligation to enable the right to know based in national and international law. This entails weighing the different rights of all parties involved. Ideas, principles, demands and standards regarding transparency develop and evolve. The trajectory towards meaningful transparency, which enables the fulfilment of human rights that we are calling for will therefore be a process, but it must be an ongoing process in which duty bearers show consistent progress to corporate practices which do not harm the rights of those who produce the goods we consume.

## **In-depth: workers' right to know in connection to toxic chemicals and health and safety at work**

This section takes a deep dive on workers' right to know when it comes to toxic exposure and health and safety issues at work. While the right to know and the duty for disclosure covers much more than chemicals and health and safety issues, as the report demonstrates, zooming in on this particular topic provides a very clear grounding of the importance that transparency plays for the protection and respect of human rights and further supports our argument that workers, their families and community members have a right to know what affects them and their livelihoods. This section is included as an exposure of the dire consequences that result from the lack of transparency and as such it supports our wider demand for disclosure and the right to know as elaborated on this report.

# 1 Introduction

## 1.1 Why this report?

This report calls for transparency in the global electronics industry from a *rights-based* approach whereby the right to know (understood as the right to access to information that may impact or is necessary to exercise workers' rights, including all information that affects their lives and livelihoods) is a right for workers, their families, and community members, and providing such information is a duty of states and businesses. States have a duty to respect, protect and fulfil human rights, including the right to information. Businesses have a responsibility to respect human rights and exercise due diligence in their supply chain to identify, prevent, mitigate and remedy violations of human rights, including the right to know. Workers (and their families, community members) have rights, including a right to know that which (potentially) affects them. Other relevant parties that play a key role in assessing impacts and that should be meaningfully engaged include rights-holders' representatives and representative organisations. The right to know is both a right in itself and a precondition for the realisation of other rights. This makes workers the owners of rights or "right-holders". In turn, states and businesses have duties, and are therefore "duty bearers". Furthermore, businesses also have a duty to disclose information and be transparent as part of their human rights due diligence and have a responsibility to engage with all relevant stakeholders.

This report is driven by the need for systematic, coherent and mandatory disclosure and transparency in the global electronics industry. The authors, the GoodElectronics Network, Business, Human Rights and the Environment Research Group of the University of Greenwich (BHRE), and the Centre for Research on Multinational Corporations (SOMO), argue that the current level of disclosure is problematic and not enough to protect and respect workers' rights. There is no transparency, but rather opacity, which aggravates the current situation defined by a lack of corporate accountability for human rights and labour rights violations in the global electronics production network. Simply disclosing corporate policies and good intentions cannot be equated to accountability. Corporate defined and corporate led initiatives on transparency translate in a lack of access to crucial information that connects factories and workers with the brands, and prevents workers, their families and community members from exercising their rights. The lack of clear rules establishing what should be disclosed, by whom and to whom is being exploited and relied upon with great negative impact on human and labour rights. The level of variation and vagueness when companies refer to transparency, and the lack of specific national and international obligations defining what meaningful transparency is, dilutes the concept and makes it difficult to compare companies with one another and for workers and their representatives to demand and obtain access to relevant information.

Our analysis is based on the human rights framework including the existing workers' right to information and the corresponding state obligations to protect workers' human and labour rights; labour standards as codified by the International Labour Organisation; national regulations in labour laws, including occupational health and safety which in many states regulate the right to access to information; international standards on corporate human rights due diligence and the corresponding obligations of states to demand and monitor such due diligence as laid out in the UN Protect, Respect and Remedy framework and the UN Guiding Principles on Business and Human Rights; and existing civil society and multi-stakeholder initiatives that promote transparency in other supply chains. Furthermore, our analysis builds on the right to know of workers

as regulated by various jurisdictions. The right to know includes the right of workers to information about hazards at work (including chemical exposure). This right to know is recognised by national regulation in the labour laws of a number of countries including the US, Canada, Australia as well as in the European Union. A rights-based approach to corporate transparency means that the disclosure of information regarding practices and risks that affect workers lives and livelihoods and the capacity of workers, their families and community members to access such information is key to respect and protect human and labour rights. This report focuses on workers, their families and community members affected or potentially affected by the global electronics industry as main rights-holders with respect to the right to know. Furthermore, other relevant parties, including rights-holders' representatives or representative organisations, also need to be meaningfully engaged and thus have access to certain level of information.

We argue, supported by current legal frameworks at national and international level and practice, that access to information on a wide number of aspects of the businesses' workplace, activities and business relationships and the corresponding duty to disclose it should be the norm, and confidentiality the exception. While transparency applies to all businesses in the entire electronics industry, this report mainly focuses on the manufacturing and final assembly phase of electronics hardware.

## 1.2 Characteristics of the electronics industry

The electronics production network encompasses a wide variety of processes and companies, from suppliers of raw materials, to smelters, refineries, providers of chemicals and component producers; from Research & Development to manufacturing and assembly; from brand name companies to retailers and telecommunication providers, churning out and disseminating a wide range of different products. Taking the full life cycle of electronics products into account, enterprises involved in recycling, upcycling or disposal of such products are also included.

Even when only looking at the manufacturing and assembly phases of electronics hardware, this industry is one of the largest industries currently in the world, with approximately 18 million workers<sup>1</sup> who produce 20% of global imports<sup>2</sup>. The global market for electronics reached 4.22 trillion euros in 2017.<sup>3</sup>

This industry is further characterised by its globalised nature, outsourcing, fragmentation, complexity, competitiveness, concentration and continuous product development, and a prevalent lack of transparency.<sup>4</sup> This report will not delve deeply into all facets, but will just say a few words on each of these various characteristics.

The internationalisation and outsourcing of the electronics industry started in the 1960s. US technology company Fairchild was one of the first to expand into Asia, with the construction

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1 Ricarda McFalls, The impact of procurement practices in the electronics sector on labour rights and temporary and other forms of employment (International Labour Office, 2016).

2 UNCTAD, Trade in ICT Goods and the 2015 Expansion of the WTO Information Technology Agreement, 2015.

3 Statista Research Department, Market share of electronics industry APAC 2018, by region, <https://www.statista.com/statistics/1057903/apac-market-share-of-electronics-industry-by-region/#statisticContainer>.

4 Olga Martin-Ortega, Opi Outhwaite and William Rook "Buying power and working conditions in the electronics supply chain: legal options for socially responsible public procurement", International Journal of Human Rights, vol. 19 (3), 2015, pp 341-368.

of a factory in Hong Kong in 1964. In 1966, the Hong Kong plant employed 5,000 workers versus 3,000 in the US.<sup>5</sup> In the 1980s, the growth and the globalisation of the electronics industry accelerated, occurring in parallel with major shifts in the location of electronics production. Now, in 2020, all leading brands of consumer electronics have outsourced most of their production to contract manufacturers in low-cost developing nations<sup>6</sup> across the globe such as China, India, Malaysia, Hungary, and Mexico.<sup>7</sup>

The global electronics industry is nowadays highly fragmented. Brand companies typically work with numerous contract manufacturers. Equally, contract manufacturers produce for different brand companies, making the industry into a complex global production network. Beyond the first tier of contract manufacturers, there is a further obscure network of relationships, involving thousands of entities. Electronics devices are typically composed of hundreds of thousands of components, and these components in turn may consist of countless parts. Component suppliers are easily replaced by others.

In many cases, relationships between brands and their first tier suppliers, where final assembly take place, are characterised by an uneven balance of power, with huge differences in profit margins. Calculations show that leading brands operate at a profit margin of 18 to 26%, while leading contract manufacturers have margins of just 1 to 4%.<sup>8</sup> Brands purposely design and apply sourcing strategies to bolster their power position vis-à-vis their suppliers and pressure for price reductions, as well as for the sake of spreading risks and taking advantages of jurisdictional gaps.

Electronics has become one of the largest industries in the world, and is only going to grow as our societies continue to evolve to technology dependence. It employs tens of millions of people worldwide. Although the industry has contributed to economic growth and opportunity in many low-income countries, sub-standard working conditions and human rights violations are pervasive in electronics supply chains. The competitiveness of the sector also shows in the fierce battle for markets and the drive for innovation. The range of ICT hardware products is ever evolving new and improved technologies, products, and models are constantly developed, and aggressively marketed. Factors that come into play in the relationship between brands, suppliers and factories are the short product life cycles, dictated by the feature of inbuilt or planned obsolescence; market uncertainty and mid-stream changes to orders responding to volatile consumer demand. This structure and practices have a direct impact on employment and working conditions.<sup>9</sup> Excessive overtime to complete orders on time, a high presence of young and female working force, low wages, unstable employment and the use of temporary workers have been extensively

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5 David Laws, Fairchild Semiconductor: The 60th Anniversary of a Silicon Valley Legend, 19 September 2017, <https://computerhistory.org/blog/fairchild-semiconductor-the-60th-anniversary-of-a-silicon-valley-legend/> and David P. Angel, *Restructuring for Innovation. The Remaking of the U.S. Semiconductor Industry* (Guilford Press, 1994).

6 Jason Chan, Pikki Fung and Pauline Overeem, *The Poisonous Pearl. Occupational chemical poisoning in the electronics industry in the Pearl River Delta, People's Republic of China* (Good Electronics, September 2016), p.16, <https://www.somo.nl/wp-content/uploads/2016/09/The-Poisonous-Pearl.pdf>.

7 Electronics Watch, *Vision and Mission*, [https://electronicswatch.org/en/vision-and-mission\\_2548021](https://electronicswatch.org/en/vision-and-mission_2548021).

8 Electronics Watch, *Biannual Report: 2016-2017* (Electronics Watch, 2017), p. 7, [http://electronicswatch.org/electronics-watch-biannual-report-2016-2017\\_2531188.pdf](http://electronicswatch.org/electronics-watch-biannual-report-2016-2017_2531188.pdf), based on various annual reports and market analysis. According to Harris, under pressure to cut prices and respect tight lead times, contract manufacturers squeeze costs. Labour costs, which represent up to 40% of the manufacturing costs, only represent 0.5% of the product end-price, see Anthony Harris, *Dragging Out the Best Deal: How Billion Margins are Played Out on the Backs of Electronics Workers* (Good Electronics, 2014).

9 Martin-Ortega, Outhwaite and Rook, *supra* n. 5.

documented.<sup>10</sup> Workers often face exposure to toxic chemicals and other health hazards. These situations result in health, safety, labour rights and human rights problems at all levels of the industry, particularly in the supply chains of global brands. Those seeking to exercise their union and collective bargaining rights risk harassment, dismissal and other forms of reprisal.

The electronics industry relies heavily on the use of hazardous substances, including during the mining, manufacturing and recycling phases. There are numerous documented cases of workers' occupational exposure with terrible consequences including acute poisoning, cancer, all kinds of diseases, including reduction of reproductive health, and even death. The International Labour Organization (ILO) estimates that every minute four workers die because of unsafe or unhealthy working conditions.<sup>11</sup> Many of these deaths and illnesses are preventable and what characterises many of the cases is a lack of sufficient information as Section 6, which focuses specifically on transparency regarding the use of chemicals, demonstrates.

The industry's social and environmental problems are not limited to the manufacturing phase. The mining of key minerals used in electronics products often goes hand in hand with links to armed conflict and/or social instability, severe human rights and environmental abuses, such as forced and child labour, forced evictions of communities, and water and soil pollution. At the end of the product life cycle, electronic goods become dangerous e-waste containing toxic substances that threaten both the environment and people's health. This report does not look into this, but it is clear that the right to information applies here in the same way as for the manufacturing phase.

### 1.3 Opacity and obstacles to transparency

The complexity of the global electronics production network described above makes tracking, tracing, mapping, monitoring and gathering knowledge and understanding of the human rights and labour rights risks and the actual violations in the industry a huge challenge for all players. To provide fact-checked and up-to-date information about hundreds or even thousands of suppliers is not an easy task.

Some electronics companies do disclose some information on the potential human impacts of their global operations and their supply chains, including making supplier lists available online. However, the publication of such information is voluntary, limited and very diverse when it comes to detail and complexity. Brand name companies, like their peers in different sectors and industries, often and from the top of their voices state that public disclosure of supplier details is not possible as these are trade secrets and business sensitive information, and that sharing them would harm their competitive advantages.

Recent practices have clearly shown that these are non-arguments. Big garment brands and retailers for example have been publishing information about their suppliers for years now, without

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10 SOMO research on the electronics industry, <https://www.somo.nl/topic/electronics/> and the extractive industry <https://www.somo.nl/topic/extractives/>; GoodElectronics publications, [https://goodelectronics.org/research/?fwp\\_post\\_format=publication](https://goodelectronics.org/research/?fwp_post_format=publication); Electronics Watch Monitoring reports, [http://electronicswatch.org/en/monitoring-reports\\_2542963](http://electronicswatch.org/en/monitoring-reports_2542963); accessed November 15, 2019.

11 Päivi Hämäläinen, Jukka Takala and Tan Boon Kiat, Global Estimates of Occupational Injuries and Work-related Illnesses (Workplace Safety and Health Institute, 2017), <http://www.icohweb.org/site/images/news/pdf/Report%20Global%20Estimates%20of%20Occupational%20Accidents%20and%20Work-related%20Illnesses%202017%20rev1.pdf>.

harm to their market positions. Even “fast fashion” or cheap fashion brands are now publishing their supplier list, having overcome reservations to share “commercially sensitive information”.

More recently, electronic companies have also started to disclose some information about their supply chain. For instance, Apple, HP and Hewlett Packard Enterprise have disclosed names and addresses of first-tier suppliers. HP has further reported on name and addresses of commodity and component suppliers. Apple, Ericsson and Qualcomm have disclosed conducting risks assessments focusing on forced labour in their supply chains. HP has disclosed information on the number of migrant workers and the amount of workers at the level of final assembly factory. Hewlett Packard Enterprise has disclosed percentages of student workforce.<sup>12</sup> All these examples evidence that disclosing supply chain information is possible and not detrimental to the companies’ economic model.

However, none of the companies systematically and truthfully disclose information that is relevant for the realisation of human and labour rights, information that affects the lives and livelihoods of workers.

Equally, the rights-based approach to transparency discussed in this paper, based on the right to know and corporate human rights due diligence, is very different from the approach usually followed by businesses or industry initiatives which are based on voluntary commitments. For instance, the Responsible Business Alliance recently published a “Practical Guide to Transparency in Procurement” (RBA Guide). The RBA Guide proposes a set of indicators “for companies that choose to *voluntary disclose*”.<sup>13</sup> This framing of disclosure as voluntary is problematic because it suggests that disclosing information is not an obligation of businesses, nor a right of workers and other parties, but rather a gesture of companies. This voluntary approach fails to recognize a binding normative framework protecting workers rights. It also misses the acknowledgment of binding state and businesses duties protecting the right to information.

## 1.4 Reading guide

This report is divided in **seven** sections, including the Introduction, besides the Executive Summary and an Annex. Section 2, *Transparency why?* examines transparency from a rights-based approach defining the right to know as the right to information that is relevant for the exercise of human and labour rights, information that affects the lives and livelihoods of workers. In doing so, it explores why transparency is necessary and it should not be a voluntary journey for business enterprises but a right of workers, their families and community members; as well as a corresponding duty for states and businesses. The right to know is based both in national and international legal frameworks, including International Human Rights Law and International Labour Law and the duties and responsibilities derived from corporate human rights due diligence for states and businesses. Section 3, *Transparency for whom?* builds on our rights-based approach by identifying the main rights-holders, those who have a right to know, this is the right to access the information businesses are obliged to disclose and states must demand, monitor, collect,

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12 KnowtheChain, 2018 Information and Communications Technology Benchmark Findings Report (KnowtheChain, 2018) [https://knowthechain.org/wp-content/plugins/ktc-benchmark/app/public/images/benchmark\\_reports/KTC-ICT-May2018-Final.pdf](https://knowthechain.org/wp-content/plugins/ktc-benchmark/app/public/images/benchmark_reports/KTC-ICT-May2018-Final.pdf).

13 Responsible Business Alliance, Practical Guide to Transparency in Procurement (RBA, 2019), <http://www.responsible-business.org/media/docs/RBAPracticalGuideProcurement.pdf>.

communicate and sanction. Section 4, *Transparency of what?* articulates the information which needs to be disclosed in terms of data sets. A list of data points is included in Annex 1. The disclosure of these data sets is already being demanded by the different regulatory frameworks and initiatives that are analysed. Section 5, *Transparency how?* elaborates on the way and form in which information needs to be disclosed to be useful for rights-holders. It is not only necessary to disclose certain data but to do it in a way that can be used for rights-holders and other relevant parties to make the realisation of workers' rights effective, hold corporations accountable when their actions or relationships result in harm and redress victims adequately. Section 6 provides an in-depth look at one of the most salient risks in the electronics industry: the use of toxic chemicals. It examines the right to know of workers and other relevant parties when it comes to chemicals and health and safety at work. Section 7 concludes.

## 2 A rights-based approach to transparency: the right to know

The complexity of global supply chains coupled with the opacity of corporate relations perpetuates and hides away harmful practices for workers and others affected by the activities and practices of businesses in the electronics industry. Increased transparency regarding such relationships and practices is key to prevent and address such harms. This report takes a *rights-based approach to the need for corporate transparency based on the right to know*, understood as the right of workers, their families and community members to access information that may impact or is necessary to realize their rights, including all information that affects their lives and livelihoods. Only by the possession of information regarding the conditions in which they develop their work can workers and other relevant parties understand and demand the protection of their rights and can businesses be made accountable when harm occurs. Only by access to information can state actors be held accountable when they fail to respect, protect or fulfil workers' rights and fail to regulate businesses.

Workers' rights are protected by international human rights law, in particular the International Bill of Rights, and International Labour Organisation Conventions, including the Core Labour Standards, this is freedom from forced labour, the right to freedom of association and collective bargaining, the prohibition of child labour and non-discrimination at work. These instruments establish rights for workers, duties for states and responsibilities for business enterprises. Based on the international framework, many national laws codify further rights and obligations of both state's authorities and businesses.

Our approach to transparency is based on two overarching existing frameworks:

- **The right to information:** This is the right of workers, families and community members that are affected or potentially affected by the electronics industry, to access information that affects their lives and livelihoods and is necessary for them to realise their human and labour rights. Rights-holder representatives and representative organisations play a key role in protecting, defending and assessing impacts and are therefore relevant parties. The main duty bearers are states and businesses. The right to information is recognised in national, regional and international law.<sup>14</sup> It is protected by norms in international human rights law, international labour law and other regimes such as environmental law, as is it demonstrated below.
- **Corporate human rights due diligence and non-financial disclosure:** This evolving standard requires business enterprises to exercise risks assessments over the impact of their activities, act on them, including remedying harm, and communicate such actions. Business enterprises are the duty bearers of increasing mandatory norms in this regard, which states should implement, monitor and sanction for non-compliance.

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14 UN General Assembly, International Covenant on Civil and Political Rights (ICCPR) (16 December 1966, UNTS, Vol. 999, p. 171), art. 19(3), UN General Assembly, Convention on the Rights of the Child (CRC) (20 November 1989, UNTS, vol. 1577, p. 3), Art. 13.

The rationale and driving force for promoting disclosure and transparency are that the proper implementation of these concepts serves to further respect and protect human and labour rights of workers, their families and community members in the global electronics industry. An approach to transparency based on the right to know allows us to identify the main right holders – workers, their families and community members; duty bearers – states and business enterprises; and other relevant parties such as workers’ representatives and representative organisations. These three groups collectively are referred to as stakeholders because they all have an interest in, influence on or are potentially affected by activities and practices of businesses in the electronics industry.

Correlative to this right is the state’s duty to protect human rights through establishing the adequate regulatory frameworks for the disclosure of such information and the establishment of sanctions for non-compliance.

As part of businesses’ responsibilities to conduct human rights due diligence business enterprises must assess their actual and potential impacts, address them and communicate such risks and their actions to address them. It is important to highlight that information about due diligence that business enterprises are required to disclose includes the due diligence findings. It is not sufficient for companies to disclose that they are conducting due diligence, they are expected to communicate the findings regarding human rights impacts. Therefore, transparency is implicit within businesses’ responsibility to communicate and engage with rights-holders and other relevant parties. This includes the responsibility to disclose the information workers have a right to.

## **2.1 Workers’ right to information in international human rights and international labour law**

This section elaborates on the right to access information, with specific focus on recent developments in the areas of chemical and toxic waste and the correlative duty of businesses and state authorities to provide such information. International human rights law and international labour law protect the rights of workers against harm produced by the actions of states and non-state actors, and these include business enterprises. The right to access information is essential for the realisation of a whole myriad of rights which workers have.

The right to information is contained in international instruments and most national constitutions and domestic regulation, and it is related to the right to freedom of expression, to the right to participate in public affairs and to the right of just and favourable working conditions among other interrelated rights. The “freedom to seek, receive and impart information and ideas of all kinds” is grounded on:<sup>15</sup>

- Article 19 of the Universal Declaration on Human Rights (UDHR): the right to freedom of opinion and expression;
- Article 23 UDHR: The right to just and favourable conditions of work;
- Article 19 of the International Covenant on Civil and Political Rights (ICCPR): the right to freedom of expression;
- Article 25 of the ICCPR: the right to take part in public affairs; Article 7 International Covenant on Economic Social and Cultural Rights (ICESCR): the right to safe and healthy working conditions; and

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15 ICCPR (n 24), art. 19(2), and CRC (n 24), Art. 13.

- Article 12 ICESCR / CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)

Other regulations also recognise the right to information of specific groups. For instance, many countries regulate consumer rights, which includes consumers' right to be informed about the characteristics of a good or service and their protection from false or misleading claims. Environmental law recognizes the right of citizens to environmental information and the obligation of states to progressively make available and disseminate environmental information to the public. For example, the Rio Declaration on Environment and Development (Rio Declaration) (1992), Principle 10 states that "At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available." The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) (1999) recognises the right of access to information. Another relevant legal regime highly developed in some jurisdictions relates to freedom of information laws that recognize the right of the general public to access data held by national governments. While these frameworks are very relevant and certainly apply to the electronics industry, their analysis is out of the scope of this paper.

Our claim regarding the right to know in the electronics industry is particularly supported by the work of the UN Special Rapporteur on the implications for human rights of the environmental sound management and disposal of hazardous substances and wastes, Mr. Başkut Tuncak, (hereinafter the UN Special Rapporteur on Human Rights & Toxics). The UN Special Rapporteur on Human Rights & Toxics, has referred to the *right to information* as a right in and of itself.<sup>16</sup> The right to information is indivisible from the core labour rights to participation and association. The Special Rapporteur on Human Rights & Toxics argues that the right to information, for instance in relation to toxic substances, is the foundation for the realisation of many other rights such as right to health, right to life, right to refuse unsafe work, right to a safe and healthy work environment. Several ILO conventions contain specific provisions regarding the right of workers and their representatives to access certain information.<sup>17</sup> For example, the ILO Chemicals Convention (C170) recognises the right to information of workers and their representatives on chemical risks at work and which is discussed in Section 6. As mentioned, the right to access work related information is also embedded in the labour laws of many countries.

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16 See UN Commission on Human Rights, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, submitted in accordance with Commission Resolution 1999/36, 18 January 2000, E/CN.4/2000/63, para. 42: The right to information is a right in and of itself and one of the rights upon which free and democratic societies depend.

17 Ibid.

### **Rights to information, participation and association of workers who are exposed to toxic substances:**

“The right to information is the foundation for the realisation of all workers’ rights regarding toxic exposure (para. 25). All health and safety information held by public bodies and business enterprise should be subject to disclosure, unless it falls within a narrow set of public interest limitations such as the protection of privacy or public health (para. 28).”

Source: Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes A/HRC/30/40, 8 July 2015, p.7.

Drawing on these frameworks we argue workers, their families and community members have a general right to access all information that affects their lives and livelihoods, allows them to fully realise their human and labour rights, and enables them to participate in decision-making processes. This includes but is not limited to health and safety information.

Correlative to workers’ right to know is the duty of states to respect, protect and fulfil such a right, including protecting it from the harmful intervention of third parties -employers and business enterprises- and businesses’ responsibilities to respect it. States need to establish adequate normative frameworks that demand the necessary disclosure from companies and establish corresponding sanctions for non-compliance and companies need to develop the necessary disclosure and transparency procedures to respect workers’ enjoyment of their right to information.

This specific right is very clear when discussing chemicals and hazardous substances as we demonstrate in Section 6. We argue that it is broader and includes information that may impact or is necessary to realize workers’ rights, including all information that affects their lives and livelihoods.

In 2019, the UN Special Rapporteur on Human Rights & Toxics presented a report to the UN Human Rights Council containing 15 principles on human rights and the protection of workers containing a specific section on principles regarding information, participation and assembly (Principles 8 to 11).<sup>1</sup>

Principle 8 states that “every worker has the right to know, including to know their rights”, it further mentions that “ILO conventions recognize several aspects of the workers’ (and their representatives’) right to know, as well as of the duties of States and the responsibilities of employers and businesses, including chemical suppliers”. Principle 8 adds that “Occupational health and safety information must be available and accessible to workers in a form that effectively serves their needs, bearing in mind their skills, language proficiency and circumstances, and communicated through training and other means”.

Principle 9 states that “health and safety information about toxic substances must never be confidential” and that “Illegitimate claims of confidential business information or trade secrecy regarding toxic substances and possible exposures can deprive workers of their human rights, including to safe and healthy working conditions and access to remedies”.<sup>2</sup>

1 Human Rights Council, Principles on human rights and the protection of workers from exposure to toxic substances, UN Doc. A/HRC/42/41, [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/42/41](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/42/41).

2 Human Rights Council, Principles on human rights and the protection of workers from exposure to toxic substances. A/HRC/42/41 , p.13- 14.

A right to information regarding the structure and conditions of the global electronics production network derives from workers’ rights at work and is supported by current normative and policy developments both at international and national level.

## 2.2 Corporate Human Rights Due Diligence and disclosure

This section explains how implementing corporate human rights due diligence involves disclosure of information and is already articulated in international standards. Current policy and normative developments have elaborated the obligations of the state and the responsibilities of companies to exercise due diligence to identify, prevent, and mitigate risks associated with corporate conduct, and publicly disclose such policies and measures. The United Nations Guiding Principles on Business and Human Rights (UNGPs), the OECD Guidelines on Multinational Enterprises, and the OECD Due Diligence Guidance for Responsible Business Conduct (the OECD Guidance) analysed below clearly recognise that rights-holders are the most important stakeholders and therefore need to be constantly engaged and consulted as part of business human rights due diligence. Sharing of timely, relevant and complete information is a cornerstone of meaningful stakeholder engagement. Such information needs to be accessible and understandable to the parties involved. Without the sharing of information there is no stakeholder

engagement which is essential for due diligence.<sup>18</sup> As mentioned in the introduction stakeholders include rights-holders, duty bearers and other related parties.

Current standards on corporate behaviour revolve around human rights due diligence. Transparency and disclosure are treated as elements of due diligence. In both the UNGP and the OECD Guidance transparency and disclosure are equated to communication.

### **The UN Guiding Principles on Business and Human Rights (UNGPs)**

As it is well known the UNGPs are based on the tripartite framework of the state duty to protect, the corporate responsibility to respect and the victims of human rights violations' right to an effective remedy. As part of the corporate responsibility to respect, businesses have to perform "a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights," (UNGP15) which includes: "assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed" (UNGP 17). Transparency per se does not appear in the UNGPs text, only in the commentary to certain principles. The UNGPs do however demand business enterprises to communicate how they respect human rights and address their impacts (UNGP 21). Businesses' communication provides, according to the Commentary to UNGP 21, a measure of transparency and accountability to those who may be impacted by corporate behaviour and to other relevant stakeholders.

The corporate responsibility to respect human rights applies to all companies in the electronics industry (regardless of their "size, sector, location, ownership and structure"<sup>19</sup>), including but not limited to brands, contract manufacturers and all suppliers throughout the supply chain. Businesses responsibility included adverse impacts through "their own activities or as a result of business relationships with other parties."<sup>20</sup>

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18 Amnesty International and OECD Watch, The OECD Due Diligence Guidance for Responsible Business Conduct. A briefing for civil society organizations on the strongest elements for use in advocacy (Amnesty International Sectie Nederland, OECD Watch, 2018) p.7, <https://www.oecdwatch.org/wp-content/uploads/sites/8/2018/06/The-OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

19 United Nations. 2011. Guiding principles on business and human rights: implementing the United Nations "Protect, Respect and Remedy" framework, p.1.

20 Ibid, p.15.

## UN Guiding Principle 21.

“In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

- a Be of a form and frequency that reflect an enterprise’s human rights impacts and that are accessible to its intended audiences;
- b Provide information that is sufficient to evaluate the adequacy of an enterprise’s response to the particular human rights impact involved;
- c In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.

Commentary: The responsibility to respect human rights requires that business enterprises have in place policies and processes through which they can both know and show that they respect human rights in practice. Showing involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors. Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholders, and formal public reports. Formal reporting is itself evolving, from traditional annual reports and corporate responsibility/sustainability reports, to include online updates and integrated financial and non-financial reports. Formal reporting by enterprises is expected where risks of severe human rights impacts exist, whether this is due to the nature of the business operations or operating contexts. The reporting should cover topics and indicators concerning how enterprises identify and address adverse impacts on human rights. Independent verification of human rights reporting can strengthen its content and credibility. Sector-specific indicators can provide helpful additional detail.”

Source: United Nations, 2011, Guiding principles on business and human rights: implementing the United Nations “Protect, Respect and Remedy” framework, p.21-22.

The UNGPs (Principle 3) clarify to states what their obligations regarding the protection of human rights from corporate impacts are and in this they include supporting and providing guidance on requiring businesses to communicate on their impacts on human rights.

### UN Guiding Principle 3

“States should

- a Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

**Commentary:**

Communication by business enterprises on how they address their human rights impacts can range from informal engagement with affected stakeholders to formal public reporting. State encouragement of, or where appropriate requirements for, such communication are important in fostering respect for human rights by business enterprises. Incentives to communicate adequate information could include provisions to give weight to such self-reporting in the event of any judicial or administrative proceeding. A requirement to communicate can be particularly appropriate where the nature of business operations or operating contexts pose a significant risk to human rights. Policies or laws in this area can usefully clarify what and how businesses should communicate, helping to ensure both the accessibility and accuracy of communications. Any stipulation of what would constitute adequate communication should take into account risks that it may pose to the safety and security of individuals and facilities; legitimate requirements of commercial confidentiality; and variations in companies' size and structures. Financial reporting requirements should clarify that human rights impacts in some instances, may be “material” or “significant” to the economic performance of the business enterprise.”

Source: United Nations, 2011, Guiding principles on business and human rights: implementing the United Nations “Protect, Respect and Remedy” framework, p.5-6.

As part of their duty to protect, states must encourage and even require companies to disclose information regarding the impact to human rights of their activities. This must necessarily include information which directly affects workers, their families and community members.

#### **The OECD Guidelines on Multinational Enterprises and the OECD Due Diligence Guidance on Responsible Business Conduct**

The 2011 revision of the OECD Guidelines for Multinational Enterprises aligns with the UNGPs, strengthening “the expectation of due diligence by companies to an international consensus.”<sup>21</sup> It added a chapter on human rights (Chapter IV), which explicitly demanded companies to exercise corporate human rights due diligence and included as part of its Disclosure chapter (Chapter III) the need to disclose non-financial information, including “material foreseeable risk factors” and “issues regarding employees and other stakeholders.”<sup>22</sup>

21 OECD Watch, OECD Clarifies Expectations Of Business To Prevent and Remediate Harmful Impacts on People and Planet, <https://www.oecdwatch.org/2018/06/21/oecd-clarifies-expectations-of-business-to-prevent-and-remediate-harmful-impacts-on-people-and-planet/>.

22 OECD. 2011, OECD Guidelines for Multinational Enterprises, OECD Publishing, p.27.

### **The OECD Due Diligence Guidance highlights the importance of disclosure**

“III. Disclosure: Clear and complete information on the enterprise is important to a variety of users. This chapter calls on enterprises to be transparent in their operations and responsive to increasingly sophisticated public demands for information.”

Source: OECD. 2018. *OECD Due Diligence Guidance for Responsible Business Conduct*, p.12.

In May 2018, the OECD launched its new Due Diligence Guidance for Responsible Business Conduct (OECD DD Guidance). The new OECD DD Guidance aims to clarify “exactly what is expected of businesses to prevent harm and conduct business responsibly. The guidance is intended for use in all sectors of the economy and by all companies, regardless of size, geographical location or value chain position. It was developed over a two-year period through a credible, multi-stakeholder process involving governments, business, unions, and civil society... The Guidance clarifies and elaborates several key concepts related to responsible business conduct and provides recommendations to business on how to fulfil these expectations.”<sup>23</sup>

The OECD DD Guidance, as the UNGPs do, places the focus on communication. Businesses should “communicate externally how relevant information on due diligence policies, processes, activities conducted to identify and address actual or potential adverse impacts, including the findings and outcomes of those activities.”<sup>24</sup>

### **“Characteristics of Due Diligence - The Essentials**

#### **Due diligence involves ongoing communication**

Communicating information on due diligence processes, findings and plans is part of the due diligence process itself. It enables the enterprise to build trust in its actions and decision-making, and demonstrate good faith. An enterprise should account for how it identifies and addresses actual or potential adverse impacts and should communicate accordingly. Information should be accessible to its intended audiences (e.g. stakeholders, investors, consumers, etc.) and be sufficient to demonstrate the adequacy of an enterprise’s response to impacts. Communication should be carried out with due regard for commercial confidentiality and other competitive or security concerns. Various strategies may be useful in communicating to the extent possible while respecting confidentiality concerns.”

Source: OECD. 2018. *OECD Due Diligence Guidance for Responsible Business Conduct*, p.19.

23 OECD Watch, *OECD Clarifies Expectations Of Business To Prevent and Remediate Harmful Impacts on People and Planet*, <https://www.oecdwatch.org/2018/06/21/oecd-clarifies-expectations-of-business-to-prevent-and-remediate-harmful-impacts-on-people-and-planet/>.

24 OECD. 2018. *OECD Due Diligence Guidance for Responsible Business Conduct*, p.33.

The OECD DD Guidance reinforces that communications can take different forms as long as the public can access it easily. It does however recommends to publicly report on

- Responsible Business Conduct “policies,
- Information on measures taken to embed RBC into policies and management systems,
- The enterprise’s identified areas of significant risks;
- The significant adverse impacts or risks identified, prioritised and assessed, as well as the prioritisation criteria;
- Actions taken to prevent or mitigate those risks, including where possible estimated timelines and benchmarks for improvement and their outcomes;
- Measures to track implementation and results; and
- The enterprise’s provision of or co-operation in any remediation.”<sup>25</sup>

Amnesty International and OECD Watch make a very useful clarification of three principles regarding disclosure that are contained in the Guidance: <sup>26</sup>

- “Information about due diligence – including due diligence processes, findings and plans, “is part of the due diligence process itself” (“Due diligence involves ongoing communication”, p. 19). This means companies cannot simply state that they are conducting adequate due diligence; they must disclose the relevant details on it, such as **findings on human rights risks and abuses** arising in their operations, to show that their procedures are adequate.
- Information disclosed should be “sufficient to demonstrate the adequacy of an enterprise’s response to impacts” (p. 19 and Question 46 of the Annex). This places a high bar in relation to both the quality and nature of the information that should be disclosed.
- Non-disclosure based on commercial confidentiality and other competitive concerns are an exception, not the rule.”

As part of the examples and explanations provided, the OECD DD Guidance addresses several relevant questions regarding communication:

### Communicate how impacts are assessed and prioritised

Companies do not only need to “communicate externally relevant information on due diligence policies, processes, activities conducted to identify and address actual or potential adverse impacts” but also the “**findings and outcomes of those activities and how the risks identified are prioritised and assessed, as well as the prioritisation criteria.**” When disclosing “the actions taken to prevent or mitigate those risks” they should include “where possible estimated timelines and benchmarks for improvement and their outcomes, measures to track implementation and results and the enterprise’s provision of co-operation in any remediation”.

25 Ibid.

26 Amnesty International and OECD Watch, supra n. 20.

Communicate through different means:

“Publicly report relevant information on due diligence processes, with due regard for commercial confidentiality and other competitive or security concerns, e.g. through the enterprise’s annual, sustainability or corporate responsibility reports or other appropriate forms of disclosure.” But also conduct “in-person meetings, online dialogues, consultation with impacted or potentially impacted rights-holders and the sharing of audit or assessment findings with trade unions or through an appropriate intermediary”.

“Appropriate forms of communication in these situations may include:

- Sharing labour, human rights, or environmental audit or assessment results with impacted or potentially impacted rights-holders, while respecting confidentiality requirements
- Communicating with impacted or potentially impacted rights-holders in collaboration with the relevant business relationship(s)
- Communicating with impacted or potentially impacted rights-holders through a multi-stakeholder or industry initiative that may have closer contact with the rights-holders.”

Communicate to right-holders

- “For human rights impacts that the enterprise causes or contributes to, be prepared to communicate with impacted or potentially impacted rights-holders.”
- “When the enterprise identifies that it has caused or contributed to actual adverse impacts, it must address such impacts by providing for or cooperating in their remediation.” For this they need to “consult and engage impacted and potentially impacted rightsholders, including workers, workers’ representatives and trade unions.”

Communicate in an accessible manner:

- “Accessibility of information means that it is not only physically accessible, but also understandable and disclosed at a time and in a format, language, and location that will best ensure that those for whom it is intended will notice it and be able to use it effectively.”
- In line with UNGP 21, reproduced above, this information should be “sufficient to demonstrate the adequacy of an enterprise’s response to the particular human rights impact involved” and “in turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.”

Source: OECD Due Diligence Guidance for Responsible Business Conduct, p.p. 33, 34 85,86

The OECD DD Guidance also deals with the issue of commercially sensitive information, and how can this type of information be communicated, as due regard should be given to legitimate concerns on security and confidentiality.

Regardless of this, the OECD DD Guidance establishes that “in certain circumstances, disclosing information may be fundamental to the corporate responsibility to respect human rights. For example informing workers about their exposure to hazardous substances.”<sup>27</sup>

### Examples of information that is “fundamental to the corporate responsibility to respect human rights.

- Informing workers about their exposure to hazardous substances
- Disclosure of the results of product or environmental testing necessary for the effective protection of the rights to life or health
- Disclosure of information about hazardous substances necessary for the effective provision of medical treatment in the aftermath of an industrial disaster”

Source: OECD Due Diligence Guidance for Responsible Business Conduct, p. 87.

The OECD Guidelines clearly recognize that confidentiality concerns do not exclude communication and the OECD DD Guidance offers an entire section of its annex on how to communicate impacts including when information is commercially sensitive.<sup>28</sup>

Furthermore, the OECD DD Guidance clarifies that in some cases access to information is a human right in itself and a basis for the realisation of other human rights. In such cases, disclosure is essential.<sup>29</sup> This premise cannot be limited by unclear or vague rules regarding what to disclose, how or to whom. Likewise, confidentiality should be the exception rather than the rule in order to realise the right to information. Businesses should abstain from using illegitimate claims of confidentiality and states need to provide safeguards against such wrongdoings.

From this analysis it is clear that respecting the right to know of workers is part of the corporate human rights due diligence. This has been established in international soft law, and is in the process of becoming hard law through the passing and implementation of several national regulations, which establish the legal obligation for businesses to disclose specific supply chain information, beyond restricted sectors such as the use of chemicals and occupational health and safety. Businesses are therefore increasingly being recognised as duty bearers of workers’ right to know by binding regulation.

27 OECD. 2018. OECD Due Diligence Guidance for Responsible Business Conduct, p.87

28 OECD, Due Diligence Guidance for Responsible Business Conduct (OECD, 2018), p. 19 and Question 47 of the Annex, <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

29 Ibid, p.10.

## 2.3 National laws on disclosure and transparency: corporations as duty bearers

In this section, we explore existing national laws on disclosure and transparency that make these standards on corporate responsibilities binding. Several national laws establish an obligation of corporations to disclose their measures to identify, prevent, mitigate and remediate the risks their activities pose on human rights, including on the workers associated to them, directly employed or part of their supply chain, therefore employed by their suppliers and subcontractors in the supply chain, at every tier. The call for mandatory human rights due diligence has gained significant momentum worldwide with some countries passing laws on the matter (i.e. France, Netherlands) while others are currently discussing draft law proposals (i.e. Denmark, Germany, Norway, Switzerland).<sup>30</sup>

These national legislations impose a range of obligations based on the concept of human rights due diligence discussed above. It ranges from loose obligations to simply disclose due diligence procedures (UK Modern Slavery Act) to demanding the development of a due diligence plan which would give rise to liability if a harm occurs (French Duty of Vigilance Law). Increasingly national legislations demand reporting on the structure of the supply chain and what the risks are to those rights-holders affected by corporate activities, hence, workers, their families and community members.

The most important element of this is that national legislation is developing the corporate obligation to disclose specific information regarding the assessment of risks and the actions taken to address them, including the findings and outcomes of such actions. Such developments in legislation further clarify the responsibility of corporations to be transparent regarding the structure of their supply chain and on how their operations affect the rights of relevant rights-holders (i.e. workers, their families and community members).

The following part of this section briefly summarises some of the most relevant regulations on transparency and due diligence and highlights the data points that each of them require corporations to disclose.

### **California Transparency in Supply Chains Act**

The California Transparency in Supply Chains Act entered into force on January 1, 2012. It requires that “every retail seller and manufacturer doing business in this state and having annual worldwide gross receipts that exceed one hundred million dollars (\$100,000,000) shall disclose ... its efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale.”

The California legislation requires companies to disclose on 5 areas: verification, audits, certification, internal accountability, and training. The specific data points that need to be disclosed are the following:

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30 See Business and Human Rights Resource Centre, National movements for mandatory human rights due diligence in European countries (last updated 14 November 2019), <https://www.business-humanrights.org/en/national-movements-for-mandatory-human-rights-due-diligence-in-european-countries> and European Coalition for Corporate Justice (ECCJ), Mandatory human rights due diligence: an issue whose time has come (CORE, 2019), <https://corporatejustice.org/news/16793-mandatory-human-rights-due-diligence-an-issue-whose-time-has-come>.

- “Verification of product supply chains to evaluate and address risks of human trafficking and slavery;
- Audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains, specifying if the verification was not an independent, unannounced audit;
- Certification required of direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business;
- Internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking;
- Training provided to company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.”

### **The UK Modern Slavery Act 2015 (UK MSA)**

The UK Modern Slavery Act 2015 (UK MSA) “primarily aims to establish a comprehensive legal framework to combat slavery, servitude and forced or compulsory labour and human trafficking”, including child labour.<sup>31</sup> It includes a Transparency in Supply Chains provision (TISC), which requires businesses with a turnover of more than £36 million a year to produce an annual Slavery and Human Trafficking Statement approved at the highest level of governance of the entity and make it publicly available on its website.

The mandatory requirements under the UK Modern Slavery Act are:

- To publish the statement on the company’s homepage
- For the statement to be signed by a director of the company
- For the statement to be approved by the Board.

The specific data points that the UK MSA suggests should be disclosed are comprised of:

- The nature and structure of the business
- The human rights supply chain risks associated to the business
- The implemented due diligence procedures
- Effectiveness of these due diligence procedures
- Training made available to staff regarding modern slavery and human trafficking

### **The French Duty of Vigilance Law (Fr DV)**

This law was adopted by the French National Assembly, on 21 February 2017. On 23 March 2017, the French Constitutional Council upheld most of the law’s text and the law is now in force.

Pursuant to the Fr DV multinational corporations that carry all or part of their activities in French territory must put in place mechanisms to prevent negative human rights and environmental impacts throughout their supply chain. In particular, it established a duty of care: “a legal obligation to adhere to a standard of reasonable care, while performing any acts that could foreseeably harm human rights or the environment.”<sup>32</sup>

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31 Martin-Ortega, Olga. 2017. Human Rights Risks in Global Supply Chains: Applying the UK Modern Slavery Act to the Public Sector. *Global Policy*. 8. 512-521. 10.1111/1758-5899.12501.

32 Sandra Cossart, Jérôme Chaplier, Tiphaine, Lomenie. 2017. The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All. *Business and Human Rights Journal*. 2. 1-7. 10.1017/bhj.2017.14. p.318.

The law applies to large businesses, both French and non-French. Specifically, companies covered include those incorporated or registered in France for two consecutive fiscal years that employ at least 5,000 employees themselves or employ at least 10,000 employees themselves and throughout their subsidiaries located in France or abroad. Companies subject to the legislation are legally mandated to establish, publish and implement a *vigilance plan*. This plan should include “reasonable vigilance measures seeking to identify and prevent human rights violations, breaches of fundamental freedoms, violations of health and safety rights of people, as well as environmental damages. The plan should cover the parent company, companies under its control, as well as the suppliers and subcontractors with whom the parent company or any of its subsidiaries have established a commercial relationship.”<sup>33</sup> The vigilance plan shall be published in the company’s annual report.

The law has extraterritorial reach (duty of care has to be exercised through the entire supply chain) so victims may bring actions in France even though the harms occurred somewhere else.

This law is the strongest of all the current human rights disclosure legislations in term of enforcement. Every person with locus standi –interested parties, which includes victims, NGOs and trade unions – “may require the competent jurisdiction to order a company subject to a penalty (astreinte) to establish the vigilance plan, ensure its publication and account for its effective implementation.”<sup>34</sup> Companies who do not comply with their vigilance plan or whose plan is inadequate may be subject to civil liability if there is a link between the non-compliance and the harm suffered by the injured party. Furthermore, victims can claim damages for negligence if they can prove that the company’s non-compliance caused (or failed to prevent) the harms.

The specific data points that need to be published as part of the vigilance plan:

- “A mapping that identifies, analyses and ranks risks;
- Procedures assessing the situation of certain subsidiaries, subcontractors or suppliers;
- Actions to prevent and mitigate risks and serious harms;
- An alert mechanism; and
- A monitoring scheme to follow-up on the plan’s implementation and efficiency of measures.”<sup>35</sup>

### **The EU Non-Financial Reporting Directive**

Large companies and financial corporations operating in Europe are now required to “include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking’s development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters”.<sup>36</sup>

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33 The Circle. Fashion Focus: the fundamental right to a living wage, May 2017. <https://www.thecircle.ngo/wp-content/uploads/2015/11/Fashion-Focus-The-Fundamental-Right-to-a-Living-Wage-1.pdf> p.25.

34 Ibid. p.321.

35 Ibid. p.320.

36 Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

The companies that need to disclose such information are “large public-interest companies with more than 500 employees. This covers approximately 6,000 large companies and groups across the EU, including listed companies, banks, insurance companies, other companies designated by national authorities as public-interest entities.”<sup>37</sup>

The specific data points that are required to be disclosed by the EU Non-Financial Reporting Directive are the following:

- “a brief description of the undertaking’s business model;
- a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented;
- the outcome of those policies;
- the principal risks related to those matters linked to the undertaking’s operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks;
- non-financial key performance indicators relevant to the particular business.”<sup>38</sup>

### **The Australian Modern Slavery Act (Au MSA)**

The most recent regulation approved at national level is the Australian Modern Slavery Act (Au MSA). The Au MSA “requires entities based, or operating, in Australia, which have an annual consolidated revenue of more than Australian \$100 million, to report annually on the risks of modern slavery in their operations and supply chains, and actions to address those risks. Other entities based, or operating, in Australia may report voluntarily. The Commonwealth is required to report on behalf of non-corporate Commonwealth entities, and the reporting requirements also apply to Commonwealth corporate entities and companies with an annual consolidated revenue of more than \$100 million.”<sup>39</sup>

There is an online public Modern Slavery Statements Register, where statements may be accessed free of charge.<sup>40</sup>

Unlike the UK MSA, the statement required by the Au MSA needs to contain a series of mandatory concepts. The data points are the following:

- “Structure, operations and supply chains of the reporting entity
- Risks of modern slavery practices in the operations and supply chains of the reporting entity, and any entities that the reporting entity owns or controls
- Actions taken by the reporting entity and any entity that the reporting entity owns or controls, to assess and address those risks, including due diligence and remediation processes.
- Assessment of the effectiveness of such actions.”<sup>41</sup>

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37 European Commission, Non-financial Reporting, [https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting\\_en](https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en).

38 Ibid.

39 Australian Modern Slavery Act, <https://www.legislation.gov.au/Details/C2018A00153>.

40 Ibid.

41 Ibid.

## 2.4 Civil society led transparency initiatives

In this section, we review a number of civil society initiatives calling for transparency from different standpoints and which are contributing to the development of international state and corporate practice. Civil society has been instrumental in demanding companies to disclose information which impacts the rights of workers and also assessing the information which companies have made available as part of their current duty to disclose. This section contains some of the most prominent ones, the analysis of which allows us to identify best practices to inspire improvement in current corporate transparency policies and practice.

**Electronics Watch**, launched in 2015, is “an independent monitoring organisation, bringing together public sector buyers and civil society organisations in electronics production regions, with experts in human rights and global supply chains. Electronics Watch is continuously expanding the scope of monitoring to more regions and more suppliers as increasing numbers of public sector organisations choose to share the cost of monitoring and coordinate their engagement with industry through Electronics Watch.”<sup>42</sup>

Electronics Watch speaks of ‘worker-driven supply chain transparency’, critiquing the corporate supply chain transparency which is solely a “consumer-driven corporate risk management tool” not useful for workers.<sup>43</sup> Worker-driven transparency, on the other hand, entails “bringing workers to the table as equals, sharing the information and providing the resources they need to ensure their safety and protect their rights.” As the organisation further adds: “Transparency driven by the rights and needs of workers to improve their working conditions and living standards is a different type of transparency. It is shaped by the priorities of those who are most vulnerable in global supply chains rather than those who control them. It is driven by the imperative to make constructive change, not by the fear of exposure. It demands attention to the resources—beyond information itself— necessary to create social value.”<sup>44</sup>

**KnowTheChain (KTC)** “is a resource for companies and investors to understand and address forced labour risks within their global supply chains”.<sup>45</sup> In its 2018 Information & Communications Technology Benchmark, 40 ICT companies were assessed “across the benchmark seven themes, which were developed to capture the key areas where companies need to take action to eradicate forced labour from their supply chains: commitment and governance; traceability and risk assessment; purchasing practices; recruitment; worker voice; monitoring; and remedy. There are a total of 23 indicators across the seven themes.”<sup>46</sup>

In its 2018 ICT Benchmark Findings report, KTC found that although ICT companies “generally have traceability processes in place, few companies publish details on their first-tier supply chain, or on the countries of below first-tier suppliers.... Nine out of 40 companies disclose a list of their first-tier suppliers, with three of those companies – Apple, Hewlett Packard Enterprise, and HP - disclosing both names and addresses of those suppliers. HP additionally publishes a list of its

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42 Electronics Watch, Who We Are, [http://electronicswatch.org/en/who-we-are\\_783](http://electronicswatch.org/en/who-we-are_783)

43 Electronics Watch, Worker-Driven Transparency, Policy Brief (Electronics Watch, no date), [http://electronicswatch.org/electronics-watch-policy-brief-2-worker-voices-from-talk-to-action\\_2557139.pdf?disposition=attachment](http://electronicswatch.org/electronics-watch-policy-brief-2-worker-voices-from-talk-to-action_2557139.pdf?disposition=attachment).

44 Ibid.

45 KnowtheChain, About Us, <https://knowthechain.org/about-us/>.

46 KnowtheChain, 2018 Information & Communications Technology Benchmark, [https://knowthechain.org/benchmarks/comparison\\_tool/4/](https://knowthechain.org/benchmarks/comparison_tool/4/).

commodity and component suppliers. Twenty-seven out of 40 companies disclose the sourcing countries of raw materials at high risk of forced labor in their supply chains including for tantalum, tin, tungsten, and gold. Very few companies provide details of their supply chain workforces.”<sup>47</sup>

KTC concludes that the “top scoring companies have strong practices in place regarding their first-tier suppliers, but first-tier suppliers take limited efforts to cascade those standards to lower-tier suppliers.”<sup>48</sup>

**Rank a brand** “is an independent brand-comparison website that assesses and ranks consumer brands in several sectors on sustainability and social responsibility.” Their assessments are transparent and cover the electronics sector. Their indicators include toxic chemicals, recycling, carbon emissions, and workers’ rights. Currently, the Rank a brand site offers a comparison among 74 brands. <sup>49</sup> The ranking is based on an extensive list of questions categorised in three areas: climate change, ecology, and labour conditions and human rights. In this latter area, two questions relate to the publication of supplier lists:

- “Does the brand (company) regularly publish an updated list of smelters that are identified in the own supply chain?
- Does the brand (company) have a published list of direct suppliers that have collectively contributed to more than 90% of the purchase volume?”

Rank a brand’s point of departure is that information should be available for consumers. Rank a brand searches online for answers to “targeted questions: on the websites of the brands, annual reports, CSR reports and other public sources. Rank a brand’s approach measures a brand’s transparency: no information = no point.”<sup>50</sup>

**Apparel and Footwear Supply Chain Transparency Pledge**, launched in 2016 by a coalition of nine trade union federations and human rights organisations including Clean Clothes Campaign, IndustriALL and Human Rights Watch.<sup>51</sup>

The goal of the Transparency Pledge “is to help the garment industry reach a common minimum standard for supply chain disclosures by getting companies to publish standardised, meaningful information on all factories in the manufacturing phase of their supply chains. The civil society coalition that developed the Pledge based it on published factory lists of leading apparel

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47 KnowtheChain, Ibid Supra 13, p.25.

48 Ibid. p.8.

49 Fairphone ranks best with Rankabrand, with affirmative answers to both questions. Fairphone publishes a list of its suppliers, smelters and refiners. Fairphone offers extra features in the form an interactive map made with the use of an open supply chain mapping programme called Sourcemap. The map offers visual representation of the path that the components in the Fairphone 3 take – from the mines and the factories all the way to the end-user. The map includes all the suppliers that Fairphone knows of to date, as well as some of the mines sites and smelters Fairphone works with through sourcing programs, Mapping the journey of your Fairphone, <https://www.fairphone.com/en/impact/source-map-transparency/>.

50 Rankabrand, How we work, <https://rankabrand.org/home/How-we-work>.

51 Transparency Pledge, What is the Transparency Pledge?, <https://transparencypledge.org/tag/the-pledge/>.

companies and developed a set of minimum supply chain disclosure standards.”<sup>52</sup> The Pledge aims to tackle inconsistencies and ineffectiveness of corporate disclosure.

By adhering to the Pledge, the company commits to publish (on its website, in a searchable format and regularly) “a list naming all sites that manufacture its products. The list should provide the following information in English

- 1 The full name of all authorised production units and processing facilities (including printing, embroidery, laundry, and so on)
- 2 The site addresses
- 3 The parent company of the business at the site
- 4 Type of products made (indicating the broad category – apparel, footwear, home textile, accessories)
- 5 Worker numbers at each site (indicating whether the site falls under the following categories by number of workers: Less than 1,000 workers; 1,001 to 5,000 workers; 5,001 to 10,000 workers; More than 10,000 workers).”

For Clean Clothes Campaign transparency is not a goal in itself, as it does not per se improve working conditions or guarantee a living wage; however, it is a precondition in order to campaign for that.

**The Accord on Fire and Building Safety in Bangladesh** (the BD Accord) is a legally binding agreement “is a legally-binding agreement between global brands & retailers and IndustriALL Global Union & UNI Global Union and eight of their Bangladeshi affiliated unions to work towards a safe and healthy garment and textile industry in Bangladesh.”<sup>53</sup> In the aftermath of the collapse of the Rana Plaza Building, which killed 1,133 workers and injured many more, over 220 companies signed the 5-year Accord on May 15, 2013.

All factories that are covered under the Accord inspection programme are included in a public, monthly updated, aggregated list. Even if companies do not have current orders in inspected factories these production locations are still included in the public list.

Key data points include:

- factory name and address;
- the number of stories of each structure;
- whether a building includes multiple apparel factories; whether it houses other types of businesses,
- the number of workers at each factory; and
- the number of Accord company signatories using each factory.

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52 Clean Clothes Campaign, Human Rights Watch, IndustriALL Global Union, International Corporate Accountability Roundtable, International Labor Rights Forum, International Trade Union Confederation, Maquila Solidarity Network, UNI Global Union, Worker Rights Consortium, 20 April 2017, Follow the thread: The need for supply chain transparency in the garment and footwear industry. <https://cleanclothes.org/file-repository/resources-publications-follow-the-thread-the-need-for-supply-chain-transparency-in-the-garment-and-footwear-industry>.

53 Accord on Fire and Building Safety in Bangladesh, About, <https://bangladeshaccord.org/about>.

Besides these key data points, information on Remediated Factories; Terminated Suppliers; Review Panel Cases; and Factories transferred to Government inspection programme is also shared on-line. Follow-up inspections at successfully remediated factories may bring to light new issues that again need remediating. Such new findings will be included in the current on-line Corrective Action Plan (CAP) for the factory. The reasons for submitting cases to the Accord's Review Panel are also disclosed online.

In 2018 a Transition Accord was signed by over 190 brands and entered into effect on 1 June 2018.

### 3 Transparency for whom? Workers and beyond

In this section, we look at the different groups who have a right to information. Besides workers, their families and community members as primary rights-holders of the right to know there are several other relevant parties that in different degrees are entitled to access information to be able to play their designated roles to protect and respect human and labour rights:

- Trade Unions
- Other organisations and initiatives that rightfully represent the interests of workers and communities, with their free, prior and informed consent
- Multi-stakeholder initiatives
- Investors
- Public buyers of electronics products
- Consumers of electronics products
- The general public.

#### **Primary rights-holders of the right to know Workers**

Workers in the global electronics production network are all those millions of workers that work at electronics companies' own operations, as well as all the workers along the various links of the global electronics value chain. For the purpose of this report, we focus on workers in the manufacturing and assembly phases of the value chain but acknowledge that all workers have a right to know.

#### **Sub-groups of workers**

Within the electronics worker population, different categories of workers can be distinguished that have varying information needs, due to for example their contractual, legal or social status, gender, and age.

On a global scale, women workers make up the bulk of electronics labour force, with a high presence on production lines. For various gender specific causes, women have particular information needs. Women workers earn less than their male co-workers; they get less on-the-job training and get promotions less easily. Particular sexual and reproductive health aspects are relevant for women workers. Women of childbearing age have a right to know how their working conditions affect their reproductive health. As mentioned, the global electronics industry is hardly unionised nor organised, and in this context, women workers are under-represented. For women workers to overcome these disadvantages, information is vital. In all, we argue that the information need of women workers is different from that of their male colleagues.

Other specific worker groups [categories] that can be distinguished are, for example, student and young workers, migrant workers, apprentices, workers on temporary contracts, labour agency workers, etc.

#### **Families of workers**

Workers' rights are both individual and collective, workers' families and communities are entitled to certain fundamental rights including the right to information.

Families of workers in the electronics industry arguably have an interest to be properly informed of various aspects related to the recruitment, employment and conditions in which their family members work.

Unfortunately, it is common practice that workers fall ill and even die from exposure to hazardous chemicals with consequences extending to the families. Electronics workers also suffer other occupational diseases injuries and accidents on the work floor. When workers are incapacitated to work, this is disastrous for their relatives, not in the last place because a source of family income falls away. Information with regard to occupational health and safety (OHS), OHS rules and measures on the work floor, exposure levels, compensation schemes etc. is therefore highly important for workers and their families.

**Members of the communities that workers belong to, or members of the communities that are (potentially) affected by businesses operations**

As mentioned above, workers' families and communities are entitled to certain fundamental rights including the right to information. Protecting and respecting workers' rights has an impact for communities.

Electronics companies are often located in industrial parks or economic zones. For the construction of such parks and zones entire communities may have to move. Community members have a clear interest to be properly and timely informed and consulted to be able to give, or to withhold, their informed consent. Various actors along the links of the electronics value chain have a duty to timely and properly inform and consult communities.

Communities that live close to electronics facilities may be exposed to various forms of discharge related to the industrial processes that take place in the facility. Examples are discharge of wastewater, solid waste, chemical substances, exhaust fumes, and dust. In cases where such discharge is managed irresponsibly, neighbouring communities may experience degradation of the quality of the air, drinking water, irrigation water, soil. Communities have a clear interest to be in the know about all aspects of the operations of electronics companies that may affect public health and their livelihoods.

The communities that migrant workers hail from have a specific information need, for example to be able to understand and assess the promises made by recruiters and future employers. Especially direct families and parents of young workers are entitled to information to be able to take informed decisions on whether to let their spouses, daughters or sons take on work in the electronics industry

**Other relevant parties that in different degrees are entitled to access information  
Workers' representatives and Trade Unions**

Independent and democratically elected workers' representatives, factory level unions, sectoral unions as well as trade union confederations are the primary legitimate worker representatives. As such they need information to be able to negotiate and follow up on the implementation of factory level collective bargaining agreements, sector agreements, and Global Framework Agreements. This is not necessarily information that can be shared outside the setting of industrial relations. Unfortunately, the level of organisation among electronics workers is extremely low, due to a set of obstacles to and violations of freedom of association.

**Organisations and initiatives that support workers and advocate for worker rights**

Besides trade unions, there are other types of organisations and initiatives that genuinely support, advocate and fight for the interests and rights of workers, their families and community members. This category includes labour rights and environmental organisations that monitor compliance with human rights, labour rights and/or environmental standards at facility or sector level. To be able to play their designated roles, such organisations have a clear information need.

## 4 Transparency of what? Data sets and data points

What do we understand by information that directly or indirectly affects workers? In the context of this report, this is all information that affects or may affect the working lives and livelihoods of electronics workers, and the information that electronics workers, their families and community members need for the full enjoyment and realisation of their human and labour rights and that enables them to participate in decision-making processes. This includes information on corporate policies, procedures and practices; production and trading conditions and workplace conditions. In this report, we make an effort to group the various data points that existing standards have identified for disclosure. Revising a number of data points that we think should not be left out, we come to seven data sets. The list of all data points under these seven data sets can be found in Annex 1. This list is long, but in our opinion not exhaustive, as these are matters of ongoing debate. We acknowledge that not all data points are relevant for all types of business enterprises in the global electronics production network. Also, not all data points are relevant for all workers.

The way disclosure of and communication about these data sets and points is done is as important as the content. In section 5 this is explained in more detail.

The seven data sets that we distinguish are the following:

- 1 Corporate information. This includes for example information on the structure, shareholders, sources of revenue, and operational plans of a company.
- 2 “Business practices between buyers and suppliers that may influence wages and working conditions” as identified by the ILO<sup>54</sup>
- 3 Position of a company within the global electronics production network.
- 4 Details on facility.
- 5 Work force.
- 6 Corporate human rights due diligence policies and practices.
- 7 Specifics of materials, components, and electronics end-products.

Corporate information includes, among other relevant data, the corporate structure, business model, shareholders and ultimate beneficial owners; financial information such as sources of revenue, taxes, profits and operational plans, for instance on downsizing or relocating.

The ILO has identified certain business practices between buyers and suppliers that have an impact on wages and working conditions. Such information is key to workers and their representatives as it clearly has an impact on them. It is also key information in order to identify leverage in business relationships to protect workers’ rights and to identify which business entities are causing, contributing or directly linked to the impacts. The position of the company within the global production network is also important in order to understand the responsibility of specific business enterprises within the value chain and to assess the power of their leverage.

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54 International Labour Organisation, Purchasing practices and working conditions in global supply chains: Global Survey results, INWORK Issue Brief No. 10 (International Labour Office, 2017), [https://www.ilo.org/wcmsp5/groups/public/-ed\\_protect/---protrav/---travail/documents/publication/wcms\\_556336.pdf](https://www.ilo.org/wcmsp5/groups/public/-ed_protect/---protrav/---travail/documents/publication/wcms_556336.pdf).

The details of the production facility include its name, alternative names, address, production lines, processes, and specific physical characteristics such as number of floors, emergency exits, etc. Details on the work force are also important, for instance the number of workers, the proportion of student or migrant workers, wages, presence of trade unions or other representative organizations, among other relevant information about the employees of a facility.

The corporate human rights due diligence policies and practices are an important set of data points that need to be communicated. It includes businesses policies; human rights risk assessments; actions taken to address such risks; the findings and outcomes of such actions; remediation mechanisms and other relevant policies and practices.

Finally, it is also important to disclose information about the specifics of materials, components and products that are being used or produced in order to trace them along the supply chain. Traceability and proper product identification is key to provide clarity on where and by who are such materials components or products being produced, manufactured, transformed, consumed or disposed.

## 5 Transparency how? Making disclosing information meaningful

The right to information and human rights due diligence principles requires that both the content of the information and the way it is communicated comply with certain essential characteristics. For instance, duty bearers must make information available and accessible in a way that is functional to protect the rights of impacted or potentially impacted rights-holders, i.e. workers, their families and community members. Moreover, information must be disclosed and communicated in such a way that rights-holders and other stakeholders can readily use it considering their skills and level of education. In this section, we unpack and review the characteristics of how information needs to be disclosed.

### Human rights due diligence requirements

Disclosure and communication should be in line with the highest prevailing relevant international standards. Currently, the most authoritative and comprehensive instruments referring to human rights due diligence are the OECD Guidelines, the OECD DD Guidance and the UNGPs, as mentioned above. The following box includes a pair of excerpts from the OECD DD Guidance clarifying some important elements of how information should be communicated.

#### **“Due diligence involves ongoing communication**

Communicating information on due diligence processes, findings and plans is part of the due diligence process itself. It enables the enterprise to build trust in its actions and decision-making, and demonstrate good faith. An enterprise should account for how it identifies and addresses actual or potential adverse impacts and should communicate accordingly. Information should be accessible to its intended audiences (e.g. stakeholders, investors, consumers, etc.) and be sufficient to demonstrate the adequacy of an enterprise’s response to impacts.”

Source: OECD. 2018. OECD Due Diligence Guidance for Responsible Business Conduct, p.19

**“5.1. Communicate externally relevant information on due diligence policies, processes, activities conducted to identify and address actual or potential adverse impacts, including the findings and outcomes of those activities.**

**Practical actions<sup>1</sup>**

- a** **Publicly** report relevant information on due diligence processes, with due regard for commercial confidentiality and other competitive or security concerns....
- b** Publish the above information in a way that is easily **accessible** and **appropriate**
- c** For human rights impacts that the enterprise causes or contributes to, be prepared to communicate with impacted or potentially impacted rights-holders in a **timely**, **culturally sensitive** and **accessible manner**.”

Source: OECD. 2018. OECD Due Diligence Guidance for Responsible Business Conduct, p.33

1 Emphasis added by the authors.

The OECD DD Guidance provides further explanation on what accessibility means. In order to be accessible information needs to be physically accessible, understandable and disclosed in a format, language and location that guarantees that the intended audience is able to notice it and use it.

**Meaningful engagement with rights-holders**

The OECD DD Guidance clarifies that businesses’ due diligence needs to be informed through meaningful engagement with those potentially affected by the activities of the enterprise.<sup>55</sup> Meaningful engagement is an essential element of human rights due diligence and of the risk assessment processes, and requires communication and interaction with workers, so they can provide their input, based on their working experiences. For workers to engage meaningfully, they need to be aware of their rights and of the actual and potential impacts to their rights and be involved in the decision making of companies’ activities and practices. The OECD Due Diligence Guidance also states that *two-way communication* is essential for engagement and that such engagement requires “the *timely* sharing of the relevant information needed for stakeholders to make informed decisions in a format that they can understand and access. To be meaningful, engagement involves the *good faith* of all parties.”<sup>56</sup>

55 In the context of health and safety at work there is not only a requirement in the framework of general due diligence processes but a specific legal obligation to inform and consult workers and allow them to take part in discussions on all questions relating to health and safety at work.

56 OECD. 2018. OECD Due Diligence Guidance for Responsible Business Conduct, p.19.

## Confidentiality claims

The OECD DD Guidance emphasises that communication “should be carried out with due regard for commercial confidentiality and other competitive or security concerns”<sup>57</sup>, for instance the need to respect domestic law and to avoid risks to stakeholders. The OECD DD Guidance offers various strategies to facilitate communication to the full extent possible while respecting such concerns:

- “Limiting access to sensitive information to those approved by the information provider.
- Anonymising the source of information.
- Providing a valid explanation or justification, where possible, for why the information has not been shared.
- Using third parties or innovative technologies that allow disclosure of key information while protecting commercially sensitive data, for example, to disclose certain information in aggregate or without identifying specific business relationships.
- Delaying reporting until persons are no longer at risk, for example after a grievance or risk has been addressed.
- Providing assurance through other methods, such as inviting an independent third party to review the enterprise’s due diligence processes and disclosing their findings publicly or to a relevant collaborative initiative.”<sup>58</sup>

The OECD DD Guidance makes an important clarification by stating that “in certain circumstances, disclosing information may be fundamental to the corporate responsibility to respect human rights.”<sup>59</sup> One of such cases refers to informing workers about their exposure to hazardous substance. This point is very important as health and safety information shall never be confidential.<sup>60</sup>

## Right to Information requirements

The right to information, as recognized by the international human rights framework and national laws, also clarify the characteristics that information needs to have. According to the interpretation of the UN Special Rapporteur on Human Rights & Toxics, the right to information requires that information “*be available, accessible and functional, in a manner consistent with the principle of non-discrimination*”. In his view, information is *available* when it has “*been generated and collected in a manner adequate to assess the magnitude of potential adverse impacts on the rights of people*”. It is *accessible* “*when everyone can seek, obtain, receive and hold available information, unless there is an overriding legitimate public-interest justification for non-disclosure*”. It is *functional* when it is “*fit for its intended purpose*” and “*is not functional unless it works to prevent harm, to enable democratic decision-making, and to ensure accountability, access to justice and an effective remedy*”. Finally, in the Special Rapporteur view, in order for the information to respect the principle of *non-discrimination*, it needs to be disaggregated and specialized taking into account “*specific population groups, including different ages, incomes, ethnicities, genders as well as minorities and indigenous peoples*”.<sup>61</sup>

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57 Ibid.

58 Ibid, p.87.

59 Ibid.

60 Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Başkut Tuncak, Principles on human rights and the protection of workers from exposure to toxic substances, UN Doc. A/HRC/42/41, 17 July 2019.

61 Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Başkut Tuncak, Report, UN Doc. A/HRC/30/40, 8 July 2015.

## Essential characteristics

**After revising the due diligence framework and the right to information, we conclude that information needs to be accessible, available, functional, sufficient, appropriate, timely, culturally sensitive, public, in good faith, based on two-way communication and consistent with the principle of non-discrimination.**

Based on such characteristics, we offer here a list of non-exhaustive practical qualitative features for optimal disclosure of information. Information shall:

- Be publicly available.
- Placed in locations where the intended audience(s) will easily notice it, for example in a logic location on the formal corporate website.
- Be timely.
- Include the date.
- Be current and regularly updated.
- Changes, corrections and additions between one version of the disclosed information and the next should be documented. Previous versions should be kept on record.
- Be in a language and using a vocabulary that the intended audience(s) can easily understand. Available also in widely used languages such as English, Spanish or Chinese for international human rights organisations, worker representative organisations, and advocacy groups.
- Be relevant.
- Be full, detailed.
- Be measurable.
- Be reliable, referenced and verifiable (as in, with reference and sources which can be accessed and checked against) and able to be traced back to its origin.
- Be in a downloadable, searchable format.
- Be free of charge.
- "Sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved".<sup>62</sup>
- Not pose risks to affected stakeholders (rights-holders, duty bearers and/or other relevant parties).<sup>63</sup>
- Respect privacy of affected stakeholders (rights-holders, duty bearers and/or other relevant parties).
- Take into account the cultural and gender sensitivities of the intended audience(s).
- Signed off by a director of the company and approved by the Board.

62 United Nations, 2011, Guiding principles on business and human rights: implementing the United Nations "Protect, Respect and Remedy" framework, p.23.

63 Ibid.

### **Making progress towards full disclosure and prioritisation**

The trajectory towards full disclosure is an ongoing process, as ideas, principles, demands and standards regarding disclosure develop and evolve. Furthermore, we recognize that sometimes it is not possible to identify, address and communicate all potential and adverse impacts simultaneously. In those cases, prioritization may be necessary. Following the UNGPs and the OECD guidelines, prioritization shall take into account severity and *likelihood* of the adverse impact. Severity is the most important factor in prioritizing. It includes the scale, scope and irremediable character of an impact.<sup>64</sup> It is important to mention that businesses are responsible to identify, address and communicate all its actual and potential impacts. Prioritization does not mean some impacts or information shall be excluded, but it is rather an issue of sequencing actions. Prioritization of impacts, or of disclosure of information, should always respect the right to know and other rights.

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64 Shift, Exploring the Concept of Prioritization: An Explanatory Note for the Dutch Sector Covenant Process (2016), [https://www.shiftproject.org/media/resources/docs/Shift\\_NoteonPrioritizationforSER\\_Feb2016.pdf](https://www.shiftproject.org/media/resources/docs/Shift_NoteonPrioritizationforSER_Feb2016.pdf) Başkut

## 6 In-depth: workers' right to know in connection to toxic chemicals and health and safety at work

This section takes a deep dive on workers' right to know when it comes to toxic exposure and health and safety information at work. While the right to information and the duty for disclosure covers much more than chemicals and health and safety issues, zooming in to this particular topic provides a very clear example of the importance that information plays for the protection and respect of human rights. This section is included as an infamous example of the dire consequences that result from information gaps in order to support the wider demand discussed in this report.

Four workers die every minute resulting from working in unsafe or unhealthy working conditions according to the ILO.<sup>65</sup> "Tens of millions of workers are exposed to hazardous substances at work"<sup>66</sup>, and every 30 seconds a worker dies from exposure to such substances.<sup>67</sup> Many cases of toxic exposure resulting in illness or death have been documented in the electronics sector, an industry that relies heavily on toxic substances throughout its lifecycle. Many of these deaths and illnesses are preventable and what characterises many of these cases is a lack of sufficient information. Information to which the workers have a right to know as it is related to their very own health, life and working environment. Workers are being left in the dark on essential information to protect their health such as chemicals used at work, exposure levels, and hazardous properties. Such information is key to prevent risks, mitigate harm, refuse unhealthy work, develop safer alternatives, and access to remedy.

### Exploitation by deception as a result of a lack of transparency

Information is fundamental for the enjoyment of a wide array of human rights. Information is both a right in and of itself and an enabler of other human rights. "When workers are not provided with relevant information about hazardous substances in the workplace to which they are actually or potentially being exposed, this could constitute exploitation by deception".<sup>1</sup>

Deception can be a form of exploitation. Exploitation is a serious crime actionable under various international and domestic laws. For instance, pursuant to the UK Modern Slavery Act, a worker is subject to exploitation "if he or she is subject to deception designed to induce him or her: (a) to provide services of any kind; (b) to provide another person with benefits of any kind; or (c) to enable another person to acquire benefits of any kind." Deception of workers must be defined to include, at a minimum, instances where there is a failure to respect and protect their right to know.

65 Hämäläinen, Takala and Boon Kiat, *supra* n. 11.

66 GoodElectronics, *Exploitation By Deception in the Electronics Industry*, <https://goodelectronics.org/exploitation-by-deception-in-the-electronics-industry/>.

67 Special Rapporteur, *Principles*, *supra* n. 37.

The GoodElectronics paper *Exploitation by Deception* argues that “when workers are not provided with relevant information about the toxic and otherwise hazardous substances in the workplace they are actually or potentially being exposed to, this could constitute exploitation by deception.”<sup>2</sup>

The UN Special Rapporteur on Human rights and Toxics has presented the following principle to the Human Rights Council based on extensive years of experience.<sup>3</sup>

**Principle 14 – Depriving workers of their right to safe and healthy work should be a crime.<sup>4</sup>**

- 1 GoodElectronics, *Exploitation By Deception in the Electronics Industry*, <https://goodelectronics.org/exploitation-by-deception-in-the-electronics-industry/>.
- 2 Baskut Tuncak, Alejandro González and Jonathan Örnberg, *Exploitation by Deception in the electronics industry*.
- 3 Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Baskut Tuncak, *Principles on human rights and the protection of workers from exposure to toxic substances*, UN Doc. A/HRC/42/41, 17 July 2019.
- 4 (GoodElectronics, 2018), <https://goodelectronics.org/paper-exploitation-by-deception-in-the-electronics-industry/>. Special Rapporteur, Report, supra n. 61.

## 6.1 International framework of workers’ right to know in connection to chemicals and health and safety

In this sub-section, we review the international framework of workers’ right to know in connection to health and safety at work. We give particular attention to United Nations instruments and the ILO Convention on Chemicals. The right to information (as discussed in Section 2) stems from the right to freedom of expression (Article 19 ICCPR). The Special Rapporteur on Freedom of expression has clarified that the right to information includes the right of people to request information of public interest and information concerning themselves which may have an impact on their individual rights.<sup>68</sup> In the specific context of hazardous substances, the right to information is further elaborated by international labour standards and international chemical standards.

### International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is an international treaty with 170 parties. It is considered universal and it is part of the International Bill of Human Rights. The ICESCR is monitored by the UN Committee on Economic, Social and Cultural Rights (CESCR). According to the ICESCR, safe and healthy working conditions are a key element of just and favourable conditions at work.<sup>69</sup> The CESCR has interpreted the right to safe and healthy

68 Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report on Promotion and Protection of the Right to Freedom of Opinion and Expression, UN Doc. A/68/362, 4 September 2013, para 19 and 22.

69 International Covenant on Economic, Social and Cultural Rights, Art. 7(b), and UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 7 April 2016, E/C.12/GC/23, (n 2), Para. 6.

working conditions to include the rights of the physical and mental integrity of the worker when conducting their work.<sup>70</sup> The right to physical and mental integrity further encompasses the right of each human being to autonomy and self-determination over their own body. Workers' autonomy and self-determination rights includes the control of unwanted, toxic substances into their body.

Another core international instrument, the International Covenant on Civil and Political Rights (ICCPR) recognises the right to information as “freedom to seek, receive and impart information and ideas of all kinds”.<sup>71</sup>

### **ILO Chemicals Convention**

The ILO Chemicals Convention (ILO C.170) addresses safety in the use of chemicals in the workplace. While it has been ratified by only 21 countries, it has been ratified by countries with a big electronic manufacturing production such as Mexico, China, Brazil and Korea. Under ILO C.170 workers and their representatives have a right to information on:

- “The identity and hazardous properties of chemicals used at work.
- Precautionary measures.
- Education and training.
- Information contained in labels and markings.
- Chemical safety data sheets (CSDS).
- Other information required by the Convention, [such as information required of States and businesses].
- How to obtain and use the information provided on labels and CSDS.
- Records of the monitoring of the working environment and of the exposure of workers using hazardous chemicals.
- Practices and procedures to be followed for safety.
- Record of hazardous chemicals used at work, cross-referenced to the appropriate chemical safety data sheets.”<sup>72</sup>

If companies are serious about their efforts to protect workers and be transparent, they should start with complying with the requirements set for by the ILO in the Chemicals Convention.

## **6.2 Domestic laws and regulations of workers' right to know in connection to chemicals and health and safety (selected jurisdictions)**

In this sub-section, we focus on how the right to know is regulated at domestic level in certain jurisdictions, including the United States and the European Union. Many countries have health and safety regulations that involve a degree of transparency and information towards workers. The following is a brief review of a few jurisdictions. We do not attempt to be comprehensive but rather share a few examples that support the workers right to know with the aim of demonstrating that such a right and corporate duty is both feasible and supported by law. In addition, companies headquartered in the following jurisdictions shall aim to apply the same standards to their entire supply chain. It is not ethical for businesses to respect standards in their home countries while exploiting gaps or lack of enforcement in the countries where they operate.

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70 UN Committee on Economic, Social and Cultural Rights, (CESCR), General Comment No. 18: The Right to Work (Art. 6 of the Covenant), 6 February 2006, E/C.12/GC/18.

71 International Covenant on Civil and Political Rights 1966, article 19(2).

72 ILO Chemicals Convention, 1990 (C 170), art. 18(3)(a)-(d).

### **United States: US Occupational Safety and Health Act (US OSH Act)**

The Occupational Safety and Health Act of 1970 (US OSH ACT) covers almost every private US employer and their workers.<sup>73</sup> The Occupational Safety and Health Administration (OSHA), which falls within the Department of Labor, was created by the US OSH ACT. OSHA is tasked with guaranteeing safe and healthy working conditions and it sets and enforces standards.

Under US OSH Act, workers have a right to:

- “Information and training about hazards, methods to prevent harm, and the OSHA standards that apply to their workplace. The training must be done in a language and vocabulary workers can understand.
- Records of work-related injuries and illnesses that occur in their workplace.
- Results from tests and monitoring done to find and measure hazards in the workplace.
- Their workplace medical records.”<sup>74</sup> Workers representatives also have a right after getting permission from the worker.
- “Effective information and training on hazardous chemicals in their work area.
- (Employers shall) keep a current list of hazardous chemicals that are in the workplace.”
- Safety Data Sheets (SDSs) for each substance that provide detailed information about chemical hazards, their effects, how to prevent exposure, and emergency treatment if an exposure occurs <sup>75</sup>
- Right to Exposure Data, “OSHA gives workers the right to get the results of exposure monitoring.”<sup>76</sup>

### **European Union: EU Regulations on Health and Safety**

The EU has adopted a series of directives on OHS applicable in all member states. Member states can adopt stricter regulations. The most important one is the OSH Framework Directive (89/391). Furthermore, EU Directive 98/24 EC deals specifically with risks related to chemical agents at work. Additionally, Directive 2004/37/EC covers the protection of workers from occupational exposure to carcinogens or mutagens.

#### **Directive 89/391/EEC - OSH “Framework Directive”**

Pursuant to this directive, the employer has an obligation to: i) “Evaluate all the risks to the safety and health of worker; ii) Keep a list of occupational accidents, and iii) Inform and consult workers and allow them to take part in discussions on all questions relating to safety and health at work”.

#### **Directive 98/24/EC - risks related to chemical agents at work**

In accordance with Directive 98/24/EC, the employer must “determine whether any hazardous chemical agents are present at the workplace and assess any risk to the safety and health arising from their presence”. Employers shall inform workers: “On emergency arrangements; ii) On the results of the risk assessment; iii) On the hazardous chemical agents present at the workplace with access to safety data sheets; iv) By training on the appropriate precautions and on the personal and collective protection measures that are to be taken.”

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73 Department Of Labor Logo United States department Of Labor, <https://www.osha.gov/aboutosha>.

74 OSHA, All About Osha, <https://www.osha.gov/Publications/about-osha/3302-06N-2006-English.html>.

75 OSHA, Osha Training Requirements: Hazard Communication, <https://www.oshatraining.com/osha-training-requirements-hazard-communication.php>.

76 OSHA, Workers' Rights - Osha.gov, <https://www.osha.gov/Publications/osha3021.pdf>.

### **Directive 2004/37/EC – carcinogens or mutagens at work**

Pursuant to Directive 2004/37/EC employers shall ensure “that workers and/or workers’ representatives ... receive sufficient and appropriate training, on the basis of all available information, in particular in the form of information and instructions, concerning: potential risks to health...; precautions to be taken to prevent exposure; wearing and use of protective equipment and clothing; steps to be taken by workers in the case of incidents and to prevent incidents.”

In addition, employers shall ensure that “workers and/or any workers’ representatives in the undertaking or establishment are informed as quickly as possible of abnormal exposures and that each worker has access to the information on the list which relates to him personally.”

### **Workplace Hazardous Materials Information System in Canada (Can WHMIS)<sup>77</sup>**

The Workplace Hazardous Materials Information System (WHMIS) is a communication standard in Canada with regard to hazardous substances in the workplace. The WHMIS implementation is a joint responsibility between suppliers, employers and workers. Employer obligations are established by OHS agencies at federal, provincial and territorial levels. Pursuant to the WHMIS, information on hazardous materials shall be provided through:

- “Labels on the containers of hazardous materials;
- Material safety data sheets to supplement the label with detailed hazard and precautionary information; and
- Worker education programs.”
- Suppliers need to provide the labels and material safety data sheets to employers, who in turn transmit the information to the workers by providing training programs.

## **6.3 Human Rights Due Diligence and workers’ right to know in connection to chemicals and health and safety**

In Section 2 we discussed that transparency and disclosure are key elements of human rights due diligence. In accordance with the due diligence responsibility, businesses are required to assess actual and potential impacts, act upon the findings, track responses and communicate how such impacts are being addressed. We also discussed that businesses shall “communicate externally relevant information on due diligence policies, processes, activities conducted to identify and address actual or potential adverse impacts, including the findings and outcomes of those activities.”<sup>78</sup>

As workers’ exposure to chemicals is clearly an actual and potential impact, it follows that businesses shall assess potential exposure and communicate the results and findings. They also shall take reasonable measures to prevent such risks from happening by informing and training workers on the identity and hazardous properties of chemicals used in the workplace. Informing workers on the chemicals and hazards at work is thus a cornerstone of human rights due diligence. As exposure to chemicals can have irremediable consequences of health and life, its severity is very high and thus needs to be prioritized.

As part of their due diligence responsibilities businesses must make information available to workers and beyond. The characteristics we have described in section 5 regarding how disclosure

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77 Windsor Worker’s Education Centre, Right to Know, Right to Participate, Right to Refuse (undated), <http://www.wweec.ca/right-to-know-right-to-participate-right-to-refuse/>.

78 OECD Due Diligence Guidance for Responsible Business Conduct, p.p. 33.

should be made in order to be meaningful apply here too. As interpreted by the UN Special Rapporteur on Human Rights and Toxics, “information is available when current reliable information has been generated and collected in a manner adequate to assess the magnitude of potential adverse impacts on the rights of people from hazardous substances and wastes. Information about hazardous substances and wastes is accessible when everyone can seek, obtain, receive and hold available information, unless there is an overriding legitimate public-interest justification for non-disclosure. Information must be both physically and economically accessible, and there must be public awareness about its availability and how to make use of the information.”<sup>79</sup>

## 6.4 The Chemical Challenge

In 2015, the GoodElectronics Network, the International Campaign on Responsible Technology, and allies launched a detailed “Challenge to the electronics industry” to respect workers’ rights and community rights, ensure safe working conditions, operate transparently and proactively reduce and eliminate chemical hazards in the sector.<sup>80</sup> The challenge calls on the electronic companies to:

- “Provide health and safety information (full, up-to-date, understandable and free-of-charge).
- Share hazard information without restriction (with workers, communities and their representative organisations).
- Provide all Safety Data Sheets (SDS).
- Maintain and disclose chemical inventory (disclose this information to workers, communities and their representative organisations at least annually (updated) and make this information publicly available).
- Cooperate with education and training initiatives.”

The Challenge also calls for the industry to use safer chemicals. This includes conducting alternative assessments, choosing safer substitutes, research safer substitutes, follow hierarchy of controls and use the same, highest standards worldwide.

When there is not enough information about the environmental or human rights impacts of a substance then its use shall be avoided pursuant to the precautionary principle.

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79 Special Rapporteur, Report, supra n. 38.

80 On March 16, 2015, International Campaign for Responsible Technology (ICRT), the GoodElectronics network and allies around the world issued a formal Challenge to the electronics industry to adopt safer and more sustainable manufacturing practices and to proactively reduce and eliminate chemical and physical hazards through the development and adoption of safer alternatives. This is necessary to protect and promote human rights, workers’ rights and the environment. This Challenge has been endorsed by over 200 organisations and individuals from more than 40 countries. It calls on the electronics industry to: Respect human rights, workers’ and community rights, including the right to know what hazards are present in electronics workplaces and surrounding communities.

**“Precautionary Principle: When an activity raises threats of harm to human health or the environment, precautionary measures shall be taken even if some cause and effect relationships are not fully established scientifically.”<sup>1</sup>**

- 1 GoodElectronics Network, Meeting the Challenge – Detailed Recommendations For the Electronics Industry Regarding the Use Of Chemicals, <https://goodelectronics.org/meeting-the-challenge-detailed-recommendations-for-the-electronics-industry-regarding-the-use-of-chemicals/>.

Furthermore, the challenge includes detailed recommendation on how to:

- “Be transparent;
- Use safer chemicals;
- Protect workers;
- Promote, guarantee and defend the participation of workers and communities;
- Protect communities and the environment;
- Compensate and remediate for harm to people and environment.”

The Challenge has been translated into nine languages and endorsed by over 200 organisations from more than 40 countries.

## 7 Conclusions

This report makes the argument for transparency in the global electronics industry from a *rights-based approach*. Beyond corporate transparency, we demand the right to know. This is defined as the right to access information for workers, their families and community members – the rights-holders- and a duty of providing such information by states and businesses- the duty bearers. The right to information is both a right in itself and a precondition for the realisation of other rights. Our focus is the electronics industry, in which we are calling for a systematic, coherent and mandatory disclosure and transparency regarding the conditions, decisions and practices that directly or indirectly affect workers, their families and community members, their work environment, life and livelihoods. This is needed, and urgent, to address the harmful practices which the opacity of corporate relations perpetuates and hides away, resulting in violation of rights of workers and others affected by the industry's activities. Our approach to transparency is soundly grounded in two frameworks: the right to information and corporate human rights due diligence and non-financial disclosure. Both frameworks are rapidly developing in international and national law and practice.

The right to know is the right of workers, their families and community members to access and act on all information that may impact or is necessary to realize their rights, including all information that affects their lives and livelihoods.

The main right-holders are workers, their families, and community members affected or potentially affected by the electronics industry, whilst the main duty bearers are states and corporations.

As part of their responsibilities to conduct human rights due diligence businesses must assess their actual and potential impacts, address them and communicate such risks and their actions to address them, including the findings and outcomes. Therefore, transparency is implicit within businesses' responsibility to communicate and engage with rights-holders and other relevant parties.

Workers, their families, members of the communities that are (potentially) affected by businesses operations are the primary rights- holders to the right of information. This includes sub-groups of workers and community members, in particular groups at higher risk of harm such as women, migrant workers, students, young workers, apprentices, workers on temporary contracts, labour agency workers, etc. Besides these groups, there are other relevant parties such as Trade Unions (TU) and other types of workers' representatives, and organisations and initiatives that represent workers' interests, that are also entitled to a certain level of information and need to be part of communication and disclosure processes.

The information that should be disclosed and communicated has to be that which directly or indirectly affect workers and their communities, their working lives and livelihoods. This is the information that workers, their families and community members need for the full realisation and enjoyment of their human and labour rights.

The right to information encompasses corporate information; business practices between buyers and suppliers; position of the company in the value chain; details of facilities; work force details; due diligence policies and practices including risks, findings and outcomes and specifics of materials, components and products.

Information needs to be accessible, available, functional, sufficient, appropriate, timely, culturally sensitive, public, in good faith, based on two-way communication and “consistent with the principle of non-discrimination.”<sup>81</sup> Companies are responsible for disclosing the information in this way, whilst states have the obligation to ensure companies do so and that workers can access it and engage meaningfully with it.

To be functional, workers and other rights-holders and related parties need to be able to readily use the information and it needs to be in a form that actually protects the rights of the rights-holders. Information can be considered available when it is current, reliable, visible and easy and affordable to find and has been collected in a way that allows for workers and their representatives to properly assess the actual and potential risks they are exposed to in their work.

Existing regulation and initiatives demand a variety of data points to be disclosed, making it difficult to identify a coherent set of data which is required across the board to companies and their suppliers. In this report, we make an effort to systematise these data sets. In Annex 1, we make an effort to identify and add the data points that we think are missing to advance towards the achievement of a *right-based approach* to transparency.

Some of the challenges to the right to know of workers, their families and community members are more acute or evident regarding exposure to toxic chemicals and health and safety at work. This is one of the greatest challenges of the industry and as such should receive enhanced attention. If companies are serious about their efforts to protect workers, their families and communities, they should start with complying with the disclosure requirements set for by the ILO on the chemicals convention. Whilst international and national regulation imposes clearer norms regarding the right to know regarding hazardous substances and health and safety at work, workers, their families and community members in the electronics industry are still suffering disproportionately the consequences of opaque policies and practices which leaves them exposed and unprotected to such toxicity and harm. The right to information continues to be ineffectively implemented exacerbating a global health crisis of workers. We hope that the work this report does in identifying transparency why, for whom, of what and how, contributes to advance the clarification and full realisation of the right to know and the duty to inform and exercise due diligence to protect the rights of workers.

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81 Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Başkut Tuncak, Report, UN Doc. A/HRC/39/48, 3 August 2018.

# Annex 1

## Data sets and data points

This annex contains the data points we suggest should be part of mandatory disclosure for companies in order to advance towards the achievement of a *right-based approach* to transparency.

### 1 Corporate information

- Corporate structure
- Business model
- Parent company
- Shareholders and/or ultimate beneficial owners of the parent company and/or People with Significant Control
- Sources of revenue, financial figures including revenue, profit, and loss, independently verified (by third party/accountant)
- Financial reporting taking into account that human rights impacts in some instances, may be “material” or “significant” to the economic performance of the business enterprise
- Information on taxes paid to or tax agreements between the company and the local authorities
- Operational plans
- Company plans with regard to downsizing, relocation, mergers
- Information on Global Framework Agreements that the company may be part of.

### 2 Business practices between buyers and suppliers that may influence wages and working conditions as identified by the ILO

- Contract clauses
- Technical specifications
- Order placement (and lead times)
- Prices and market power (number of buyers or suppliers with whom they operate)
- Requests for social standards made by the buyer to the supplier.

### 3 Position of company within the global electronics production network

- Business’ own operations
- Upstream and downstream global electronics production network: including, but not limited to public buyers, consumer markets, telecommunications providers, final assembly, manufacturers, component suppliers, suppliers of chemicals, processors, smelters, refiners, suppliers of raw materials, distributors, etc.

## 4 Details on facility

- Full name of facility
- Alternative name of facility
- Full address of facility
- Name of Special Economic Zone, Industrial Zone or Industrial Park where the facility is located
- Position of facility in overall company structure [global production network]
  - Indication whether facility is a subsidiary, final assembly, manufacturer, component supplier, smelter, refiner, etc.
  - Indication whether the supplier is a Strategic Supplier, Preferred Quality Supplier, or similar denominations used by the buying company – and the criteria and scores on which this ranking is based.
- Assembly lines or production lines accommodated within facility
- Work processes conducted at facility
- Features of compound (presence of dormitories)
- Physical features of facility (number of floors, exits, emergency equipment, etc.).

## 5 Work force

- Number of workers per facility
- Breakdown and proportion of work force (gender, age, seniority, type of contract, migrant workers, student workers, etc.) per facility, work process, and/or production line
- Wages, bonuses and benefits
- Working hours, including overtime
- Copy of appointment letters, contracts, pay slips
- Information on the presence of labour unions, collective bargaining processes and eventual collective bargaining agreements on facility level
- Information on the use of use of third-party labour intermediaries or labour contractors and brokers, whether as formally registered companies that provide temporary staffing services or more informal or quasi-registered labour contractors
- In case workers were made to pay recruitment fees, a company should disclose evidence that they have reimbursed such recruitment fees to the workers in their supply chain.

## 6 Corporate human rights due diligence policies and practices

- Policies, processes and practices conducted to identify and address actual or potential adverse impacts of corporate conduct, including the findings and outcomes of those activities. Processes, findings and plans are part of the due diligence process itself.
- Policies include:
  - Corporate policies related to environmental, social and employment matters, respect for human rights, anti-corruption and bribery
  - Responsible business conduct (RBC) policies
- Processes
  - Due diligence and remediation processes
- Risks
  - Areas of significant risks of own operation and derived from business relationships

- Significant adverse impacts or risks identified, prioritised and assessed, as well as the prioritisation criteria
- Information on risks related to environmental, social and employment matters, respect for human rights, anti-corruption and bribery linked to company's operations including, where relevant and proportionate, its business relationships, products or services
- Risks of modern slavery practices in the operations and supply chains
- Actions/Activities
  - Actions taken to prevent, address and mitigate risks and serious harms, including timelines and benchmarks
  - Assessment of the effectiveness of such actions
  - Activities conducted to identify and address actual or potential adverse impacts
  - Measures taken to embed RBC into policies and management systems
- Findings and Outcomes
  - Outcomes of policies
  - Outcomes of actions taken to prevent or mitigate risks
  - Due diligence findings and plan
- Remediation
  - Provision of or co-operation in any remediation mechanisms
- Other relevant policies and practices
  - Efforts to eradicate slavery and human trafficking
  - Verification of product supply chains to evaluate and address risks of human trafficking and slavery
  - Audits to evaluate supplier compliance with company standards
  - Certification requiring direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business
  - Internal Accountability
  - Training to employees with direct responsibility for supply chain management on mitigating risks.
  - Trainings made available for workers
  - procedures assessing the situation of certain subsidiaries, subcontractors or suppliers
  - Monitoring scheme to follow-up on the implementation and efficiency of measures
  - Supplier & supply chain standards and policies; code of conduct, ethics policies related to environmental, social and employment matters, respect for human rights, anti-corruption and bribery
  - Efforts made to protect basic human rights where relevant and proportionate
  - Disclose on trainings made available to staff/employees and suppliers regarding companies' policies
  - Disclosure of information on the processes in place for cascading standards and codes further down the supply chain, or how suppliers are *requested/pressured/motivated/helped/obliged* to comply with social standards
  - Disclosure of information on company-level alert mechanism or grievance mechanisms and grievance mechanisms operated by the improvement initiatives that the company is participating in, as well as data on the usage of those mechanisms, the actual remedy processes, including outcomes
  - Disclosure on engagement with stakeholders such as policy-makers, workers' rights organisations, or local non-governmental organisations in countries in which suppliers operate
  - Disclosure of in-company oversight and implementation of all these policies, with details on board-level oversight

- Reporting on membership of multi-stakeholder or industry initiatives and on improvement projects undertaken in collaboration with such initiatives
- Political lobby undertaken by business
- Disclosure of how companies adapt their purchasing practices to mitigate risks of labour rights violations, including forced labour, for example by regularly reviewing forecasting with suppliers and analysing suppliers' capacity to avoid excessive overtime for workers.

## **7 Specifics of materials, components, products**

- Component type, model, name, and/or code
- Product type, model, name, and/or code
- Technical specifications of components and products
- Screen size (if applicable)
- Production line or assembly line where component or product was made.



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