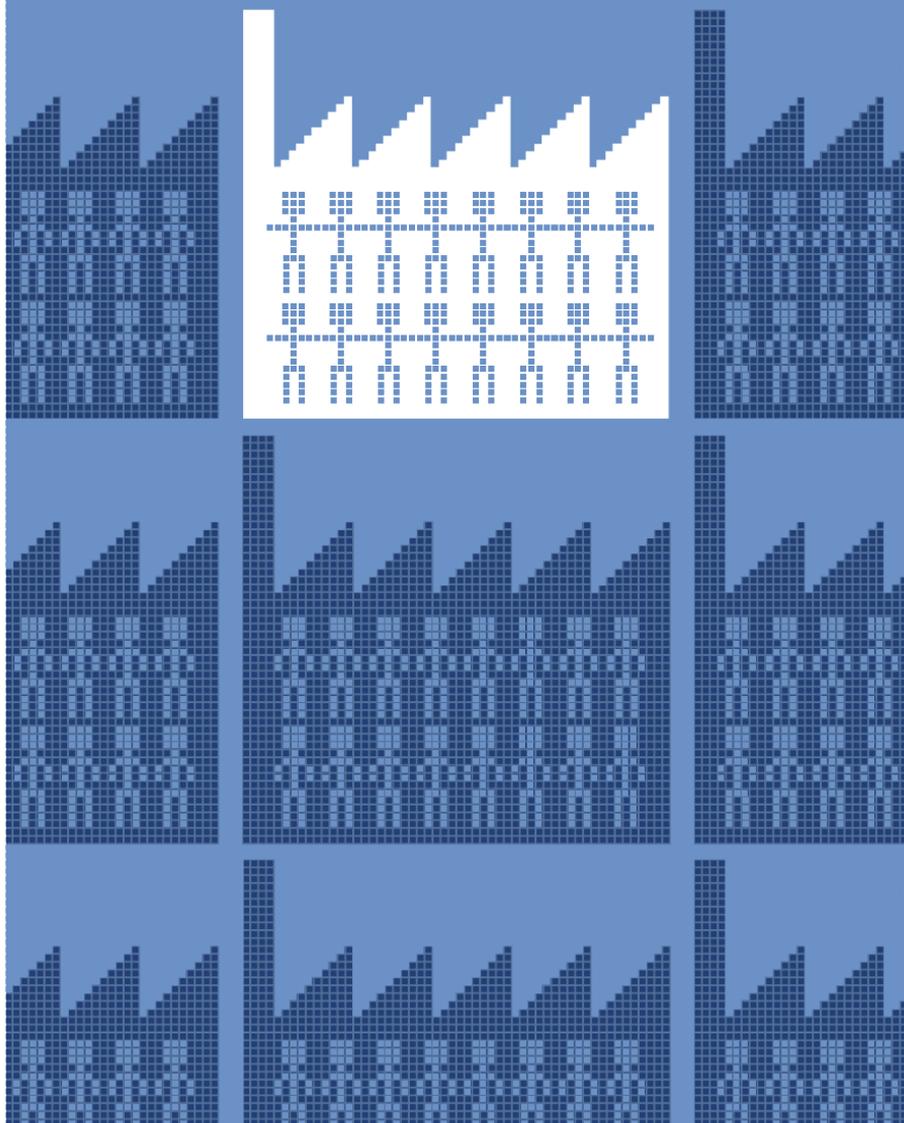


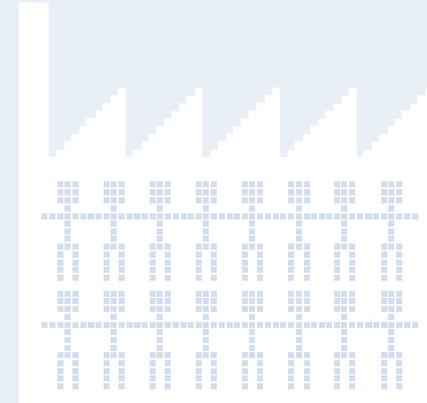
How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy

A guide for civil society organisations



How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy

A guide for civil society organisations



Mariëtte van Huijstee [SOMO](#)

Victor Ricco [CEDHA](#)

Laura Ceresna-Chaturvedi [Cividep India](#)

Colophon

How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy

A guide for civil society organisations

November 2012

Authors: Mariëtte van Huijstee (SOMO), Victor Ricco (CEDHA),
Laura Ceresna-Chaturvedi (Cividep India)

Graphic design: JUSTAR.nl

This publication has been made possible with financial assistance from the Dutch Ministry of Foreign Affairs. The content of this publication is the sole responsibility of SOMO and can in no way be taken to reflect the views of the Dutch Ministry of Foreign Affairs.

Published by: SOMO, CEDHA, Cividep India

SOMO
Stichting Onderzoek Multinationale Ondernemingen
Centre for Research on Multinational Corporations

Sarphatistraat 30 Tel: + 31 (20) 6391291
1018 GL Amsterdam E-mail: info@somo.nl
The Netherlands Website: www.somo.nl

SOMO



CEDHA

Cividep India

Workers' Rights & Corporate Accountability



About SOMO: SOMO is an independent research organisation based in Amsterdam, the Netherlands. It was founded in 1973 to provide civil society organisations (CSOs) with information about the structure and organisation of multinationals by conducting independent research. SOMO has built up considerable expertise in the following areas: corporate accountability; financial and trade regulation; and the position of developing countries regarding the financial industry and trade agreements. SOMO has also built up knowledge of many different business fields by conducting sector studies.

About CEDHA: Created in 1999, the Center for Human Rights and Environment (CEDHA) is a non-profit organisation that aims to build more harmonious relationship between the environment and people. CEDHA is based in Córdoba, Argentina.

About Cividep: Cividep is a non-governmental organisation (NGO) based in Bangalore, India. It studies the effects of corporate activities on communities and the environment, helps workers to organise, and campaigns with many other organisations and individuals for workers' rights and corporate accountability. Cividep's workers' rights initiatives have been in the garment manufacturing and electronics manufacturing sectors.

This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Unported License.

This guide is second in a series of guidebooks for CSOs published by SOMO. The first guide addressed to topic of Multi Stakeholder Initiatives; interactive processes in which business, CSOs and possibly other stakeholder groups interact to make business processes more socially and/or environmentally sustainable.

To order a copy of this guide, send an e-mail to info@somo.nl or view the guides online: www.somo.nl

Contents

6	Acknowledgements
7	Acronyms
8	Glossary
10	Introduction and explanation of this guide
10	Introduction
10	'Protect, Respect and Remedy' framework and the Guiding Principles
11	Strengths
12	Weaknesses
13	Objective of this guide
14	Development of this guide
15	How to use this guide
16	Methodological recommendations
18	Part I: General human rights check
18	Step 1: Check human rights policy
21	Step 2: Check human rights due diligence
29	Step 3: Check process to enable remediation
32	Step 4: Check compliance with laws and standards
36	Part II: Addressing adverse human rights impacts
38	Attribution of responsibility based on involvement with adverse impacts
39	Overlaps between the scenarios
42	Step 1: Identify responsibility scenario
47	Step 2: Assessing the company's response to the adverse human rights impact
56	Follow-up strategies
56	Engagement with the company
57	Courts
58	National governments
58	OECD National Contact Points
59	National human rights institutions/ombudsperson
60	UN: The working group on business and human rights and other mechanisms
61	Regional human rights protection systems
61	Public awareness raising
62	Financial institutions and shareholders
62	Other business relationships
63	UN Global Compact
64	Other international and intergovernmental grievance mechanisms
66	In conclusion
68	Further resources
69	Notes
70	Annotations

Acknowledgements

The authors wish to express their gratitude to all the practitioners and experts who were willing to review a draft version of this guide: Peter Bakker (World Business Council for Sustainable Development), Aukje Berden (Nidera), Claire Methven O'Brien (Danish Institute for Business and Human Rights), Robert Finch (Cambodian Center for Human Rights), Audry Gaughran (Amnesty International), Michiel van Gelderen (UN Office of the High Commissioner for Human Rights), Filip Gregor (Environmental Law Service), Carlos Lopez (International Commission of Jurists), Amol Mehra (International Corporate Accountability Roundtable), Dominique Muller (Clean Clothes Campaign), Pia Navazzo (FIDH), Gabriela Quijano (Amnesty International), Caroline Rees (Shift), Jan-Willem Scheijgrond (Royal Philips Electronics), Julieta Sullivan (Nidera), and Lene Wendland (UN Office of the High Commissioner for Human Rights). Their comments and suggestions proved invaluable to the development of the present structure and content of the guide, and have improved both of the aspects of the guide immensely in the authors' views. Nevertheless, the content of the guide can in no means be interpreted to reflect each of these reviewers' opinions nor should their inputs to the process be taken as an endorsement of the final product.

As well as the external reviewers, each of the authors would like to thank numerous colleagues who have helped to produce the guide:

Victor Ricco (CEDHA) would like to acknowledge the contribution made by several interns who have helped to make this publication possible, namely Sol Delamer, Anna Naimark, Willow Batista, Emily Cohen and Sol Herrera Prieto. A special thanks goes to Caspar Plomp for the work and assistance he provided in the development of this guide;

Mariëtte van Huijstee (SOMO) would like to thank Joris Oldenziel, Tim Steinweg and Marije Brouwer for their insightful remarks and constructive feedback;

and **Laura Ceresna-Chaturvedi (Cividep-India)** would like to thank Gopinath K. Parakuni and Suhasini Singh for their assistance during the project.

Acronyms

CEDHA	The Center for Human Rights and Environment
Cividep	Civil Initiatives for Development and Peace India
COP	Communication on Progress
CSO	Civil society organisation
CSR	Corporate social responsibility
FIDH	International Federation for Human Rights
ILO	International Labour Organization
NCP	National Contact Point
NGO	Non-governmental organisation
NHRI	National Human Rights Institution
MSI	Multi-stakeholder initiative
OECD	Organisation for Economic Co-operation and Development
SOMO	Centre for Research on Multinational Corporations
UN	United Nations
UNDRIP	UN Declaration on the Rights of Indigenous Peoples

Glossary¹

Due diligence: due diligence is understood as a business process through which enterprises actively identify, prevent, *mitigate* and account for how they address and manage their potential and actual adverse human rights impacts. The process should include assessing actual and potential impacts throughout their business operations, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Due diligence implies more than just an assessment of risks for the company; the purpose is to understand and address risks and abuses that the company's activities pose to rights holders, including in its supply chain and through its other business relationships.

Grievance mechanism: a grievance mechanism is a non-judicial procedure that offers a formalised means through which individuals or groups can raise concerns about the impact an enterprise has on them – including, but not exclusively, on their human rights – and can seek remedy. These mechanisms may use adjudicative, dialogue-based or other processes that are culturally appropriate and rights-compatible. According to the United Nations, for a grievance mechanism to be effective, it should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning.

Leverage: leverage is an advantage that gives power to influence others and it means the ability to change wrongful practices of the business partner that is causing or contributing to the impact.

Meaningful stakeholder engagement:² an activity undertaken to create opportunities for dialogue between an organisation and one or more of its stakeholders, with the aim of providing an informed basis for the organisation's decisions.

Mitigation: to mitigate in this context means to do everything within one's capabilities to prevent or cease the wrongful practices of a party causing or contributing to a negative human rights risk or impact. There is a difference between mitigation of human rights risks and mitigation of human rights impacts: the mitigation of human rights risks refers to actions taken to reduce the likelihood of a certain adverse impact to

occur. Mitigation of adverse human rights impacts refers to actions taken to reduce the extent of an impact by a third party, with any residual impact then requiring remediation. This should not be interpreted as meaning that it is appropriate for a company to reduce a human rights abuse by a third party to some extent and that a little bit of remaining abuse is acceptable. All the company's efforts should be focused on ceasing the human rights impact by the third party that is causing the harm, but since the company does not have full control over the third party, a full stop cannot be guaranteed by this company.

Multi-stakeholder initiative: multi-stakeholder initiatives refer to interactive processes in which business, CSOs and possibly other stakeholder groups interact to make business processes more socially and/or environmentally sustainable.

Remediation: remediation refers to the act or processes of providing remedy to the victim(s) of an adverse human rights impact. Remedies may take a range of forms. They may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. It is important to highlight that companies are not the only actors with a responsibility for remediation, as states also have a clear role to play in remediation. It is the duty of the state to safeguard the human right to remedy. Companies should thus refrain from hampering legitimate remediation processes offered by the state, while states should actively monitor the remediation efforts by companies.

Rights holder: every human being is a rights holder and every human right has a corresponding 'duty bearer'. A rights holder is:

- entitled to rights;
- is entitled to claim rights;
- is entitled to hold the duty bearer accountable;
- has a responsibility to respect the rights of others.

Those who have the obligation to respect, protect and fulfil the rights of the rights holder are duty bearers (e.g. companies or States).³

Introduction and explanation of this guide

Introduction

This guide aims to provide concrete support, guidance and a uniform reference framework for civil society organisations (CSOs) to use the United Nations Guiding Principles to address the responsibility of business to respect human rights and thereby support local communities, workers and other rights holders to ensure fulfilment of their human rights. The guide provides a method for CSOs to use the UN Guiding Principles on Business and Human Rights in company research and advocacy, and helps them to hold companies accountable for their corporate responsibility to respect internationally recognised human rights.

The worldwide expansion of the private sector during the last three decades has been accompanied by a dramatic increase in the societal impacts of this sector, both in positive and negative terms. Multinational enterprises may contribute to economic welfare and employment and thereby contribute to the enjoyment of human rights. At the same time, enterprises can also have a negative impact on human rights worldwide, for instance when they displace indigenous peoples from their lands, when they pollute the environment on which communities are dependent, when they breach labour rights, or when they are closely tied to a regime that violates the rights of its citizens. Such adverse human rights impacts are abundant in the present globalised economy, as profound power imbalances often allow the rights of the most weak and vulnerable to be sacrificed for the interests of powerful enterprises and their shareholders.

'Protect, Respect and Remedy' framework and the Guiding Principles

The United Nations (UN) has acknowledged that the activities of business enterprises may have a negative impact on human rights. A mandate on business and human rights was created in 2005 on the issue of human rights and transnational corporations and other business enterprises. A Special Representative for Business and Human Rights,

Professor John Ruggie, was appointed by the UN Secretary General. This has resulted in the development of the 'Protect, Respect and Remedy' framework in 2008 that outlines the duties and responsibilities for states and businesses to address business-related human rights abuses, followed by the Guiding Principles adopted in 2011 that outline how States and businesses should implement the UN framework.

The 'Protect, Respect and Remedy' framework rests on three pillars. The first is the State's duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation and adjudication. The second is the corporate responsibility to respect human rights, which means that business enterprises should act with *due diligence*⁴ to avoid infringing on the rights of others and to address adverse impacts with which they are involved. The third is the need for greater access by victims to effective remedy, both judicial and non-judicial. This guide focuses on the Guiding Principles within the second pillar: the corporate responsibility to respect human rights. The Guiding Principles within this framework provide a useful frame of reference for CSOs to address the responsibilities of business and justify demands for more responsible business conduct.

Strengths

The UN framework and the Guiding Principles have strengths and weaknesses. One major strength is that it is the most authoritative and internationally recognised framework for business and human rights, as it is backed by UN member state governments and was based on extensive consultations with many stakeholders over a period of six years. The Guiding Principles explain the standard corporate conduct that is expected from companies by UN member states, and have been supported by many business and industry associations.

Furthermore, the corporate responsibility to respect, as outlined by the Guiding Principles, has advanced the debate with regard to the responsibility of companies to respect human rights considerably: with the Guiding Principles in place, many arguments used by business to deny their responsibility to avoid and address adverse human rights impacts have become invalid, for instance when they deny supply chain responsibility. The Guiding Principles have effectively clarified that businesses have the responsibility to address the impacts on human rights that occur through their own activities or as a result of their business relationships with other parties, including in their supply chains.

Weaknesses

The framework and the Guiding Principles also have a major weakness that is widely recognised amongst CSOs: they do not create new international legal obligations for companies that can be enforced, and are not accompanied by a grievance or complaints mechanism that victims of business-related human rights abuses can access for remedy.

Furthermore, the Guiding Principles are weak with regards to developing duties for individual states to regulate the human rights impacts of business enterprises beyond national borders (i.e. extra-territorial obligations), even though this principle is internationally recognised in other areas (such as sex tourism) and is much stronger in several national legal systems (such as the Alien Tort Statutes in the United States).

A third weakness is that the Guiding Principles do not incorporate explicit reference to the full body of human rights laws and standards that is relevant for the assessment of the corporate responsibility to respect human rights. In other words: implementation of the Guiding Principles by a company does not automatically equal respect for all internationally recognised human rights.

In the Guiding Principles “internationally recognised human rights – [are] understood, at the minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work”. While the Guiding Principles do state that business can impact on virtually all human rights, and business may need to consider additional rights depending on the circumstances, these are not explicitly referenced. There are more internationally recognised human rights laws and standards out there that are very relevant for assessing the corporate responsibility to respect, such as the UN Declaration on the Rights of Indigenous Peoples (see Box 1 for other relevant international human rights laws and standards).

Some essential human rights treaties and declarations are thus not explicitly referenced in the Guiding Principles, and therefore the Guiding Principles provide loopholes for companies to escape the responsibilities laid down in these documents. Nevertheless, the commentary of Principle 12 states clearly that: “Depending on circumstances, business enterprises may need to consider additional standards [emphasis added]. For instance, enterprises should respect

the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law.”

In cases where CSOs are able to demonstrate that the circumstances make additional international human rights laws and standards relevant, the commentary to Guiding Principle 12 provides an opening for CSOs to hold companies to account for respecting these additional international human rights law and standards. CSOs using this guide are thus well advised to consider whether additional international human rights laws and standards to the International Bill of Human Rights and the International Labour Organization (ILO) core conventions are relevant to their company and/or case in question and include these in the assessment.

Box 1:

Additional relevant international human rights laws and standards

Other relevant human rights laws and standards include, but are not limited to, the core UN Human Rights Conventions (as defined by the UN Office of the High Commissioner for Human Rights⁹) and UN Declarations such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). CSOs are advised to read these instruments in conjunction with the work of UN expert bodies such as Treaty Bodies and Special Procedures, since these provide useful interpretation and guidance on how to respect and implement such standards.

Objective of this guide

The objective of this guide is to help CSOs use the Guiding Principles in their research, campaigns, engagement and advocacy towards companies and governments. By using the Guiding Principles in corporate research, campaigning, engagement and advocacy, CSOs can play an indispensable role as a countervailing power in confronting

companies with their responsibility to respect internationally recognised human rights and ensuring they are held to account to meet their responsibility and improve their behaviour. Thereby, CSOs can contribute to making the Guiding Principles of real value for *rights holders* likely to be negatively affected by corporate activities. Furthermore, by using the Guiding Principles in their research and advocacy and building up expertise, CSOs will be able to provide national and international authorities with useful insights in the strengths and weaknesses of the Guiding Principles, helping to improve the international business and human rights framework in due course.

Development of this guide

This guide has been developed in several stages and through a collaborative and participative process. In the first half of 2012, SOMO, CEDHA and Cividep developed a draft version of this guide. During the 2012 United Nations Summit on Sustainable Development (Rio+20), the partners organised a participatory workshop as an independent side event for CSOs, focused on outreach and disseminating of the Guiding Principles, building capacity on using them and testing and improving the draft guide. After making some improvements based on the workshop, experts and practitioners from different stakeholder groups and with varying perspectives on the Guiding Principles were invited to review the guide. At the same time, the guide was piloted on two company cases, one from India and one from Argentina. Based on feedback from the review and the pilots, the guide was finalised in the second part of 2012.

Both the review and the pilots delivered many valuable insights that have improved the guide considerably in the view of the authors and have made it more relevant and applicable for the target group: namely, CSOs wanting to address the responsibility of business to respect human rights and thereby support local communities, workers and other rights holders to ensure vindication of their rights. Having said that, the guide can be further improved once CSOs build up experiences in using the Guiding Principles and discover promising avenues to follow in their company research and advocacy and hold companies to account for their corporate responsibility to respect human rights. The authors therefore invite users of this guide to share their experiences and feedback using the contact information provided in the colophon.

How to use this guide

This guide offers a methodology to check performance of multinational corporations⁶ in relation to the Guiding Principles by means of performance indicators and assessment questions. Some users may prefer to use either indicators or questions. Others may prefer to use both.

The guide is divided into two parts, according to the needs of the user:

- 1 Part I offers a general check on whether the company's human rights policies, procedures and performance are effectively addressing risks to human rights and are preventing adverse human rights impacts in accordance with the Guiding Principles. A CSO is advised to use this part of the guide when it does not have any knowledge of human rights abuses by the company so far, and does not necessarily have pre-established contact with rights holders. Furthermore, CSOs that have identified a human rights abuse are advised to use this part of the guide to assess whether the company has done everything it could to prevent the human rights impact to occur.
- 2 Part II offers a concrete tool in cases where actual adverse human rights impacts have been identified. It is meant to assess whether the company addresses the impacts adequately according to the Guiding Principles, and the assessment will involve a close connection between the CSO making the assessment and rights holders. The methodology offered in Part I might lead to the identification of a company related adverse human rights impact, after which the user may continue to investigate this specific case using Part II of the guide.

The remainder of this chapter includes some general methodological recommendations for CSOs conducting an assessment of a company's human rights performance. Then Parts I and II follow. These are followed by a chapter comprising an overview of the possible strategies that CSOs can use to address their assessment findings. This chapter includes many of the reasons why CSOs would want to assess a company's human rights performance. The guide closes with a conclusion and a section on documents, instruments and tools for further guidance.

Methodological recommendations

The assessment method presented in this guide will often involve research and collection of data that is not publicly available. Such research will require a sound methodological approach and proper research techniques and skills. For further guidance regarding research methods and techniques, CSOs may refer to academic literature on this subject. This section will provide a number of recommendations for data collection that are specifically relevant in the context of this guide.

Company information that is publicly available will likely portray a rosier picture of the company's human rights performance than would (potentially) affected rights holders (e.g. workers, indigenous communities living around operational facilities etc.). As these rights holders are the intended beneficiaries of the corporate responsibility to respect human rights, an assessment of a company's performance in this regard can only be made if their perspectives and experiences are included. As a general rule CSOs should always attempt to provide more than one source of information for insights into company human rights performance, to generate insight from as many angles as possible and to avoid single views.

Some suggestions on how to get reliable information:

- Create an overview of the countries and sectors the company operates in, to be able to comprehensively evaluate the company's risks to human rights and its responses to these adverse human rights risks and impacts.
- Cooperate or consult with (potentially) affected rights holders and other stakeholders.
- Check the company website frequently.
- Identify functions and positions within the company to select the appropriate person to seek information from. Note that relevant information and persons may be scattered among company departments (eg. the compliance, audit, procurement or corporate social responsibility (CSR) department) and that companies may not be responsive to these requests.
- Request information from the company on its human rights impacts and its responses to these impacts through email, phone calls, requests for interviews, etc. The assessment questions featured in

this guide can be easily used for drafting a company survey and/or interview.

- To obtain the data that is needed for the present assessment, it is essential that the company is willing to communicate about the way it seeks to prevent and address adverse human rights impacts. Guiding Principle 21 requires all companies to be responsive to legitimate requests by external parties on how they address alleged human rights impacts. This is expected in particular if the parties challenging the company are themselves directly affected or are the legitimate representatives of such individuals or groups. CSOs conducting the current assessment can thus make a strong request for information with a company if the CSO can make the case that it represents affected rights holders.
- Request information from official entities – trade unions, (local) journalists, national human rights institution (NHRIs) or ombudsperson(s) – and other relevant intermediaries.
- Seek information through formal access to information requests with authorities, such as the Environmental Ministry, the Economy and/or Industry Ministry, the NHRI or Ombudsperson, and industry oversight bodies. For example, you may request the social and environmental impact assessment the company should have carried out in many cases before starting business operations, and the formal authorisation of its activities. Request also the on-going or periodic review of such impact assessment.
- Collaborate with parliament to seek information through formal information requests posed by parliament to the government.

Part I: General human rights check

Part I of this guide is designed to assess whether the policies, procedures and performance of a company are in line with the Guiding Principles and whether they are adequate to prevent risks to human rights and address human rights impacts when they occur. It provides a general business and human rights check of a company to assess its human rights performance. While conducting these checks, it is possible that an actual abuse that has not yet surfaced might be revealed, making Part 2 of this guide relevant. If a CSO deals with a company that has or has had negative impacts on human rights, it is advised to also use the second part of this guide, which provides indicators to assess whether the company addresses actual impacts adequately according to the Guiding Principles.

There are multiple situations in which a CSO would like to assess the risks to human rights associated with a specific company. For example:

- a** Before a company starts operations in the country and there is no – or insufficient – information about the impact of its activities;
- b** When benchmarking companies against each other;
- c** When considering whether to collaborate with a company or not;
- d** When mapping the types of companies investing in the country;
- e** When developing a company profile or research report.

Step 1: Check human rights policy

The most basic requirement that business enterprises have to fulfil in order to meet their responsibility to respect human rights is to commit to this responsibility in a human rights policy statement that they make available to the public.

Box 2:

Guiding principle 16

Guiding principle 16 states that a human rights statement of policy should be:

- a** Approved at the most senior level of the business enterprise;
- b** Informed by relevant internal and/or external expertise;
- c** Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;
- d** Publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
- e** Reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

To assess the company's implementation of this principle:

- Check whether the company's human rights policy can be retrieved from its public communications (eg. website, external reports) and whether it is easy to find.
- Assess whether the human rights policy states which person or department in the company has approved it and who is responsible for its implementation. If this is not stated in the policy itself, it is advisable to contact the company and request information referring to the Guiding Principles.
- By contacting several company departments, its business partners and potentially affected rights holders and other stakeholders, it can be cross-checked whether the relevant parties are aware of the policy.
- It can be helpful to check other company documents – for example, annual reports or CSR reports – to find out whether the Human Rights Policy is reflected in them as well.

Performance indicators

- The company has a public statement/policy that at the minimum endorses the International Bill of Human Rights as well as the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work (GP12).
- The company has endorsed other internationally recognised human rights standards in its human rights policy that are relevant for the particular circumstances in which it operates. These might apply to a specific region or sector, or to specific groups (such as indigenous peoples) that the company may have potential adverse impacts on (GP12 Commentary). The human rights statement/policy is approved by the company's CEO or Board of Directors (GP16).
- The human rights policy is communicated to all personnel, suppliers, business relations and other parties directly linked to its operations, products or services, and stipulates expectations of these parties (GP16).

Guiding questions for check

- Is the human rights policy available, eg. on the company's website or upon request?
- Which international human rights standards does it refer to? Does it meet the minimum criteria stated above? Does it adequately cover all relevant standards given the sector and region in which the company operates?
- Does the human rights policy stipulate the company's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services?
- Has it been approved by the most senior level of the company (eg. CEO/Director/ Company Board)?
- Is it communicated to all personnel, business partners, other relevant parties (eg. state security forces; investors; potentially affected stakeholders)?
- Are other policies and business processes coherent with the human right statement, eg. does the company ensure its taxation, legal and procurement policies do not undermine respect for human rights?
- Does the company have a human rights clause in contracts with business partners?

Step 2: Check human rights due diligence

Apart from a human rights commitment, companies should adopt a business process known as human rights *due diligence*. Human rights due diligence is understood as a business process through which enterprises actively identify, prevent, *mitigate* and account for how they address and manage their potential and actual adverse human rights impacts. Companies should thus have on-going processes in place that will help them to identify potential human rights abuses and enable them to take timely measures to prevent them. These same processes may bring human rights abuses associated with its business operations to light. The company should have processes in place to address these abuses.

Besides making sure that companies do not act in conflict with human rights, enterprises should actively take preventative measures to avoid potential future negative human rights impacts. The human rights due diligence requirement applies not only to the company's own operations, but includes any impact it causes, contributes or is directly linked to in its supply chain and business relationships such as subcontractors, customers, governments and joint venture partners. Please refer to page 26 and 27 of this guide for examples of businesses causing, contributing towards and being linked to human rights abuses.

Human rights due diligence firstly needs to be carried out throughout the company's own activities as well as those of its business partners, customers, clients and relations with the other stakeholders including the government. Secondly, human rights due diligence applies to all business functions, including operations, recruitment, training and appraisals, and needs to be sensitive to different operational contexts.

It is essential for a company to follow a human rights due diligence process for it to prevent negative human rights impacts from occurring. Human rights due diligence demands the company to do the utmost to prevent impacts, and to know and show that it did so. As the commentary to Guiding Principle 21 states: "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".

Box 3:**Guiding Principle 17**

Guiding Principle 17 states that:

In order to identify, prevent, mitigate and account for how they address human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.

Human rights due diligence:

- a Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- b Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- c Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

Assessing risks to human rights

In order to follow a due diligence process, companies need to assess their risks to human rights, including those that are occurring or have occurred (this scenario will be dealt with in more detail in part two of this guide) or that might occur in future. This assessment will help companies to stop negative impacts at present and helps them prevent potential negative impacts in the future and to remediate any harm caused.

Assessing whether a company's due diligence processes are truly effective in addressing potential and actual human rights impacts **requires a CSO to map the company's structure**, value chain and business relationships and the risks to human rights that may occur within this realm. This is an extremely complex and time-consuming exercise, especially in the case of transnational corporations with multiple subsidiaries and operations all over the globe. While this can also be a complex exercise for companies themselves, it is expected

Box 4:**Guiding Principle 18**

Guiding Principle 18 states that this assessment should:

- a Draw on internal and/or independent external human rights expertise;
- b Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

of them in light of the Human Rights Council's endorsement of the Guiding Principles.

It is important to **examine the human rights context that a company has entered into**. A company consulting and carrying out a human rights impact assessment is not taking its responsibility to respect human rights seriously if it knows communities have not been consulted about the development of a given project in the first place. In the extractive sector, for example, once the company sets foot in an area, there will often be land acquisitions to make space for the company's operations that might lead to loss of livelihood options for the original land owners. All these issues have to be addressed in a prior human rights impact assessment.

Starting the assessment of a company's actions with regard to human rights due diligence, CSOs can **use their (local) knowledge and expertise about risks to human rights in specific countries, contexts and sectors** that the company operates in, and check whether the company has identified and addressed these risks. To do this, one can search for due diligence documents on the company's website and/or examine company reports. Furthermore, it is helpful to contact the company and inquire who in the company is responsible for implementing human rights due diligence and to contact the respective person or department directly to inquire about the company's approach to human rights due diligence.

Sometimes companies are legally obliged to conduct an environmental and social impact assessment before they are granted permission for their operations by the relevant government. However, according to the Guiding Principles, companies have to assess their human rights

impacts not just before the start of operations but also on an on-going basis. If the impact assessments are publicly available, it is recommended to **crosscheck what kind of impact assessment was done (Environmental, Environmental and Social or Human Rights Impact Assessment) and whether the concerns of potentially impacted right holders are included and addressed**. If there are any mitigating or preventive actions planned, it is important to verify (both with the company and the affected rights holders and other stakeholders) whether these actions have indeed been taken and what the results are.

If there is no impact assessment document publicly available, it is advisable to **request directly from the company non-public documents containing information that is key for the effective protection of human rights** (such as the rights to water, health or a healthy environment). Another option is to check whether the company was asked to submit an impact assessment by the State and contact the relevant regulatory agencies or inspectorates (eg. Ministry of the Environment and other environmental agencies, labour inspectorates, pollution control).

To verify whether the company has met the requirement to involve potentially affected stakeholders in its risk assessments, **company information must be checked with the views of rights holders (e.g. communities, workers and other individuals)**. In addition, the rights holders can be consulted on whether and what (potential) human rights risks they see associated with the company's operations, and whether they feel these are adequately addressed. If not, the Guiding Principles provide an authoritative backing for the CSO to request that the company should start a dialogue with these groups.

Box 5:

Meaningful stakeholder engagement⁷

Stakeholder engagement efforts often fall short because of a failure to understand local community dynamics, or a failure to fully engage all local stakeholders that are affected. Meaningful stakeholder engagement should take into account the interests of stakeholders in decision making and ensure that affected stakeholders' rights are respected. This includes:

- 1 Preparing communities before engaging by providing them with adequate access to information and independent legal and technical advisors.
- 2 Determine what level of engagement information, consultation or negotiation is needed. Only informing stakeholders without engaging in dialogue is inappropriate. Therefore, in most cases meaningful stakeholder engagement will include consulting the community and giving them the opportunity to share their views before decisions are made. In some cases the company will have to negotiate with the community to reach an agreement on a specific issue.
- 3 Gain free, prior and informed consent from indigenous people living on the land of the proposed project area, i.e. consent must be free of coercion, obtained prior to the commencement of project activities, and informed through access to all the information necessary to make the decision, including knowledge of legal rights and the implications of the project.
- 4 Integrate community engagement in each phase of the project cycle, which ensures that stakeholder engagement does not only take part at the beginning of a project but is an ongoing process as risks to human rights change over time.
- 5 Include traditionally excluded stakeholders such as youth, women and minorities who may require the company to hold separate meetings with different stakeholders to enable marginalised people to speak out. However, this provides a company with a more complete picture of potential risks and impacts. All meetings have to be conducted in the local language and in a culturally appropriate manner.

- 6 Resolve community grievances through dialogue. Companies need a mechanism to address grievances that come up during their operations, as they might not be able to anticipate all problems at the initial planning phase. They need to determine the scope of the grievance mechanism and what remedies it can provide; ensure that communities participate in its design and periodically review the mechanism; identify the relevant decision-maker with authority to resolve grievances and which employee will liaise with claimants throughout the process. Companies need to establish a procedure for resolving grievances with a procedure for investigating claims and resolving complaints within a reasonable timetable and need to make the grievance mechanism accessible (free of cost, transparent and locally based liaisons). Furthermore, the relationship between company-level and other (state or non-state) grievance mechanisms needs to be defined in case grievances cannot be resolved and need to be referred to an external, independent body, such as a mediator, arbitrator, ombudsman or court.
- 7 Promote participatory monitoring by local communities. Involving communities in the monitoring of a project may be an effective way of satisfying their concerns and promoting transparency. Companies can support participatory monitoring through funding such methods and training of community members.

Performance indicators

- The company has human rights due diligence policies and procedures in place (GP 15/GP17).
- The company identifies the risks and impacts it may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships (GP 15/GP17).
- The company conducts regular assessments to assess its potential impacts (GP18).
- The company draws on internal and/or independent external human rights expertise to assess its impacts (GP18).
- The company consults with all potentially affected groups of rights holders before it starts operations to identify and prevent negative impacts (GP18).
- The company holds regular consultations with those potentially affected as human rights risks might change over time and operations of the company (GP17/GP18).
- Rights holders confirm that they were involved in the human rights due diligence process, that information was provided to them in their own language and with adequate time to make an informed decision, and that they were able to participate in all meetings and hearings (GP18).
- The company communicates how it addresses human rights risks and what strategies it has adopted to prevent them (GP 21).
- Where severe human rights risks exists, the company formally reports on how it addresses human rights risks and what strategies it has adopted to prevent them (GP 21).
- The company has integrated and acted upon human rights due diligence findings, for example, by altering operations (by changing terms of contracts, increasing monitoring in their supply chain, implementing Voluntary Principles on Security and Human Rights) and in some cases ceasing operations (GP 17).
- Rights holders recognise that potential adverse impacts were avoided and actual adverse impacts have ceased and have been effectively remediated (GP 17).

Guiding questions for check

- What potential human rights impacts do you foresee as a CSO with your expertise and knowledge? Does the company acknowledge these risks?
- Which departments in the company are responsible for human rights due diligence?
- Has the company developed processes for assessing its human rights impacts?
- If yes, how does the company respond to requests regarding its potential human rights impacts and strategies to prevent them? Is the company willing to communicate about its potential risks to human rights?
- Does the assessment identify rights holders and other stakeholders that are/ may be impacted by the company's operations? Are none of the stakeholders left out?
- Has the company consulted with those potentially affected in the course of its impact assessment and informed them about potential impacts?
- Does the company consult with them on an on-going basis?
- What has the company communicated to them about how it will prevent any negative impact on them?
- Were potentially affected rights holders and other stakeholders involved in the design of the impact assessment and preventive/mitigating measures?
- How has the company integrated and acted upon findings from the human rights impact assessment?
- Do potentially affected rights holders and other stakeholders indicate that the due diligence procedures adequately take their concerns into account?

Step 3: Check process to enable remediation

Even with the best policies and practices in place, and despite a human rights due diligence process, a company may cause or contribute to adverse human rights impacts that it has not been able to prevent. If a company identifies such a situation, its responsibility to respect human rights requires active engagement in enabling remedy. It should provide for remediation by itself or in cooperation with others such as state authorities, labour inspectors or other state-based remedial mechanisms. In a context where the human rights abuse of the company constitutes a crime under national law the company will have to comply with legal enforcement processes.

In principle, it is the state's duty to provide access to remedy to victims of (corporate-related) human rights abuses. However, a company has the responsibility first and foremost of preventing such abuses and, in case an abuse occurs, it needs to have processes in place that enable its remediation.

Box 6:

Guiding Principle 15

Guiding Principle 15 states that:

In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

...

- Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

According to the Guiding Principles one way (but not the only way) companies should provide for remediation is through operational-level *grievance mechanisms*. These mechanisms do not just help companies to address grievances effectively, provided they meet certain criteria (see Box 7). They can also serve as an early warning system and address issues before they escalate and amount to a human rights abuse. Grievance mechanisms are an important part of human rights due diligence to identify adverse human rights impacts at an early stage and track the effectiveness of responses.

Box 7:**Operational-level grievance mechanisms**

Guiding Principle 29 states: To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

Effectiveness criteria for non-judicial grievance mechanisms

Guiding Principle 31 states: In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- a** Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- b** Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- c** Predictable: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- d** Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- e** Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- d** Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
- g** A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

Operational-level mechanisms should also be:

- h** Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

Even before an adverse human rights impact occurs, it is important to **check whether the company in question has a proper process in place that will allow it to address grievances and to enable access to remedy** effectively and in a timely manner for affected rights holders.

Performance indicators

- The company has clear processes and structures in place to respond to an adverse human rights impact and enable remediation (GP 15).
- The company has designated staff who are in charge of enabling remedy in case of an adverse human rights impact (GP 15).
- The company engages with potentially affected rights holders and other stakeholders to develop an appropriate response process to human rights impacts and reviews it frequently (GP 31).
- The company has established or participates in operational-level grievance mechanisms for individuals and communities that may be adversely impacted, in accordance with the effectiveness criteria in GP 31 (see Box 7).
- In case a company is part of a *multi-stakeholder initiative*, the MSI provides for effective grievance mechanisms (GP 30).
- The grievance mechanisms are accessible for those whose use they are intended and recognised as legitimate and effective by the users (GP31).
- The company has successfully collaborated with law enforcement agencies or other state-based remedial mechanisms to enable remedy in the past (GP22).

Guiding questions for check

- Does the company have operational-level grievance mechanisms in place?
- How do rights holders evaluate the grievance mechanisms? Do they use and trust them? Why (not)?
- Who in the company handles grievances?
- Are potentially affected rights holders aware of the company's operational-level grievance mechanisms? Were they involved in developing/ reviewing it?
- Is the operational-level grievance mechanism designed in a way to provide fair, independent and impartial processes and outcomes?

- Does the company have processes in place to enable remediation if human rights concerns are raised through other legitimate grievance mechanisms?
- Who in the company is responsible for enabling remediation if a human rights impact occurs?
- If the company has been involved in adverse human rights impacts in the past, to what extent has the company delivered meaningful action to stop and address adverse impacts?
- Has the company ever obstructed the access to remedy (e.g. gaining reparations or compensation) in the past?
- Does the company engage in a multi-stakeholder initiative? What is its role in the initiative? Does the multi-stakeholder initiative ensure that there are effective grievance mechanisms available?

Step 4: Check compliance with laws and standards

Companies need to comply with national laws, as well as international human rights standards.

Box 8:

Guiding Principle 23

Guiding Principle 23 states that in all contexts, business enterprises should:

- a** Comply with all applicable laws and respect internationally recognized human rights wherever they operate;
- b** Seek ways to honor the principles of internationally recognized human rights when faced with conflicting requirements;
- c** Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

Companies have to comply with national laws, even when they operate in countries where the implementation of laws is weak. If national laws do not meet the requirements of international human rights standards, companies are advised to comply with international standards. Even if national law does not explicitly request them to do so, it does not prevent them from doing so either.

There are some operating environments where national laws conflict with internationally recognised human rights. Conflicting requirements arise where laws oppose international human rights standards, such as the freedom of association. In this case, companies are advised to comply with national laws while respecting the spirit of international human rights standards and seeking ways to fulfill human rights standards to the greatest extent possible. When a CSO identifies that the company operates in environments with conflicting requirements, it may inquire with the company about their efforts to honour internationally recognised human rights in these contexts.

In order to determine whether the company is compliant with national laws and internationally recognised human rights standards, a first step is to **assess applicable national laws**, which will differ from sector to sector. The **international standards** for an industry should also be consulted. Furthermore, **evidence such as possible court cases, administrative warnings/processes, inspection protocols, prosecutions and media reports** should be retrieved. It is also vital to check with potentially affected rights holders (e.g. workers or communities) for any abuses they observed.

When operating in weak governance zones, such as conflict areas, according to the Guiding Principles companies should consult with credible independent experts such as governments, civil society, national human rights institutions and multi-stakeholder initiatives, on ways to prevent complicity in gross human rights abuses in these areas. It is worthwhile **checking whether the company has consulted such experts**.

Performance indicators

- No legal, regulatory or administrative body has found the company to be in breach of national laws and regulations (GP23).
- In case of conflicting requirements, the company honours internationally recognised human rights standards to the greatest extent (GP23).
- In case the company operates in conflict areas, the company reports on measures taken to prevent complicity in gross human rights abuses in these areas (GP23).
- In case the company operates in conflict areas, the company consults with credible independent experts such as governments, civil society, national human rights institutions and multi-stakeholder initiatives, on ways to prevent complicity in gross human rights abuses in these areas (GP23).

Guiding questions for check

- Has any legal, regulatory or administrative body found that the company has violated any national laws and regulations (including human rights, labour, environmental and investment laws) of the country it operates in?
- Have rights holders reported or observed any violation of law or international standards by the company?
- Does the company comply with internationally recognised human rights standards, even when they are higher than the requirements of national laws?
- If the company operates in areas where conflicting requirements are known to exist, how does the company honour internationally recognised human rights standards?
- Does the company operate in conflict areas? If yes, how is it managing the risk of becoming implicated with gross human rights abuses? Has it involved independent experts in this?

Part II: Addressing adverse human rights impacts

This part of the guide is designed for situations when a CSO has identified an actual business-related adverse human right impact. Even though the primary purpose for companies implementing the Guiding Principles is to prevent adverse human rights impacts from occurring in the first place, in this case, the adverse human right impact has evidently not been prevented. CSOs can use this part of the guide to support affected rights holders in collecting proof and arguments to demonstrate that the company does not meet its corporate responsibility to respect human rights. The results of the assessment can then be used in several follow up strategies, which are further examined in the next chapter.

Where Part I of this guide is focused on the assessment of how companies manage their **risks** to human rights by means of human rights due diligence, this part of the guide offers a methodology to assess how companies address their actual adverse human rights **impacts**.

Box 9:

Guiding Principle 11

Guiding Principle 11 states that: Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

The responsibility to respect human rights as stated in the Guiding Principles is a global standard of expected conduct for all business enterprises, wherever they operate. This means that corporations always have to respect internationally recognised human rights and should do the utmost to prevent abuses from occurring (see Part I, step 2). If a corporation is nevertheless associated with a human rights abuse by **causing** it, **contributing** to it, or because the abuse is **directly linked** to its operations, products or services by a business relationship, the company should take action to address the negative human rights impact. The type of action that is considered appropriate according to the Guiding Principles will vary according to the type of involvement by the company in the adverse human rights impact (see Guiding Principle 13 and 19b).

The Guiding Principles describe three ways in which a company can be associated with a negative human rights impact: by causing it, by contributing to it and by being directly linked to it. The most important differences between the three different scenarios are the following:

- In cases where a company causes a negative human rights impact; the corporate responsibility to respect requires them to cease the impact, and be actively engaged in *remediation* through legitimate processes, by itself or in cooperation with other actors.
- In cases where a company contributes to a negative human rights impact; the corporate responsibility to respect requires them to cease its own contribution to the impact. In addition, it has to mitigate the impact of the third party causing the impact, which means the company should use its abilities to cease the wrongful practices of the party causing the harm (see Glossary for further explanation). Furthermore, the company is expected to be actively engaged in *remediation* through legitimate processes, by itself or in cooperation with other actors.
- In cases where a company is directly linked to a negative human rights impact, the corporate responsibility to respect human right requires it to *mitigate* the impact of the third party causing it.

Box 10:**Guiding Principle 13 and 19b**

Guiding Principle 13 states:

The responsibility to respect human rights requires that business enterprises:

- a** Avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur;
- b** Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

Guiding principle 19b states:

- b** Appropriate action will vary according to:
 - (i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;
 - (ii) The extent of its leverage in addressing the adverse impact.

Attribution of responsibility based on involvement with adverse impacts

The distinction between causing, contributing and being directly linked to adverse impacts made in the Guiding Principles has clarified different situations in which companies may be involved in human rights abuses, and what this means in terms of their responsibility to take action to cease, mitigate and/or remediate/cooperate in the remediation of the impact. However, these distinctions are not always as clear in practice, and concrete situations may be interpreted differently by different stakeholders. In many cases, there may be a causal link between the abuse and the company's acts or omissions. However, the company may also be contributing to an adverse impact, through third parties or because other parties are contributing to the same abuses (see figure, page 41). In such situations, the question whether a company is causing or contributing to an abuse can be subject to debate. Similarly, the distinction between contributing to and being directly linked to an abuse can be interpreted differently, and

will need to be carefully assessed on a case-by-case basis, depending on the exact nature of the relationship and the acts or omissions of the company and its business relationships. Experts in the field of business and human rights make different assessments in different cases, which shows that it can be challenging to define the exact relationship between the company and the abuse and the responsibility deriving from that relationship. For CSOs dealing with a particular situation this may be even more difficult – for example, due to lack of information about the exact roles and relationships of the company and other parties involved in the abuse.

Step 1 in this part of the guide will provide some indicators to help define the relationship and the corresponding responsibility, while not providing a definite answer for each and every situation. It is expected that the distinctions between causing, contributing and being directly linked to human rights abuses will be further clarified over time on the basis of concrete examples and debate amongst experts. CSOs can play an important role in this debate by using a broad but well founded interpretation for assigning responsibility to companies for addressing human rights abuses that they are linked to through their supply chain and business relationships.

Overlaps between the scenarios

The way the company is involved in a negative human rights impact determines which actions are expected from the company in terms of addressing the adverse human rights impact under the Guiding Principles. Therefore, this guide speaks of different responsibility scenarios. However, there is considerable overlap between the different scenarios.

The 'contribute' scenario combines elements of both the 'cause' scenario and the 'directly linked to' scenario. In fact, it consists of two sub-scenarios: a company can contribute to an adverse human rights impact together with a third party or through a third party (see figure, page 41). An example of a company contributing to an adverse human rights impact together with a third party is that of an oil company polluting rivers and agricultural land, while other oil companies in the region are also contributing to the pollution. An example of a company contributing to an adverse human rights impact through a third party is that of a company sourcing products from a supplier. In order to process the number of orders and meet delivery deadlines, the supplier makes its workers undertake unpaid overtime.

The appropriate response that is expected from a company that contributes to an adverse human rights impact therefore includes elements of both the 'cause' and the 'directly linked to' scenario: where the company is directly carrying out the abuse together with the third party, it should stop doing so (as in the 'cause' scenario). Going back to the example, this means the oil company should stop polluting. In addition, it should use its leverage to attempt to stop the third party (as in the 'directly linked to' scenario), e.g. develop a joint action plan to cease the pollution together with all the oil companies in the region. It should also remediate any remaining impact (as in the 'cause' scenario).

Where the company is contributing through a third party, it should stop enabling, encouraging, exacerbating or facilitating the third party to cause the abuse (this is unique for the 'contribute' scenario). To go back to the example, the buyer should relax delivery deadlines and pay fair prices. Furthermore, it should use its leverage to attempt to stop the third party (as in the 'directly linked to' scenario), e.g. make contractual arrangements with the supplier to avoid unpaid overtime, and remediate any remaining impact (as in the cause scenario), e.g. make an arrangement with the supplier to compensate the workers for their unpaid overtime.

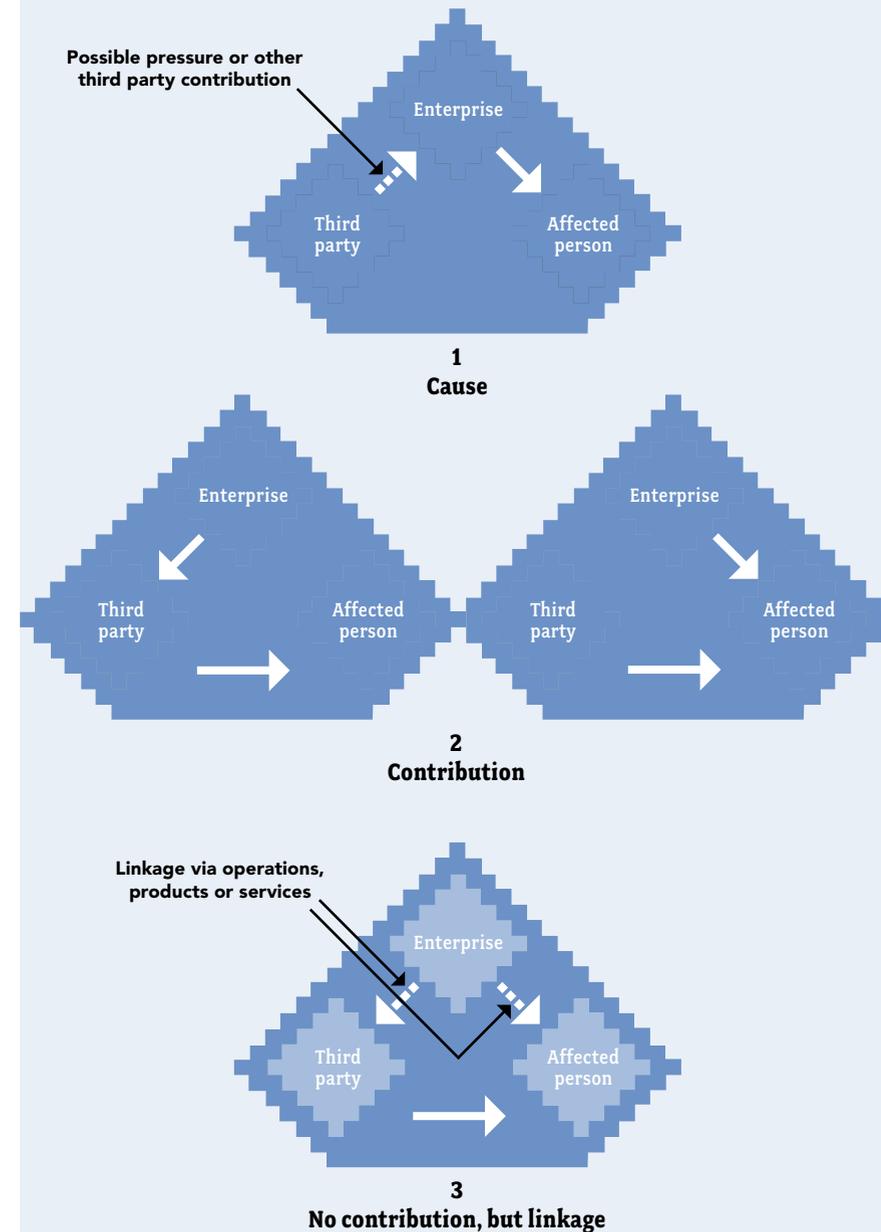
Box 11:

Complicity in human rights abuses

A company that contributes to a human rights abuse may be found complicit with the entity causing the abuse, providing the company with a clear motivation to cease its contribution and address the impacts.

Complicity has both legal and non-legal meanings. Examples of non-legal complicity could be situations where a business enterprise is seen to benefit from abuses committed by others, such as when it reduces costs because of slave-like practices in its supply chain or fails to speak out in the face of abuse related to its own operations, products or services, despite there being principled reasons for it to do so. Even though enterprises have not yet been found complicit by a court of law for this kind of involvement in abuses, public opinion sets the bar lower and can inflict significant costs on them. The human rights due diligence process should uncover risks of non-legal (or perceived) as well as legal complicity and generate appropriate responses.⁸

Schematic overview of types of company involvement in adverse human rights impacts⁹



Step 1: Identify responsibility scenario

Because the action that can be expected from a company that is associated with a human rights abuse is dependent on the responsibility scenario, the first step in the assessment is to try to identify the responsibility scenario for the company in question, i.e. to determine whether the company in question is causing, contributing or directly linked to a negative human rights impact.

A company is **causing** a human rights abuse when it is the principle actor in the abuse (directly carrying out the abuse) whether through its actions or omissions. Human rights abuses may be against the company's personnel, communities impacted by its activities and people in general. It may also include environmental impacts whenever these environmental impacts negatively affect the enjoyment of human rights.

Box 12:

Examples of an interpretation whereby companies would fit into the 'cause' scenario

The interpretive guide on the Corporate Responsibility to Respect – published by the UN Human Rights Office of the High Commissioner – provides the following examples of situations where business enterprises may be deemed to have caused adverse human rights impact:

- Routine racial discrimination by a restaurant in its treatment of customers;
- Exposure of factory workers to hazardous working conditions without adequate safety equipment;
- Being the sole or main source of pollution in a community's drinking water supply due to chemical effluents from production processes.

A company is **contributing** to an adverse human rights impact if its actions or omissions are crucial for the commitment or intensity of the abuse by a third party, i.e. when it enables, encourages, exacerbates or facilitates a third party to cause a negative human rights impact. A company may be contributing to an adverse human rights impact together with a third party or via a third party.

Box 13:

Examples of an interpretation whereby companies would fit into the 'contribute' scenario

The interpretive guide on the Corporate Responsibility to Respect – published by the UN Human Rights Office of the High Commissioner – provides the following examples of situations where business enterprises may be deemed to contribute to an adverse human rights impact:

- Providing data about Internet service users to a government that uses the data to trace and prosecute political dissidents contrary to human rights;
- Performing construction and maintenance on a detention camp where inmates were allegedly subject to inhumane treatment;
- Targeting high-sugar foods and drinks at children, with an impact on child obesity;
- Changing product requirements for suppliers at the eleventh hour without adjusting production deadlines and prices, thus pushing suppliers to breach labour standards in order to deliver.

The third scenario is that the company is neither causing nor contributing to the impact, but the impact is nevertheless **directly linked** to its operations, products and services by a business relationship.

Box 14:**Examples of an interpretation whereby companies would fit into the 'directly linked to' scenario**

The interpretive guide on the Corporate Responsibility to Respect – published by the UN Human Rights Office of the High Commissioner – provides the following examples of adverse impact that is directly linked to an enterprise's operations, products or services by its business relationships, but where the enterprise itself may not have contributed to it:

- Providing financial loans to an enterprise for business activities that, in breach of agreed standards, result in the eviction of communities;
- Embroidery on a retail company's clothing products being subcontracted by the supplier to child labourers in homes, counter to contractual obligations;
- Use of scans by medical institutions to screen for female foetuses, facilitating their abortion in favour of boys.

For a schematic overview of the different scenarios see the figure on page 41.

**Indicators for a company causing a human rights abuse**

- There is a causal link between the company's acts or omissions and the adverse impact. Without the company's acts or omissions, the adverse impact would not have occurred.
- The adverse human rights impact results directly from the actions of the company personnel within the company's work facilities or surrounding areas.

Guiding questions for check

- Can the act or omission causing the negative human rights impact be attributed to the company's own activities?
- Is the person violating human rights an employee of the company?
- Have the company management's decisions caused the adverse impact to occur?
- Is the abuse caused at the company's own workplace, its direct surroundings, or its own equipment?

Indicators for a company contributing to a human rights abuse

- The combination of the company's activities and that of a third party creates a negative human rights impact.
- The company's actions or omissions are crucial for the commitment of the abuse by the third party; the company enables, encourages or facilitates a third party to cause a negative human rights impact.
- The company's acts or omissions increase or exacerbate the adverse impact; without the company's acts or omissions the impact may still occur but with less magnitude or severity.
- The company's own policies (such as purchasing policies related to prices and delivery times) can reasonably be expected to motivate human rights abuses by its business relationship.

Guiding questions for check

- Is the company aware of the negative human rights impact it contributes to?
- Is the impact (partly) caused by a third party?
- Does the company enable, encourage, facilitate, motivate, increase or exacerbate the adverse human rights impact?
- What kind of business relationship does the company have with the party causing the negative human rights impact?
- Does the company benefit from the human rights abuse?

Indicators for a company being directly linked to a human rights abuse

- The company is not causing or contributing to the human rights impact through its own activities, but the impact is nevertheless connected to its operations, products or services through a business relationship.
- The adverse human rights impact occurs without any intended or unintended pressure from the company to do so.

Guiding questions for check

- Is the negative human rights impact connected to the company's operations, products or services through a business relationship?
- Is there no indication that the company is enabling, encouraging, facilitating, motivating, increasing and/or exacerbating the adverse human rights impact caused by the third party?

Once the responsibility scenario is determined, the next step is to assess how the company responded when it became aware of the abuses and whether this response is in accordance with the Guiding Principles. Here the concept of *due diligence* becomes relevant again, as it refers to business processes meant to both prevent potential impacts and address actual impacts (see Box 3). The Guiding Principles make clear that the company's response should include the following seven elements:

- 1 **Assessing** its human rights impact.
- 2 Meaningful **consultation** with affected rights holders and other stakeholders (e.g. affected workers, communities, vulnerable groups and/or individuals).
- 3 **Integrating** assessment findings in developing an appropriate response to the adverse impact.
- 4 Developing a concrete **action** plan with clear indicators for implementation in order to cease or mitigate the negative impact.
- 5 **Tracking** the effectiveness of response.
- 6 Being actively involved in **remediation** of the negative human rights impact.
- 7 Being **responsive** to rights holders and other stakeholders that want to know how the company addresses the negative impact.

In addition to the above assessment areas on how the company addresses its impacts, it may also be worthwhile assessing what type of measures the company took to prevent the abuses from happening. Was the company proactively trying to prevent the abuse from occurring in the first place, or has it ignored its responsibility to prevent adverse human rights impacts? CSOs can use Part I of this guide to assess these preventive measures.

Step 2 provides an assessment tool for each of the three scenarios described above.

Step 2: Assessing the company's response to the adverse human rights impact

Assessing the appropriateness of a company's response when associated with a human rights abuse involves a considerable set of indicators and guiding questions. To create an overview, these are subdivided under the headings of the elements required for an effective response mentioned above. Under each heading, the relevance of the indicators for each of the scenarios is outlined. For example, the indicators for the appropriateness of the company's human rights impact assessment are relevant for all scenarios, while the performance indicators with regard to remediation are relevant only in the cause and contribute scenarios. For ease of recognition, this is also signaled by symbols in the margin that correspond to each of the scenarios.

Performance indicators

Assessment

Under the Guiding Principles, companies are required to assess their human rights impacts by means of a *due diligence* process, meaning they have to map their operations structure, value chain and business relationships and examine the human rights impacts that may occur within this realm.

The following indicators are relevant for the assessment of all three scenarios:

- The company has identified the occurrence of an adverse human rights impact through its due diligence process (GP 13 and GP 17).
- The company has identified the nature of the adverse human rights impact by means of consultation with rights holders who are the victims of the adverse impact (GP 13 and GP 17).
- The rights holders who are the victims of the adverse impact indicate they have been consulted by the company in order to identify the nature of the adverse human rights impact (GP 18b).



Meaningful consultation

Meaningful stakeholder implies that companies should take the interests of stakeholders into account when making decisions and should ensure that affected stakeholders' rights are respected. (See also Box 5 on 'meaningful stakeholder engagement'.)



The following indicators are relevant for the assessment of all three scenarios:

- The company has consulted with the affected rights holders to develop concrete and acceptable actions to address the impact (GP 18b and GP 20b).
- Affected right holders perceive the consultations to be meaningful, in the sense that the company demonstrates understanding of their concerns (GP 18b).
- Affected rights holders perceive their views and their dignity, welfare and human rights have been taken seriously and integrated into the action plan (GP 18b).

Integration

In the case of large multinational corporations, it is likely that the people responsible for assessing human rights impact are separate from the personnel conducting the activities or overseeing the relationships that typically generate that impact. So those assessing the impact do not control the decisions and actions that can prevent, mitigate or remedy it. The departments that do control those decisions and actions therefore have to be involved in identifying and implementing solutions. Integration enables this to happen.¹⁰



The following indicator is relevant for the assessment of all three scenarios:

- All relevant departments within the company that are related to the human rights impact are informed about and engaged in the response to the negative human rights impact (GP 19).

Action plan

Under the Guiding Principles, following the identification of an adverse human rights impact companies are required to make an action plan to address this impact effectively, meaning it has developed a strategy to stop or mitigate the negative impact, with clear indicators for implementation.

The actions that should be included in the action plan differ between the three scenarios:

- If the company has caused the impact, it should develop an action plan to cease the adverse impact (GP 13, 19).
- If the company has contributed to the impact, it should develop an action plan to cease its contribution to the adverse impact and mitigate any remaining impact (GP 13, 19).
- If the company has not caused or contributed to the impact, but is nevertheless directly linked to the impact, it should develop an action plan to mitigate the impact caused by a third party (GP 13, 19).

The following indicators are only relevant in the scenarios where companies contribute to or are directly linked to human rights abuses:

- The company has exercised its leverage over the third party causing the human rights to demand that it stops the impact (GP 19b ii) jointly address the impact, after engaging with the party that is causing the negative human right impact (GP 13, GP 17 and GP 19).
- In case this exercise was unsuccessful, the company should take steps to increase its leverage (e.g. by joining forces with other parties involved, GP 19).
- If the company does not succeed in increasing leverage and the relationship is not crucial to the company, the company should end the relationship or carefully consider the consequences of continuing the relationship (GP 19).
- Where the human rights impact is caused by a supplier, the company has offered human rights capacity-building to the particular supplier collaborated with other companies sourcing from the supplier to require and ensure, i.e. through monitoring and independent verification, that the supplier respects human rights if the abuse continues or there is no response or willingness from the supplier to address the impact, the company should end the business relationship or carefully consider the consequences of continuing the relationship (GP 19).

Box 15:**Leverage¹¹**

“Leverage” over an entity (business, governmental or non-governmental) in this context may reflect one or more factors, such as:

- a** Whether there is a degree of direct control by the enterprise over the entity;
- b** The terms of contract between the enterprise and the entity;
- c** The proportion of business the enterprise represents for the entity;
- d** The ability of the enterprise to incentivize the entity to improve human rights performance in terms of future business, reputational advantage, capacity building assistance, etc.;
- e** The benefits of working with the enterprise to the entity's reputation and the harm to its reputation if that relationship is withdrawn;
- f** The ability of the enterprise to incentivize other enterprises or organizations to improve their own human rights performance, including through business associations and multi-stakeholder initiatives;
- g** The ability of the enterprise to engage local or central government in requiring improved human rights performance by the entity.

The following indicators are relevant for all three scenarios:

- The company has assigned responsibility for implementing its action plan and periodically reviews its results (GP 19).
- If the adverse human rights impact involves individuals belonging to specific groups or populations that require particular attention, the company respects the additional relevant UN standards and instruments (for example, the UN Declaration on the Rights of Indigenous Peoples if the company has had a negative impact on indigenous peoples, GP 12).

Tracking

The Guiding Principles require companies to track the effectiveness of their responses to the human rights impacts they have identified. This means that companies have to measure how they respond to the adverse human rights impacts, to be able to account for their success in respecting human rights.

The following indicators are relevant for the assessment of all three scenarios:

- The company tracks the effectiveness of its response using both qualitative and quantitative indicators and differentiates between different groups that are impacted, such as women, children and indigenous communities (GP 20).
- The company engages with affected rights holders in tracking its responses and integrates and acts upon the findings to ensure an effective response to the human rights impact (GP 19 and 20).
- The rights holders who are the victims of the adverse impact indicate they have been regularly consulted by the company in order to ensure the effectiveness of its response in addressing the negative human rights impact (GP 18b).

Remediation

The requirement for companies that cause or contribute to human rights abuses to remediate refers to providing remedy to the victim(s) of an adverse human rights impact. Remedies may take a range of forms (e.g. apologies, restitution, guarantees of non-repetition).

The following indicators are only relevant in the scenarios where companies are causing or contributing to human rights abuses:

- The company provides for or cooperates in remediation of the adverse human rights impact (GP 15c and 22).
- The company cooperates with authorities that are seeking to provide remedy for the victims of the adverse impact (GP 22).
- The company has processes in place to enable remediation (GP 15).
- The company has established or participates in effective operational level mechanisms, in accordance with the effectiveness criteria in GP 31 (GP 15, GP 29, GP 31; see Box 7).
- The affected rights holders judge the remediation process to have been effective, according to the effectiveness criteria in GP 31 (Box 7).

Box 16:**Guiding Principle 22**

Guiding Principle 22 states:

Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

Responsiveness

Responsiveness of a company refers to its willingness to communicate about the way it seeks to prevent and address adverse human rights impacts.

The following indicators are relevant for the assessment of all three scenarios:

- The company responds to requests for information raised by affected rights holders and their legitimate representatives who want to assess the adequacy of the company's response to the adverse human rights impact (GP 21).
- The company is prepared to communicate about the execution and outcomes of its human rights impact assessments in such a manner that the adequacy of the response can be evaluated externally (GP 21).
- In cases of severe negative human rights impacts, the company makes a formal, external report about how it is addressing those impacts (GP21).

Guiding questions for check**Assessment**

The following question is relevant in all three scenarios:

- Did the company identify the nature of the adverse human rights impacts following meaningful consultation with affected rights holders (e.g. adversely impacted workers, communities and/or individuals)?

Meaningful consultation

The following questions are relevant in all three scenarios:

- Can the company engage directly with those groups that are impacted?
- If it cannot, what other credible sources does the company rely on to understand the community's perspectives and concerns?
- If it can, does the company engage with affected rights holders to understand their concerns?
- Do the rights holders perceive the consultation to be meaningful? In what way?

Integration

The following question is relevant in all three scenarios:

- Are all relevant departments within the company that are related to the human rights impact informed about and are they engaged in responding to the negative human rights impact?

Action plan

The following question is relevant in all three scenarios:

- Does the action plan address the whole range of causes for the adverse human rights impacts, preventing continuation of the impacts?

The questions regarding the action plan differ between the three scenarios:

- If the company is causing the adverse human rights impact, has it developed a concrete action plan to cease the adverse human rights impacts and to prevent future impacts?
- If the company is contributing to the adverse human rights impact, has it developed a concrete action plan to cease its contribution to the adverse human rights impacts, mitigate any remaining impact, and prevent such impacts in the future?
- If the company is directly linked to an adverse human rights impact, has it developed a concrete action plan to mitigate the human rights impact, and prevent such impacts in the future?

 The following questions may be used if a company contributes to, or is directly linked to, an impact:

- Once the company has identified the party that caused the abuse, does the company offer necessary assistance to the party? Assistance may include training on human rights respect, and how to follow the company's code of conduct or look for alternative ways to do business without violating human rights.
- Has the company engaged with the party in order to alert it and cease the adverse human rights impact?
- Has the company used its leverage over the party to cease the impact?
- If the company did not have enough leverage to mitigate the impact, has it made efforts to increase its leverage?
- Has the company continued the relationship with the entity that violated human rights, even if its efforts to mitigate the abuses were not successful and ending the relationship would not have adverse human rights impacts?

Tracking

 The following questions are relevant in all three scenarios:

- Does the company track the effectiveness of its action plan in addressing the adverse impact?
- Does the company track impacts on specific groups (women/children, indigenous people)?
- Has the evaluation taken into account the perspective of the affected rights holders?
- Has the company revised the action plan based on the evaluation findings?

Remediation

 The following questions may be used if the company causes and contributes to an impact:

- Has the company participated in any remediation processes?
- Did the company play a role in providing direct and timely remedy for the affected rights holders?
- What did the remediation include (apology, compensation (financial or other), cessation of activity or relationship)?

- Was the remediation accepted by the affected rights holders?
- Does the company have operational-level grievance mechanisms in place for dealing with grievances of those impacted by the company's activities?
- Do the operational-level grievance mechanisms comply with the effectiveness criteria in Guiding Principle 31? (See Box 7).
- Has the company faced criticism with regard to the effectiveness of its responses by affected rights holders and/or other stakeholders? If yes, has the company undertaken steps to address this criticism?
- How do the affected rights holders and/or other stakeholders assess the remediation process?
- Has the remediation process resulted in changes in the company's overall human rights policy?

Responsiveness

The following questions are relevant in all three scenarios:

- Is the company willing to communicate about how it addresses adverse human rights impacts?
- Does the company respond to requests for information raised by affected right holders and their legitimate representatives on how it addresses human rights?
- Does the company report on how it addresses severe human rights impacts?

Follow-up strategies

CSOs are encouraged to use and share the results of their assessment with regard to alleged human rights abuses and lack of implementation of the Guiding Principles in as many situations and forums as relevant. These follow-up strategies will contribute to ensuring that businesses respect human rights, as well as making companies, states and CSOs around the world aware of the existence and meaning of the Guiding Principles and the corporate responsibility to respect human rights.

CSOs are not advised to conduct all the strategies mentioned at once, as certain steps may jeopardise others. Rather, the CSO should consider which strategy best serves their interests, in close consultation with rights holders. Furthermore, the CSO should examine which strategies best fit its organisational identity and capacity, and which sequence of actions may create the most leverage. One way to do the latter is to design an escalation strategy in which the CSO will continue with a next strategy only once the first has not delivered the desired results.

Engagement with the company

The results of the assessment may first be addressed with the company that has been researched. In most cases, CSOs will have approached the company already during the investigation for information requests. Depending on the responsiveness of the company, this may or may not result in a dialogue. If it does, this provides the CSO with the opportunity to remind the company of its corporate responsibility to respect human rights, alert the company about (potential) adverse human rights impacts, and motivate the company to take steps to prevent and/or address these (potential) impacts. Using the UN endorsed Guiding Principles will help the CSO to justify its claims. The CSO may succeed in improving the human rights conduct of the company in this way. Not all companies are reluctant to engage in constructive dialogue to improve their performance; and not all companies are willing to attend to the concerns raised: asking questions is the first step towards company awareness. If a CSO plans to publish a report on the adverse human rights impact, it is useful to

include a review procedure, whereby the company is given the opportunity to respond to the report before its publication.

As well as the obvious interest of rights holders, there is also a business rationale for respecting human rights. From a business perspective, conducting appropriate human rights due diligence should: help business enterprises to improve the management and mitigation of the operational, legal, reputational and financial risks to the company of being involved or linked to human rights abuses; contribute to a company's sustainability; increase employee satisfaction and motivation; avoid costly disruptions of operations, e.g. due to workforce strikes; as well as addressing the risk of legal claims against them by showing that they took every reasonable step to avoid involvement with an alleged human rights abuse. That does not mean that carrying out due diligence will automatically absolve companies of liability. There may be situations in which, despite conducting ongoing human rights due diligence, companies are still responsible for an abuse and found liable.

Adhering to a global standard like the Guiding Principles may also reduce costs since there is convergence towards them by a series of other frameworks, standards and tools guiding business conduct.

Courts

With the endorsement by the UN Human Rights Council, the Guiding Principles can be considered soft law, while national laws and regulations can be considered hard law, which means breaches of these can be brought before the courts. Much of the content of the Guiding Principles is reflected in national laws and regulations, and an alleged business-related human rights abuse may be a crime, tort or other form of illegal act under a national legal system, which allows a course of action before the courts. When the assessment of the human rights performance of a company uncovers an alleged human rights abuse, CSOs are advised to examine whether this constitutes a recognised crime, contravention or breach of a legally binding provision. Where such breaches of national laws seem to exist, CSOs have the strongest case by first and foremost referring to the applicable legislation, and citing the Guiding Principles in addition to this applicable national norm.

The standards and principles contained in the Guiding Principles that are not (yet) reflected in national laws and regulations have the potential to become hard law by means of jurisprudence through

referencing in court cases. In court cases on corporate human rights abuses, the Guiding Principles can help judges to interpret compliance with internationally recognised human rights standards. It is generally recognised among legal experts that the more the Guiding Principles are used and referenced in courts, other non-judicial forums, and public and private policies, the more they become part of customary international law.

National governments

Both the executive and the legislative branch within a country's government have important roles to play in fostering the corporate responsibility to respect human rights. The Executive has an important role in implementing policy and carrying out administrative functions. There are many administrative oversight bodies for business (e.g. labour, environmental inspection, or oversight bodies for specific sectors and industries) that depend on the Executive and that can play an active role in monitoring and fostering responsible corporate conduct. The Legislative Branch can assist in investigating and legislating for corporate responsibility to respect human rights, and in providing a balance to the role of the Executive.

The results of an assessment of a company's human rights performance can be shared with both branches of government. This will provide concrete insights into the challenges of realising the corporate responsibility to respect, and will also provide a means to lobby for the legislation and monitoring needed to foster responsible corporate conduct. Furthermore, in cases where the alleged company receives financial support from the government, the results of the assessment are essential to raise awareness of possible contributions or direct links to human rights abuses through beneficiaries of supportive loans or guarantees for investments, and as such may be used to motivate the government to take action against the company.

OECD National Contact Points

The OECD Guidelines for Multinational Enterprises are recommendations by governments to multinational enterprises operating in or from adhering countries. They provide internationally accepted "soft law" principles and standards for responsible business conduct in areas such as employment and industrial relations, human rights, environment, information disclosure, combating bribery,

consumer interests, science and technology, competition and taxation. The Guidelines can be downloaded from the OECD website.¹²

As the 2011 updated OECD Guidelines incorporate a human rights chapter in line with the UN 'Protect, Respect and Remedy' Framework and the Guiding Principles, the information gathered using this guide can support building the evidence base for a complaint under the OECD Guidelines' complaint mechanism. If the assessment concludes that the company in question is breaching the Guiding Principles, the company is likely also to be in breach of the OECD Guidelines.

The dispute resolution mechanism associated with the OECD Guidelines is a unique instrument for addressing corporate behaviour, where NGOs, trade unions and other stakeholders can file complaints against multinational enterprises for alleged abuses of the OECD Guidelines. Governments that adhere to the OECD and its Guidelines must establish a National Contact Point (NCP) to promote the Guidelines and handle complaints about 'specific instances' of alleged company misconduct.

The 'specific instance' complaint procedure is focused on finding a resolution between the parties through mediated dialogue. If mediation is successful, NCPs can make a statement supporting the agreements reached. If mediation fails, NCPs can also make statements determining whether the Guidelines have been breached and make recommendations to ensure that the Guidelines are adhered to. In addition, the commentary regarding the conclusion of procedures states that Statements and Reports on the results of the proceeding made publicly available by the NCPs could be relevant to the administration of government programmes and policies. In order to foster policy coherence, NCPs are encouraged to inform these government agencies.¹³ This can have significant consequences for a company.

A list of NCPs can be found on the OECD website.¹⁴ OECD Watch, a global network of NGOs promoting corporate accountability through the OECD Guidelines, has developed detailed guidance material for CSOs for filing complaints under this mechanism.¹⁵

National human rights institutions/ombudsperson

In some countries, an ombudsperson is appointed to listen to people's concerns regarding cases of corporate human rights abuses and to subsequently press states to perform their duty to protect rights

holders against the company's abuses. Using this guide can help to provide evidence for the ombudsperson.

Some countries have national human rights institutions (NHRIs).¹⁶ All NHRIs have a mandate including monitoring, making recommendations, education and research on business and human rights under the UN Paris Principles. Some NHRIs have legal powers under national law to handle cases on human rights abuses by multinational enterprises.¹⁷ This could be a good forum for sharing the outcomes of the assessment and for promoting effective responsible corporate conduct through further engagement.

UN: The working group on business and human rights and other mechanisms

CSOs could use the information gathered through the use of this guide to engage with the UN working group and address challenges in the implementation of the Guiding Principles. At the adoption of the UN Guiding Principles in 2011, The UN Human Rights Council decided to establish a Working Group on the issue of human rights and transnational corporations and other business enterprises consisting of five independent experts, of balanced geographical representation, for a period of three years. Its mandate is to promote the effective and comprehensive dissemination and implementation of the Guiding Principles on Business and Human Rights: implementing the United Nations "Protect, Respect and Remedy" Framework. The Council also decided to establish a Forum on Business and Human Rights under the guidance of the Working Group to discuss trends and challenges in the implementation of the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors, operational environments or in relation to specific rights or groups, as well as identifying good practices. This Forum will take place on a yearly basis. CSOs could use the information gathered through the use of this guide to engage with the UN Working Group and address gaps or weaknesses or challenges in the implementation and the content of the Guiding Principles, and raise these challenges through participation in the Forum.

In its announcement about its Methods of Work, the Working Group noted that "it is not in a position to investigate individual cases of alleged business related human rights violations". Thereby the UN Working Group's working methods deviate from the methods used by many other UN special procedures. On the other hand, the Working

Group has stated that "in addition to the official country missions and any other visits to Member States, the Working Group aims to carry out its mandate in a manner that includes significant additional relevant field work, frequently reaching out, consulting and engaging directly with individuals, communities, business enterprises and associations, Government actors, national human rights institutions and other stakeholders across all regions to inform its work and to ensure that any findings and recommendations respond to practical and operational realities on the ground"¹⁸. There is thus an opportunity for CSOs to invite the UN Working Group for field visits and raise with them specific cases of abuse. It remains to be seen what fulfillment the Working Group will give to such field visits in practice, and CSOs are encouraged to seek for ways to have them address their concerns.

The UN has many different Special Procedures with mandates on specific rights or groups that can provide recommendations to States and in some cases companies as well. These procedures include Special Rapporteurs, committees for the different human rights treaties, etc. The results of the assessment could be relevant for these special procedures.

Regional human rights protection systems

There are many different forums at the regional level that deal with cases of human rights abuses. In general, cases can be brought against states under these regional systems, but the results of a company assessment can help these regional mechanisms to understand state behaviour and corporate conduct to further recommend or condemn the state for breaches of their international human rights obligations under their jurisdiction. Forums such as the European Court of Human Rights, the Inter American Human Rights Commission and Court, and the African Commission for Human and People's Rights are suitable for sharing the insights of the assessment in the framework of cases or public hearings within the mechanisms.

Public awareness raising

Cases of non-compliance with the corporate responsibility to respect human rights can be used by CSOs as a basis for public awareness raising efforts in both the country where the non-compliance has occurred (host country) and the country where the company is headquartered (home country). If CSOs are able to demonstrate that a

company has failed to implement the Guiding Principles, the backing of the Guiding Principles by the UN Human Rights Council will help them to make authoritative claims with regard to the corporate responsibility to respect human rights. Companies will generally not like to be publicly shamed for breaching UN standards and principles, and will possibly seek to address their negative human rights impacts to avoid negative reputational impacts and stakeholder scrutiny.

Financial institutions and shareholders

The results of the assessment can also help in cases where financial institutions are involved. Many international financial institutions have procedures in place in order to check compliance with their own policies while providing loans for projects. For instance, there are mechanisms within the World Bank Group with the Compliance Advisor Ombudsman for the International Finance Corporation and the Multilateral Investment Guarantee Agency, as well as the Inspection Panel; and the Inter-American Development Bank Group with the Independent Consultation and Investigation Mechanism. Even national development banks may have standards for providing loans for which the results of a company's human rights performance assessment can be relevant. It is strongly advisable to search within the region in which the assessment has taken place, to find out whether there are such mechanisms in place for presenting the results of the assessment.

Other business relationships

Another follow-up strategy for the assessment is to inform the business partners of the company in question about its negative human rights impacts. This may create the leverage to motivate the company concerned to change its practices. In addition, it will provide useful information for the human rights due diligence of the business relationships. For example, if the company is manufacturing goods for major brands, it is advisable to contact these brands and advocate with them to use their leverage as a buyer to influence their supplier's conduct. This strategy may be particularly fruitful with brand companies that have explicitly acknowledged their supply chain responsibility.

UN Global Compact

With more than 6,000 corporate participants, the United Nations Global Compact is the world's largest voluntary corporate accountability initiative. Member companies commit to implement the Global Compact's ten principles in the areas of human rights, labour, the environment and anti-corruption.¹⁹

The Global Compact stresses that the commitments expressed in its human rights principles correlate with the 'responsibility to respect' as defined in the UN Guiding Principles. Participating companies are required to issue an annual Communication on Progress (COP). The COP should describe the progress made in implementing the ten principles. However, the content of these reports are not checked.

In 2005, five years after its launch, the Global Compact adopted a set of Integrity Measures. The Integrity Measures include a procedure for initiating dialogue around "allegations of systematic or egregious abuses of Global Compact's overall aims and principles".²⁰ Examples of such "systematic and egregious abuse" include substantiated allegations of company involvement in:

- Murder, torture, deprivation of liberty, forced labour, the worst forms of child labour and other child exploitation;
- Serious violations of individuals' rights in situations of war or conflict;
- Severe environmental damage;
- Gross corruption; and
- Other particularly serious violations of fundamental ethical norms.²¹

When a matter is presented in writing to the Global Compact Office, the Office will forward the matter to the participating company concerned requesting comments and feedback on any actions undertaken to address the matter. The Global Compact Office is also available to provide guidance and assistance to the company concerned in taking actions to remedy the situation. If the company refuses to engage in dialogue on the matter within two months of first being contacted by the Global Compact Office, it may be regarded as 'non-communicating'. The company would be identified as such on the Global Compact website. If the continued listing of the participating company on the Global Compact website is considered detrimental to the reputation and integrity of the organisation, the Global Compact Office reserves the right to remove that company from the list of participants and to indicate so on their website.

Other international and intergovernmental grievance mechanisms

There are numerous other international and intergovernmental grievance mechanisms where alleged abuses of human rights may be lodged, depending on the nature of the issues, the sector and the region where the abuse has occurred. Often these mechanisms have human rights provisions referring to the Universal Declaration of Human Rights, the core conventions of the International Labour Organization (ILO), or other internationally recognised human rights frameworks. The fact that the Guiding Principles are also based on the same set of human rights, and the increasing convergence of global frameworks on company conduct with the Guiding Principles, means that CSOs that establish an alleged business-related human rights abuse and/or a lack of implementation of the Guiding Principles can consider using other appropriate grievance mechanisms to address alleged abuses.

A company may be part of specific industry or multi-stakeholder initiative that includes accountability mechanisms (e.g. the Fair Labor Association, Round Table on Sustainable Palm Oil). Even if no accountability mechanism exists, the mere membership of a company in such an initiative is an additional advocacy entry point.

In conclusion

With this guide, SOMO, Cividep and CEDHA aim to contribute to the dissemination and usefulness of the Guiding Principles for CSOs, so that these organisations can use the Guiding Principles more effectively to motivate companies to respect human rights. By confronting companies with the existence of the Guiding Principles and by demanding an ambitious uptake by these companies, it will be possible for the Guiding Principles to make a positive impact on the lives of rights holders.

In addition, the use of the methodology offered in this guide will help CSOs to identify potential gaps or weaknesses in the Guiding Principles themselves, and to provide useful insights in order to continue developing and/or strengthening standards on corporate human rights responsibilities.

While developing the guide, it became apparent that using the Guiding Principles to assess company human rights performance is more easily said than done. Often the information required to make the assessment will not be readily available. This means being dependent on company willingness to provide some of the required information, which is not something we can rely on (yet). Nevertheless, asking companies to provide this information is of

value in itself, as this confronts companies with their responsibility to respect human rights and may provide a spark of awareness about the internationally accepted responsibility for companies to respect human rights. In fact, if companies do not respond to legitimate requests for information about how they address their human rights risks and impacts, this may be considered a breach of the Guiding Principles in itself. After all, the Guiding Principles stress that companies need to “know and show” how they respect human rights, and CSOs play an important role in holding companies to account.

This guide is developed to make the Guiding Principles accessible and useful for CSOs in their efforts to support local communities, workers and other rights holders to ensure that their rights are respected. Once CSOs build up experience in using the Guiding Principles, this will reveal areas for improving the methodology and guidance provided in this guide. The authors therefore invite users of this guide to share their examples, case studies, experiences and feedback using the contact information provided in the colophon. We envision this will lead to improved versions of this guide in due course.

Further resources

There are several organisations, centres, reference documents, guides and guidance tools that users of this guide may find helpful. The following resources are recommended (although this list is not exhaustive).

Relevant centres and organisations

Amnesty International: <http://www.amnesty.org>

Business & Human Rights Resource Centre: <http://www.business-humanrights.org>

Business & Society Exploring Solutions: <http://www.baseswiki.org>

Danish Institute for Human Rights: <http://www.humanrightsbusiness.org>

International Federation for Human Rights (FIDH): <http://www.fidh.org>

OECD Watch: <http://www.oecdwatch.org>

United Nations Human Rights Office of the High Commissioner: <http://www.ohchr.org>

Relevant publications

International Federation for Human Rights. *Corporate Accountability for Human Rights Abuses. A Guide for Victims and NGOs on recourse Mechanisms*, 2012
<<http://www.fidh.org/Updated-version-Corporate-8258>>.

United Nations Human Rights Office of the High Commissioner. *Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy"*, 2011
<http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>.

United Nations Human Rights Office of the High Commissioner. *Interpretive Guide on the Corporate Responsibility to Respect*, 2012
<http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf>.

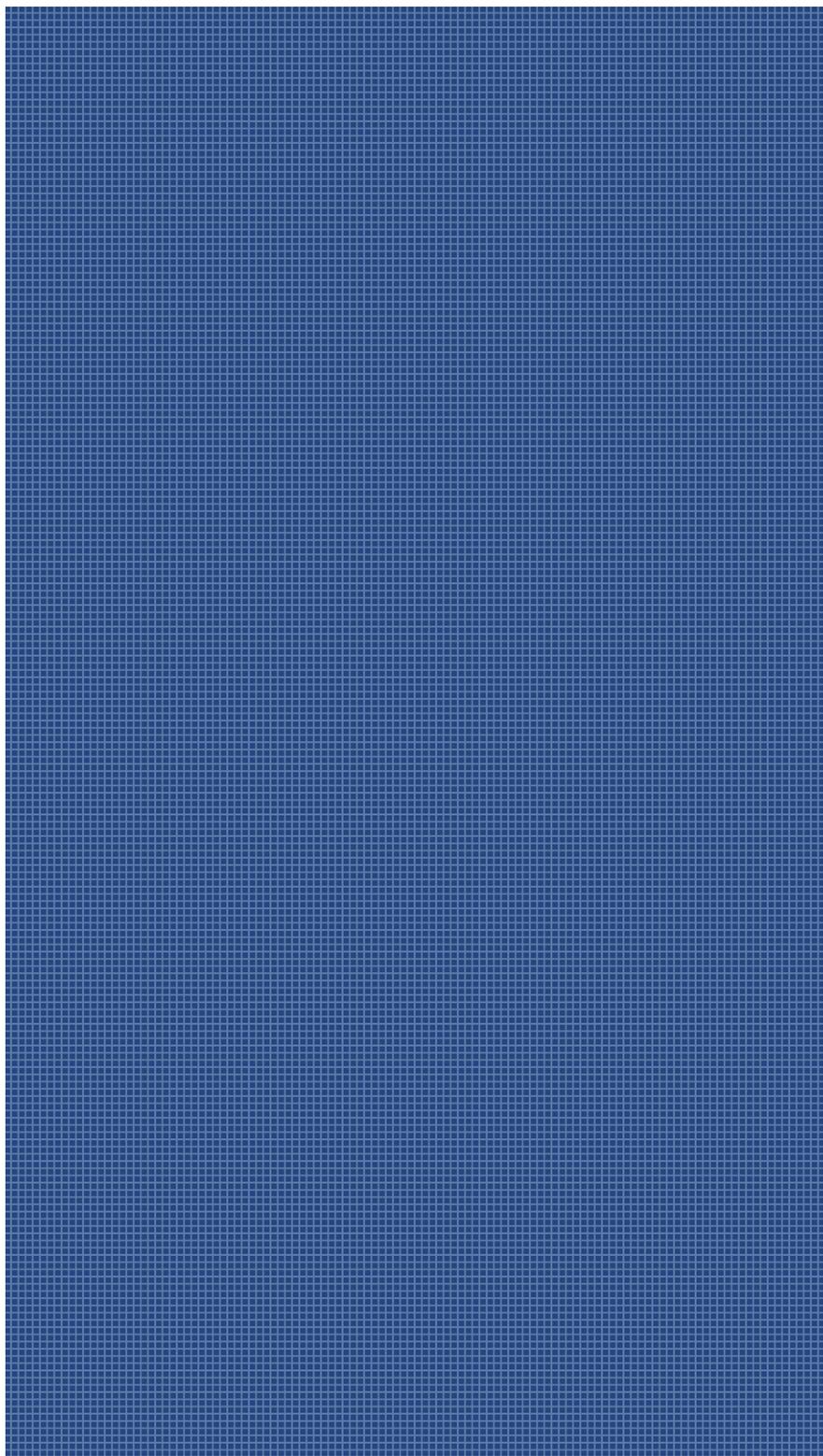
Oxfam America and Rights & Democracy. *Community-based human rights impact assessments: Practical lessons*, 2010
<<http://www.oxfamamerica.org/files/community-based-human-rights-impact-assessments-practical-lessons.pdf>>.

OECD Watch. *Calling for Corporate Accountability: A guide to the OECD Guidelines for Multinational Enterprises* (expected beginning 2013). www.oecdwatch.org

Notes

- 1 The definitions and descriptions of concepts in this glossary are composed by a combination of the text of the United Nations Guiding Principles on Business and Human Rights, the Interpretive Guide on the Corporate Responsibility to Respect published by the United Nations Human Rights Office of the High Commissioner and the authors' own explanations and interpretations.
- 2 Source: ISO 26000:2010 Guidance on Social Responsibility.
- 3 Source: J. Kirkemann Boesen & Tomas Martin, *Applying a Rights-Based Approach. An Inspirational Guide for Civil Society*. Copenhagen: the Danish Institute for Human Rights, 2007.
- 4 See Glossary. The words printed in italic throughout the guide can be found in the Glossary.
- 5 See: <http://www2.ohchr.org/english/law/index.htm>
- 6 Please note that, although the Guiding Principles are applicable to all companies – worldwide, large and small – this guide focuses on multinational corporations.
- 7 Source: World Resources Institute. *Breaking Ground: Engaging Communities in Extractive and Infrastructure Projects*. Washington: 2009, p. 2.
- 8 UN OHCHR. *Interpretive Guide for the Corporate Responsibility to Respect Human Rights*. 2012, p. 4
<http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>
- 9 UN OHCHR. *Interpretive Guide for the Corporate Responsibility to Respect Human Rights*. 2012, p. 4
<http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>
- 10 UN OHCHR. *Interpretive Guide for the Corporate Responsibility to Respect Human Rights*. 2012, p. 4
<http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>
- 11 UN OHCHR. *Interpretive Guide for the Corporate Responsibility to Respect Human Rights*. 2012, p. 4
<http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>
- 12 OECD. *OECD Guidelines for Multinational Enterprises*. 2011 <http://www.oecd.org/ataoecd/43/29/48004323.pdf>
- 13 OECD. *OECD Guidelines for Multinational Enterprises*. 2011, p.87 <http://www.oecd.org/dataoecd/43/29/48004323.pdf>
- 14 OECD. *National Contact Points / Points de contact nationaux*, September 2012
<http://www.oecd.org/dataoecd/17/44/1900962.pdf>
- 15 Visit www.oecdwatch.org for more information and the OECD Watch Guide to the Guidelines
- 16 For a map of NHRI's worldwide, see:
http://nhri.ohchr.org/EN/Contact/NHRIs/Documents/NHRI_May2012_map_web2%20rev2.pdf
- 17 The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) has a working group on business and human rights that outlines what actions specific institutions are taking in this field: <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Home.aspx>. Other relevant sites are:
<http://nhri.ohchr.org/EN/Pages/default.aspx>. The following provides a list of NHRIs:
<http://nhri.ohchr.org/EN/Contact/NHRIs/Pages/default.aspx>. Pages on business:
<http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Home.aspx>
- 18 Source: website of the UN Working Group on Business and Human Rights:
<http://www.ohchr.org/EN/Issues/Business/Pages/WorkingMethods.aspx> [accessed 22 October 2012].
- 19 United Nations Global Compact, *Human Rights Supplement to Communication on Progress Guidance*, no date.
- 20 Website UN Global Compact. *Integrity Measures – Frequently Asked Questions*.
http://www.unglobalcompact.org/AboutTheGC/IntegrityMeasures/Integrity_Measures_FAQs.html [accessed on 11 October 2012].
- 21 Ibid.

Annotations



This guide aims to provide concrete support, guidance and a uniform reference framework for Civil Society Organisations (CSOs) in using the United Nations Guiding Principles on Business and Human Rights. These Guiding Principles can be utilised to address the responsibility of business to respect human rights and thereby support local communities, workers and other rights holders to ensure fulfillment of their human rights. The guide provides a method for CSOs to use the Guiding Principles in company research and advocacy, and helps them to hold companies accountable for their corporate responsibility to respect internationally recognised human rights.

SOMO



Cividep India
Workers' Rights & Corporate Accountability

CEDHA