**Board duties** **in ensuring effective company engagement with affected stakeholders**

A report in support of the Board Practice Note issued by the World Economic Forum in May 2022

**(front cover – with photo)**

World Economic Forum’s Global Futures Council on Human Rights

**Acknowledgements**

This report was researched and written by the World Economic Forum’s Global Futures Council on Human Rights (2020-22)[[1]](#endnote-1).

*Co-Chairs:*

John Morrison, CEO, Institute for Human Rights and Business (IHRB)

Julia Olofsson, Head of Human and Child Rights, Ingka Group (IKEA), Sweden

Members:

William Anderson, Vice-President, Global, Social and Environmental Affairs, Adidas AG

Rachel Cowburn-Walden, Human Rights Stewardship Director, Unilever

Steven Crown, Vice-President and Deputy General Counsel, Microsoft Corporation

Mark Davis, Director, Sustainable Operations, The Body Shop International Ltd

Dominque Day, Executive Director, DAYLIGHT

Sumi Dhanarajan, Director, APAC, Forum for the Future

Andre de Plessis, Independent Consultant and International Human Rights Lawyer

Bennett Freeman, Chair, Advisory Board, Global Witness

Clare Ivery, Associate General Counsel/Senior Director Ethics and Compliance, Procter and Gamble

Anisa Kamadoli Costa, Chairman and President, Tiffany and Co. Foundation; CSO

Harpreet Kaur, Business and Human Rights Specialist, UNDP

Irene Khan, United Nations Special Rapporteur on the Freedom of Opinion and Expression

Reem Khouri, Founder and Partner, Kaamen

Tae Wan Kim, Associate Professor of Business Ethics, Carnegie Mallon University

Xiaohui Liang, Deputy Head, China Textile Council

Mary Lou Maher, Corporate Director

Marcela Manubens, Human Rights Expert

Amol Mehra, Director, Industry Transformation, Laudes Foundation

Emna Mizouni, Director, Digital Citizenship

Dante Pesce, Director, Centro Vincular, Universidad Catolica de Valparaiso, Chile

Michael H. Posner, Jerome Kohlberg Professor of Ethics and Finance, Stern Business School, NYU

Edward Santow, Professor – Responsible Technology, University of Technology, Sydney

Frank Seier, Business and Human Rights Specialist

Mattias Stausberg, Group Advocacy Director, Virgin Group Ltd

Michele Thatcher, Chief Human Rights Officer, PepsiCo Inc.

Jenny Vaughan, Director, Human Rights, Business for Social Responsibility (BSR)

Alexandria Walden, Global Head of Human Rights, Google Inc.

Brent Wilton, Business and Human Rights expert

Albert Emilio Yuson, General Secretary, Building and Woodworkers International (BWI).

*Support provided by the Institute for Human Rights and Business (IHRB)[[2]](#endnote-2). Key contributors to the report are: William Anderson, Rachel Cowburn-Walden, Bennett Freeman, Ty Greene, Scott Jerbi, Harpreet Kaur, Amol Mehra, John Morrison, Julia Olofsson, Sarah Ong, Haley St Dennis, Jenny Vaughan, Ilan Vuddamalay, Albert Emilio Yuson, Manuela Manubens. Thanks also to the World Benchmarking Alliance for providing examples of mechanisms in Appendix 2.*

*Insert WEF and IHRB logos*

**Contents**

1. Introduction
2. Board composition, competencies and practice
3. Why affected stakeholders are material to any Board
4. Research findings on Boards and relevant company mechanisms
5. Reporting and Transparency: What Board Members need to know
6. Conclusion: What’s on the horizon
7. Appendices:

* *Board Guidance Note: Board duties in ensuring company engagement with affected stakeholders*
* *Examples of relevant mechanisms for Board oversight*
* *The particular role of Human Rights Defenders*

**1. Introduction**

A corporate Board has ultimate responsibility for the actions of a company. This responsibility is of even greater importance today given growing societal expectations concerning the environmental and social performance of major companies[[3]](#endnote-3). Concepts such as ‘stakeholder capitalism’ frame contemporary understanding of the many groups in addition to shareholders that need to be considered when a Board exercises its oversight of policies and practices of the company. But which stakeholders should any Board prioritize and what mechanisms should a company have in place to mediate these relationships?

The standards that the United Nations, OECD and many governments have developed call on companies to prioritize their ‘affected stakeholders’ i.e. those upon whom business operations, products and services have the greatest impact.This includes some of the most vulnerable workers, communities and groups in our societies. Affected stakeholders need to be a key consideration in Board oversight and expectations of executive management.

This report supports and explains a ‘Board Guidance Note’[[4]](#endnote-4) (included in the Appendix) addressing Board relationships with affected stakeholders. It recognizes the developing regulatory, investor, employee, consumer and competitive space and the increasing need for Boards to focus on these issues. Central is the understanding that affected stakeholders are people with their own inherent dignity, agency and, importantly, human rights. This report outlines why such an approach is important, drawing on research and interviews with a range of stakeholders undertaken by members of the WEF Global Futures Council on Human Rights. It offers examples of how some Boards are already moving in this direction, including specific company mechanisms that might be useful for others. Particular attention is given to what Board members need to know in relation to human rights reporting and transparency, as well as Board level awareness of and engagement with human rights defenders in specific contexts.

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

**2. Board composition, competencies and practices**

A corporate Board is responsible for stewarding a company’s strategy, providing oversight of executive management, and ensuring that the company delivers for shareholders. Boards are also increasingly focused on the environmental and social impacts of their companies’ activities, and respecting human rights is an essential element of this important evolution[[5]](#endnote-5). To ensure that companies maximize long-term value for all stakeholders, including acting in a manner that is consistent with well-established human rights principles, Boards need to enhance their understanding of how people most affected by companies’ operations, supply chains, products, and services may be impacted and the human rights responsibilities this involves. Achieving this goal means that Boards need the right mix of skills, expertise, and perspectives to exercise these responsibilities effectively.

**Board Composition and Structure: Who should sit on the Board?**

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

***Diversity.*** In addition to the skills and perspectives that have long been considered essential for Board members (e.g., finance, operations, strategy), it is increasingly important that Board composition takes into account the broader social impacts of a company’s activities, including those relating to human rights. Broadening the perspectives and expertise of a Board enables a more comprehensive and inclusive ability to anticipate important questions, manage risk, prevent and mitigate adverse impacts, and enable the conditions for positive contributions to wider enjoyment of human rights. Many companies have experienced mistakes or missed opportunities because of insufficient understanding of adverse impacts of operations, supply chains, products, or services on people and communities. It is therefore essential that all Boards take steps to broaden the perspectives present in their discussions, to ensure a more complete understanding of impacts on people and communities affected by business activity. A Board that includes these perspectives will enhance its ability to understand trade-offs and competing priorities that are critical to the development and delivery of company strategies. To achieve these goals, it is also essential that Board search firms are well-equipped to identify candidates who can make valuable contributions on human rights issues; this may require going beyond usual search criteria and networks.

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

**Board Competencies: What does the Board need to know?**

Overseeing business performance related to human rights requires that a Board knows who the company’s affected stakeholders are, how they are impacted by its activities and relationships, and what steps the company is taking to prevent, mitigate, or remediate harms to these stakeholders. Equally important, the Board must have a baseline understanding of core human rights principles and standards, including those listed below. Basic fluency in international human rights standards and corporate responsibilities will help Board members identify potential issues and make good decisions in the context of legal requirements, existing and emerging standards, and evolving norms of expected corporate behavior.

**3. Why affected stakeholders are material to any Board**

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

The phrase “stakeholder capitalism” is defined as:

*“a form of capitalism in which companies seek long-term value creation by taking into account the needs of all their stakeholders, and society at large*”[[6]](#endnote-6).

This builds on earlier ideas such as “Shared Value” or even “Corporate Social Responsibility” but unlike earlier terms, Stakeholder Capitalism implies a social contract between business and society. But it begs the question who in fact are these stakeholders and who gets to decide? Is it the business itself, is it governments or can stakeholders have the autonomy to decide this for themselves?

**Affected stakeholders**

This conundrum can be largely resolved if we follow the “stakeholder” definition of the United Nations Guiding Principles on Business and Human Rights (UNGPs), which were unanimously endorsed by the UN Human Rights Council in 2011. Here priority should be given to “affected” stakeholders – those people (individuals, groups and communities) upon which the activities of a business impact the most. Since 2011, it has been the term “affected stakeholders” that has formed the bedrock for responsible business conduct standards within the UN, OECD and the 40 or so national governments that have developed National Action Plans on Business and Human Rights[[7]](#endnote-7). The commentary to UNGP18 says:

*“To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society.”[[8]](#endnote-8)*

This is also the definition adopted by the European Commission in February 2022 in its proposal for mandatory human rights and environmental due diligence for corporations:

*“The definition of “stakeholders” in Article 3(n) of the draft, defined as being the company’s employees, the employees of its subsidiaries, and other individuals, groups, communities or entities whose rights or interests are or could be affected by the products, services and operations of that company, its subsidiaries and its business relationships.”[[9]](#endnote-9)*

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

**Business and Human rights**

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

*“… Business enterprises should pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization, and bear in mind the different risks that may be faced by women and men.”[[10]](#endnote-10)*

Even before human rights due diligence become a mandatory requirement in countries such as France, Germany, Norway, the Netherlands and soon – it seems likely – the European Union, it has made intrinsic sense to many international companies. Non-financial risk cannot be viewed through the lens of ‘risk to business’ alone. Whilst the interests of business and society might well converge over the longer term (humans are consumers, climate change is an existential risk to profit and planet alike), they do not always coincide in the short-term. Incentive structures in businesses that focus on short-term performance might overlook or even run counter to the human rights of some of the most vulnerable people in any society. This is why many investors support initiatives such as the Corporate Human Rights Benchmark[[11]](#endnote-11) or the Principles for Responsible Investment[[12]](#endnote-12), both of which frame affected stakeholders and a human rights due diligence approach as symbiotic and intrinsically linked.

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

There are three key reasons why human rights are an increasingly essential topic for Boards to consider in relation to their affected stakeholders. First, regulatory requirements are increasing for performance, reporting, and disclosure. Second, many businesses have experienced significant financial and operational issues when human rights considerations are overlooked. Finally, societal expectations of business are rising substantially, both from communities and employees. To meet the needs presented by these changes, Boards should evolve their composition, expertise, and practices. That includes taking into consideration:

* ***Business and human rights standards***, starting with the UN Guiding Principles on Business and Human (UNGPs), including familiarity with the process of human rights due diligence.[[13]](#endnote-13)
* ***Evolving regulatory environment***, such as the trend toward mandatory human rights due diligence legislation (e.g., the European Union directive on corporate sustainability due diligence.[[14]](#endnote-14)
* ***Changing societal expectations***, as well as shifting consumer, shareholder, and public expectations of responsible business and corporate citizenship. Stakeholder dialogues/surveys, other survey data and focus groups can provide useful inputs to help Board members understand how the wider world sees human rights issues and their relationship to a company, an industry, or an operating environment.
* ***Legal instruments concerning human rights,***  such as those laid out in the International Bill of Human Rights (which includes the Universal Declaration of Human Rights (UDHR), the International Convention on Civil and Political Rights (ICCPR), and the International Convention on Economic, Social, and Cultural Rights (ICESCR)) and other relevant international human rights instruments, such as the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).[[15]](#endnote-15)

There is no one size fit all competency that makes for a human rights-aware Board. One place to start is by identifying core human rights issues relevant to the company and where gaps might exist within the Board in terms of its understanding of the issues and their impact on company strategy, investments, and operations.

**Delegating to Executive Management**

It is the executives within any company, not the Board, that have the day-to-day responsibility for implementing human rights due diligence within business activities including in relation to affected stakeholders. It is also mostly the case that it will be executives themselves that bring issues relating to affected stakehokders to the attention of Board Members. The executive managerial role is central, but this needs to be understood as delegated authority from the Board. No Board can directly engage with all affected stakeholders of a company. However, its oversight role must extend to ensuring that the right mechanisms are in place for executives to carry out its responsibilities in the context of relationships with affected stakeholders and related human rights due diligence requirements. It is the Board’s role to question whether the company has the correct range of mechanisms to manage its relationships with all affected stakeholders, in particular the most vulnerable, and whether those in place are operating effectively and meeting the needs of affected stakeholders.

**The rise of ESG**

As more countries continue to move towards some form of legislation concerning mandatory due diligence, Boards worldwide are already increasingly exposed to ESG issues. For example, responding to the climate crisis is an existential issue for society and business everywhere, and 2050 Net-Zero commitments will not be reached unless company Boards aligned their performance with these goals. Given that responses to climate change involve environmental and social dimensions, national governments are placing ESG requirements on high-carbon sectors to manage the transition effectively. Investors have shown an increasing willingness as well to flex their muscle at AGMs if Boards are perceived to be too slow in addressing issues of gender discrimination, diversity or climate action. Competitive access to finance is also increasingly predicated by strong ESG performance and board-level commitments.

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

**The specific role of Human Rights Defenders**:

“Human rights defenders play important roles in identifying adverse impacts of business activities on human rights. The UNGPs note that companies should consult human rights defenders as an important expert resource as part of their human rights due diligence, as defenders have a key role as watchdogs, advocates and voice for affected stakeholders.”

*The report Shared Space Under Pressure – Business Support for Human Rights Defenders (published in September 2018, was commissioned by the Business and Human Rights Resource Centre and International Service for Human Rights) – see Appendix 3*.

**4. Research findings on Boards and relevant company mechanisms**

The “Board Guidance Note: Board duties in ensuring company engagement with affected stakeholders”[[16]](#endnote-16) that accompanies this document sets out an illustrative list of mechanisms that can support efforts by corporate Boards in their oversight responsibilities on human rights related issues, including effective engagement with affected stakeholders. This list is included as well in Annex 2 of this report. These examples are meant to be illustrative and not all of the mechanisms listed function the same in every business sector, but it is a place to start.

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

Potential mechanisms of this kind include:

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

**The human rights competence of Boards**

As part of the research undertaken for this report, individuals representing a range of backgrounds, including those with experience serving on corporate Boards, were asked whether Boards they were familiar with currently have the right skills, experience and knowledge to undertake human rights related oversight tasks. Overall, current Board composition is reportedly diverse with varied sets of knowledge, skills and expertise; however, it is commonly accepted that many Board members require additional information and guidance in order to effectively address increased attention on ESG and mandatory due diligence related requirements. While a small number of Boards have members who are attuned to ESG opportunities, material ESG risks are demanding integration of the ESG parameters to the company's vision and business strategy, many engage only on compliance, ethics, and risks to the business.

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

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

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

Business representative

**Are human rights an issue for Boards?**

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

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

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

CSO *representative*

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

Business representative

The significance of inclusive, participatory and meaningful engagement with affected stakeholders in ensuring good corporate behavior and maintaining the social license to operate was affirmed by all interviewees. However, interviewees emphasized that stakeholder engagement should sit with executive management and functional teams with the Board providing oversight and guidance. Interviewees elaborated on the role of the Board in managing partnerships with stakeholders. As one private sector representative stated, "you could argue that there are other things and stakeholders that are incredibly important for the Board to understand. For example, consumers – how our products are performing…should they have relationships with our vendor base or our wholesale customers – they are all incredibly important for our business. But it is neither practical nor the best use of the Board's time in managing these relationships with stakeholders across the enterprise – it is the role and function of the executive leadership." . Civil Society Organisation representatives interviewed for this report shared similar concerns regarding the suitability of Board level conversations with affected stakeholders, particularly in the absence of suitable expertise or lack of preparation, as well as the complexities of power imbalances. As one interviewee noted, "the Board needs to go where the defenders are but before the Board does that – they need to invest heavily to understand affected stakeholders' issues, their interests…conduct site-visits, and meet [proxy] representatives of affected stakeholders before they directly engage.".

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

**How does the Board address human rights?**

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

* ***Integration into other Board activities:*** Concern for human rights can and should be integrated into other activities of the full Board or of Board committees. As more and more Boards establish ESG performance as an element of executive compensation and KPIs, human rights criteria should be considered for inclusion, along with other topics like climate and diversity, equity and inclusion (DEI), as such performance targets are established. Nominations Committees should also include the characteristics listed above as candidates for open Board seats are considered. Risk Committees should integrate human rights considerations into their activities as well.
* ***Scenarios:*** The use of scenarios has come into widespread practice through the activities of the Task Force on Climate-Related Financial Disclosures (TCFD). This process can be equally valuable for identification, anticipation, and action related to human rights risks. Scenarios can be a uniquely valuable tool for the Board to manage risks that might otherwise be missed or underestimated, and can provide guidance to management for risk mitigation and strategy development.
* ***Briefings from experts:*** Boards can benefit from expert briefings on key developments overall on human rights issues, and/or specific questions that may affect particular operations or issues of relevance to a company’s operations. Examples could include briefings on countries with problematic human rights records, locations where key company operations face a challenging human rights environment, gender or racial equity, evolving understanding of the intersection of technology and human rights, and the links between human rights and climate change.
* ***Advisory boards:*** Many companies have looked to augment their perspectives and expertise by establishing advisory boards, sometimes across all ESG issues, and sometimes with an area of focus like human rights. Many advisory boards are in regular contact with the formal governing Board, and this can provide an additional mechanism for more diverse perspectives to be included in Board deliberations.
* ***Site visits:*** For some companies, site visits by Board members to locations with material importance and relevant human rights questions will prove quite valuable. This is particularly true for companies in the energy and extractives sector, or others where a single location or country presents challenging issues. Such visits also offer opportunities to exchange with experts, community representatives, and other relevant stakeholders.
* ***Board effectiveness:*** Adding ESG issues, including human rights, to the annual Board effectiveness assessment is crucial. This ensures parity with other issues and helps identify areas of improvement for future years.
* ***Engaging in difficult conversations:*** Thorough and effective discussions of human rights issues may depend on reconciling or hearing significantly different points of view. Boards may consider establishing norms or best practices for such conversations. In the long run, investing in these difficult conversations can lead to benefits not achievable with more superficial forms of engagement or dialogue.

*“It is from beginning that we focus on guest workers…we have a responsibility towards these guest workers who come to work here in our company.”*

Business representative

**Does the company know who its affected stakeholders are?**

Overall, company representatives interviewed for this report noted the steps they take to map their stakeholders. However, the focus remains on those with employment relationships, including contractual and migrant workers. Though companies report mapping "affected stakeholders" in their operations and supply chains, there remains ambiguity about the precise definition of affected stakeholders and rights-holders. These are most often understood as being limited to individuals employed by the company directly or indirectly and rarely focused on wider communities that may be impacted by company activities, except among businesses in the extractives industry.

**Does the Board oversee a full range of human rights mechanisms*?***

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

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

Business representative

The frequency varies from quarterly to annual meetings, while almost all company interviewees reported sharing reports and briefings with their Boards every quarter. Boards reportedly engage on a regular basis with the executive committee, though conversations remain largely focused on compliance. Board members with background and expertise in sustainability or corporate social responsibility appear to be more engaged in understanding the interests of affected stakeholders, though engagement by others has reportedly increased recently in anticipation of the EU’s directive on mandatory environmental and human rights due diligence as well as the broader ESG discourse.

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

Business representative

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

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

Business representative

**5. Reporting and Transparency: What Board Members need to know**

A corporate Board hold critical roles in providing strategic guidance and oversight over a company and its management. This supervisory role comes together with fiduciary responsibilities, including ensuring due care in how Board members exercise their duties in a context of increasingly stringent corporate responsibility regulations.

In recent years there has been a marked growth of business and human rights standards, including those translated into legal mandates. Even more notable is the sharp uptick in demands for companies to address environmental, social and governance (“ESG”) criteria. 

Public disclosure of sustainability related information through reporting is integral to ensuring that accurate data flows to users who need it for decision making. Data from public corporate reports is used by investors who seek to understand sustainability risks in their portfolios and ensure their allocation of financial capital goes to sustainable businesses, products and activities, and signals openness to wider stakeholder engagement.

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

***Reporting obligations relating to Board oversight***

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

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

* **Section 1502 of the Dodd-Frank Act (2010)** requires disclosure of steps taken to address conflict minerals sourced from the Democratic Republic of Congo and surrounding areas;
* **California Transparency in Supply Chains Act (2012)** requires disclosure of verification, audit, certification, internal accountability and training efforts;
* **UK Modern Slavery Act (2015)** mandates the publication of modern slavery statements, which must be approved by the Board with a clear date of approval;
* **Securities and Exchange Board of India Listing Obligations and Disclosure Requirements Regulations (2015)** made disclosure on human rights and environmental risks mandatory for India's 1,000 largest publicly listed companies;
* **French Duty of Vigilance Law (2017)** requires companies to publish an annual vigilance plan, establishing measures to identify risk and prevent severe human rights impacts, including subcontractors and suppliers;
* **Australian Modern Slavery Act (2018)** requires modern slavery statements approved by principal governing bodies of the reporting entity;
* **EU Non-Financial Reporting Directive (2018)** is the first law to require companies to report on both the sustainability impacts and risks posed to companies, as well as those impacts on people and the environment (“double materiality”);
* **Dutch Child Labour Due Diligence Law (2019)** requires companies to identify and prevent child labour in their supply chain and appoint a regulator who publishes human rights due diligence statements in an online public registry. Notably the law includes criminal sanctions for failure to exercise human rights due diligence;
* **Hong Kong Stock Exchange enhanced requirements for ESG disclosure (2019)** newly introduced social key performance indicators, including how companies manage social risks across supply chains;
* **Norwegian Transparency Act (2021)** applies to a large range of companies and their entire supply chains, requiring due diligence activities and responses to information requests about how they address potential and actual impacts on human rights;
* **US Uighur Forced Labour Prevention Act (2021)** requires issuers to disclose any knowing engagement with entities in or affiliated with the Xinjian Uyghur Autonomous Region of China;
* **German Act on Corporate Due Diligence in Supply Chains (2021)** obliges companies to identify risks of human rights and environmental violations at their suppliers, take countermeasures and document them to the Federal Office for Economic Affairs and Export Control;
* **EU’s Sustainable Finance Disclosure Regulation (SFDR) (2021)** aims to improve transparency for sustainable investments and claims and requires standardised disclosures on how ESG factors are integrated at entity level and product level.

**6. Conclusion – What is on the Horizon?**

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

Different approaches to the issue of business responsibility for affected stakeholders are underway in different parts of the world. The European Union, for example[[17]](#endnote-17), is in the process of introducing landmark regulation covering not only EU companies, but third-country companies with significant turnover in the EU and companies with established relationships with EU companies.

In February 2022, the European Commission published its draft directive on **Corporate Sustainability Due Diligence[[18]](#endnote-18)**, kicking off the legislative review process. The draft proposal notes that company directors are responsible for putting in place and overseeing due diligence actions which must be reported to the board of directors. When fulfilling their duty to act in the best interest of the company, directors will need to consider human rights, climate change and environmental consequences, both in the short and long term. They will also need to ensure their corporate strategy considers the actual and potential adverse impacts identified.2 Furthermore, companies will be required to take measures to prevent, mitigate and end adverse impacts. They need to communicate through publishing a yearly statement on their website about the due diligence measures taken.

Legal advisors are noting the opportunity for companies to position themselves better for these upcoming regulations by already disclosing how sustainability considerations are integrated into strategies, policies and procedures and reviewing the extent to which their board and teams are equipped to address supply chain risks.3

If adopted by the European Parliament and Council, the **Corporate Sustainability Reporting Directive** (CSRD)[[19]](#endnote-19) is also due to come into effect in 2023 to replace the Non-Financial Reporting Directive. The CSRD aims to address previous gaps, reduce the burden of preparing multiple different reports and make data comparable and easier to access and use by multiple audiences. One new area in this reform will be the development of mandatory standards that will accompany the legislation to make it simpler to focus on what is most relevant.5 Advisors are pointing to how important it is for companies to prepare for this upcoming change as the sustainability data required will influence access to loans and investments for financing the energy transition.6

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

**Appendix One: Board Guidance Note on Board duties in ensuring company engagement with affected stakeholders**

This Guidance Note gives a brief overview of the role of corporate boards of directors in relation to the concept of ‘affected stakeholders’. This is the essence of ‘stakeholder capitalism’, in which companies seek long-term value creation by taking into account the needs of all their stakeholders, and society at large. This Note sets out five key questions any board might reflect upon and five steps each company should take when addressing this issue. It is accompanied by a Supporting Report, which clarifies concepts and provides specific examples of effective practices already in place within some businesses. In reality, most of these issues are delegated to senior staff for management on a day-to-day basis. But Board Members are the people at the end of a long chain linking those impacted by a company’s actions with those ultimately responsible for decisions and actions taken. Therefore, Board oversight of the relevant mechanisms for managing these issues is essential.

**Five key questions for any board to ask itself**

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

Five questions a Board should ask to determine how well it responds to the interests of those most affected by company operations:

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

(add some key findings from LW and HRD cases here)

The purpose of the Board

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

‘Affected stakeholders’

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

The nature of the relationship

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

**The steps every Board should take to ensure effective company engagement with affected stakeholders:**

These five steps are:

* Be clear about who the company’s affected stakeholders are;
* Decide what kinds of engagement mechanisms might be relevant to identify, assess and address risks to, and impacts on, the human rights of affected stakeholders;
* Establish the correct level of Board engagement and oversight;
* Ensure the board has the necessary skills, knowledge, diversity and experience;
* Monitor, evaluate and disclose progress.
* Be clear about who the company’s affected stakeholders are

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

* Decide what kinds of mechanisms might be relevant and appropriate

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

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

Appropriate mechanisms might include:

* Board governance
* Stakeholder councils
* Collective bargaining arrangements
* Human Rights Defender policies and procedures
* Human rights due diligence reports
* Grievance mechanisms
* Whistle-blower mechanisms and protections
* Site visits
* Enterprise risk registers
* Community engagement procedures
* Consumer and customer feedback processes
* Diversity and equal opportunities systems
* Disclosure and reporting frameworks
* Establish the correct level of board engagement and oversight

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

* Ensure the Board has the necessary skills, knowledge and experience

In order to carry out the necessary oversight of such mechanisms, as well as to act on the interests of affected stakeholders, Boards need the right composition, structure and work culture. The role of the chair is critical in securing this, allowing the Board to play the role of ‘critical friend’. The Board should include Executive and Non-Executive Members with the right skillsets and experience. A diverse group of Board Members should be capable of monitoring the work of Committees tasked with overseeing all relevant sustainability and governance issues, and exercise the appropriate level of oversight over senior executives within the company.

* Monitor, evaluate and disclose progress

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

**Appendix Two: Examples of relevant mechanisms that Boards might have oversight over**

This appendix describes some of the mechanisms that any company might have in place to ensure the company is respecting the human rights of affected stakeholders. Not all of these mechanisms will be explicitly labelled ‘human rights’ but they deal with specific aspects of human rights never-the-less. The Board’s oversight role of these mechanisms needs to ask the following questions:

* Does the range of mechanisms adequately cover the salient human rights of those stakeholders most affected by the company’s activities?
* Are they working effectively from the perspective of the affected stakeholder as well as the company?
* Does the Board regularly engage in ‘deep dives’ to be better understand specific mechanisms?
* Does the Board periodically review the appropriateness of such mechanisms and any emerging gaps?

This list of potential mechanisms is not exhaustive but hopefully they give some indication to Boards of what is meant as well as illustrative examples from companies. The selection of these examples is based on publicly available examples that have already been rated as good practice through independent and impartial initiatives such as the Corporate Human Rights Benchmark.

**Board Governance**

Companies can draw on human rights experience and expertise in different ways. Increasingly there will be at least one Board Member, usually a Non-Executive Director, who is the ESG lead and might chair the Board’s Sustainability Committee, although it is quite possible for the Board’s Chair or CEO to chair this committee. Some jurisdictions allow for Supervisory Committees on which worker and other affected stakeholder representatives might sit (e.g. Germany). Some companies might also create Advisory Boards (focused on sustainability, ESG or human rights specifically) which might also include affected stakeholder representatives and advise the Corporate Board directly.

***Example: Ford Motor Company[[20]](#endnote-20)***

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

*According to the Committee's Charter the sustainability strategies includes 'including human rights, working conditions, and responsible sourcing'. In addition, in its UNGPRF Index 2020, it states: 'Human rights issues are monitored throughout the year and brought to the attention of the Sustainability and Innovation Committee of the Board of Directors for review and oversight as they arise. We have a Corporate meeting structure to improve how we operate the business today and prepare us for the future, framing how we think, inspect, decide and learn'[[21]](#endnote-21)*

***Example: Total[[22]](#endnote-22)***

The Company's Human Rights Internal Guide, which contains Total's human rights commitments, contains a message from the CEO (Patrick Pouyanne) which states that "the Group is committed to respect internationally recognized Human Rights standards in the countries where we work." Furthermore, the Company's Safety Health Environment Quality Charter, which outlines a commitment to comply with Voluntary Principles on Security and Human Rights is signed off by the CEO (Patrick Pouyanne).

The Human Rights Coordination Committee coordinates the initiatives and action taken by the various Total business units relating to Human Rights. It is led by the Ethics Committee chair. The Ethics Committee's mission is to ensure the Code of Conduct (which contains Human Rights policy commitments) is shared, understood and implemented across the Company. The chair of the Ethics committee reports regularly to the Executive Committee and to the Governance & Ethics Committee of the Board of Directors on the implementation of the Code of Conduct which includes Human Rights policy commitments.

The Company’s Human Rights Briefing Paper states that consultation with internal and external stakeholders, the Code of Conduct and Human rights Guide identified "three broad and important focal (salient) Human Rights areas." These include Human Rights in the Workplace, Human rights and Local Communities and Human Rights and Security. The Human Rights Coordination Committee coordinates the initiatives and action taken by the various Total business units relating to Human Rights. It is led by the Ethics Committee chair. The Ethics Committee's mission is to ensure the Code of Conduct (which contains Human Rights policy commitments) is shared, understood and implemented across the Company. Its Chairman reports directly to Total's CEO and presents an annual report to Total's executive commitment and Board of Directors.[[23]](#endnote-23)

**Stakeholder Councils**

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

***Example: Adidas Group[[24]](#endnote-24)***

Adidas Group has built a longstanding commitment to engaging its stakeholders, reflected in its Stakeholder Relations Guideline. The definition of stakeholders included in this document is the following: ' people or organizations who affect, or are affected by, our operations and activities.' They include employees, business partners, community members and workers in suppliers' factories among others.

The Company quotes several programs and initiatives which show how it engaged stakeholders in the development or monitoring of its human rights approach. One example is its work with the Fair Labour Association (FLA) as part in the multi-stakeholder forum Americas Group focused on freedom of associations issues or its work with the United Nations High Commissioner for Refugees (UNHCR), and the Turkish Ministry of Labour and Social Security to advocate for rights for Syrian refugees and discuss the challenges in integrating them into the labour market.[[25]](#endnote-25)

**Collective bargaining arrangements**

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

***Example: Unilever[[26]](#endnote-26)***

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

In the human rights report, the Company indicates that in addition to day-to-day interactions between its leadership teams and union representatives in the factories, it has formal consultations with unions. ‘We conduct a biannual consultation forum with the IUF (International Union of Food, Agricultural Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations) and IndustriALL, a face-to-face engagement between our senior industrial relations leaders and IUF leadership’. ‘Worker representatives discuss local and global rights issues which then can be addressed by our senior team; these discussions also give us a platform to communicate our own business context, and ne policies and programmes that impact workers. We discuss rights issues in our own operations, in joint ventures, and involving our suppliers. We also focus on our key commodities such as palm oil and tea, and particularly on working conditions for women in those sectors’.[[27]](#endnote-27)

**Human Rights Defender policies and procedures**

Nearly 30 companies now have policies specifically addressing some of the most vulnerable of all affected stakeholders: human rights defenders. A specific report on the role of boards in relation to human rights defenders can be found here.

***Example: Human Rights Defenders and Civic Freedoms Portal[[28]](#endnote-28)***

HRDs’ work is essential to the business and human rights movement because of their critical importance for ensuring corporate responsibility and accountability. Yet, attacks on them are growing. This hub brings together news on these advocates and communities - specifically on land, environmental and labour defenders, guidance for companies and investors, and supportive business actions. It also links to our database of attacks and interview series.

“One of the most important and urgent opportunities for responsible business is to support civic freedoms - freedoms of association, assembly, expression and privacy - and the people who exercise the rights to defend all human rights. There is a clear normative responsibility for companies to respect human rights, as set forth in the Guiding Principles on Business & Human Rights (UNGPs), and companies also have a discretionary opportunity to go above and beyond these defined responsibilities and expectations. The UNGPs are a hard floor, not a low ceiling, for company action to support civic freedoms and human rights defenders (HRDs). This page gathers the latest news on business action in support of human rights defenders and features a collection of company and investor policies that mention HRDs.

The following international companies have issued Human Rights Defender Policies:

|  |  |  |  |
| --- | --- | --- | --- |
| Diageo | Kellogg | McDonalds | M&S |
| Pernod-Ricard | Tesco | SK Hynix | Adidas |
| GAP | Inditex | Kering (Gucci) | VF Corporation |
| Barrick Gold Corp | BHP | Freeport McMoRan | Newmont |
| Repsol | Vale | Analog Devices | Ericsson |
| Intel Corporation | Micron Technology | Microsoft | Murata Man |
| Nokia | NXP Superconductors |  |  |

The following international companies have issued Human Rights Defender Statements:

|  |  |  |  |
| --- | --- | --- | --- |
| Heineken | Coca-Cola Company | Woolworths | Tiffany |
| Walmart | Chevron | Isagen | Eni |
| Rio Tinto | Vattenfall | Apple Inc. | Unilever |

The following institutions and initiatives also have Human Rights Defender Statements:

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

**Human rights due diligence reports**

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

***Example: Directive of the European Parliament and of the on Corporate Sustainability Due Diligence (23 February 2022)[[29]](#endnote-29)***

“Article 25 on Directors’ Duty of Care requires that *“Member States shall ensure that, when fulfilling their duty to act in the best interest of the company, directors of companies referred to in Article 2(1) take into account the consequences of their decisions for sustainability matters, including, where applicable, human rights, climate change and environmental consequences, including in the short, medium and long term”.*It goes on to require that: *“Member States shall ensure that their laws, regulations and administrative provisions providing for a breach of directors’ duties apply also to the provisions of this Article”*. The positive here is that the proposal makes the requirement a strategic one, even if it is not specific about the timeframes involved (how short term is short term, how medium is medium term and so on?). This is especially important in business sectors, such as commodity trading, apparel and other fast-moving consumer goods, that seem allergic to long-term planning, whether on sustainability issues or otherwise. When it comes to environmental and climate issues, long-term can mean the very long-term, and the Commission needs to clarify whether it wishes business to encompass inter-generational considerations. The Article also calls on member states to ensure that not doing so would be a breach of director duties, even though it permits states themselves to define what this might mean at the national level.

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

**Remedies and Grievance mechanisms**

Operational-level grievance mechanisms are also a requirement of the UN Guiding Principles on Business and Human Rights and can provide both remedy to the victim as well as invaluable information for management and Boards.

***Example: Anglo-American plc[[30]](#endnote-30)***

The Human rights policy indicates that 'Where we have caused or contributed to adverse human rights impacts we will contribute to their remediation as appropriate'. Also, the Social Way document indicates that effective social performance is linked to respect for human rights, meaning 'avoiding, preventing, mitigating and, where appropriate, remediating adverse human rights due diligence'.  Social way document states that managed sites shall ensure 'Clear communication that the existence of the complaints and grievance mechanism does not preclude the right of stakeholder to engage in judicial or other legitimate processes, in which Anglo American is committed to cooperate'.[[31]](#endnote-31)

***Example: Microsoft[[32]](#endnote-32)***

The Company responded in a detailed letter to Amnesty International in October 2017, where it addressed the questions put to it by Amnesty regarding its investigation into its supply links to the DRC and Huayou Cobalt. The response provides detailed information on the changes that Microsoft says it has undertaken in response to the report previously released by Amnesty, and just prior to the release of Amnesty's follow up report 'Time to Recharge' in November 2017. These changes by Microsoft relate to both the mapping of the company's supply chain and also the increased expectations placed on suppliers.[[33]](#endnote-33)

***Example: Accord on Fire and Building Safety in Bangladesh[[34]](#endnote-34)***

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

The Accord Steering Committee agreed that the company should use the Accord to exercise due diligence as outlined in the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. The company signatory was therefore requested to engage with the Accord Secretariat and the other signatory companies sourcing from the same factory, with a view to increase its leverage to attempt and remedy the alleged rights violations.

As a result, the Accord Secretariat investigated the harassment and excessive work hours allegations through the Complaints Mechanism; and found the allegations had merit. In accordance with the Accord protocols, the Secretariat kept all the responsible companies informed throughout the process of investigation and issue of resolution.

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

**Whistle-blower mechanisms and protections**

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

***Example: OECD’s initiative on effective whistleblower protection in the public and private sectors*.[[35]](#endnote-35)**

Whistleblower protection is integral to fostering transparency, promoting integrity, and detecting misconduct. Past cases demonstrate that corruption, fraud, and wrongdoing, as well as health and safety violations, are much more likely to occur in organisations that are closed and secretive. In many cases, employees will be aware of the wrongdoing, but feel unable to say anything for fear of reprisals, concern about acting against the organisation’s culture, or lack of confidence that the matter will be taken seriously. The negative implications of this are far-reaching for both organisations and society as a whole. Effective whistleblower protection supports employees in “blowing the whistle” on corruption, fraud or wrongdoing. The OECD has nearly two decades of experience in guiding countries to review whistleblower protection measures, increase awareness, and develop policies founded on international good practices. The OECD pioneered the first soft law instrument on public sector whistleblower protection, with the 1998 Recommendation on Improving Ethical Conduct in the Public Service. In 2009, the OECD Council adopted its Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions, requiring the 41 Parties to the Anti-Bribery Convention to put in place public and private sector whistleblower protection measures.

**Diversity and Inclusion (D&I) Policies**

Insert example from WEF initiative on racial justice Partnering for Racial Justice in Business | World Economic Forum (weforum.org)

**Community engagement procedures**

The ‘social licence to operate’ is key concept for businesses that have direct physical relationships with affected stakeholders, such as in the mining sector. Maintaining this consent is a key consideration for Boards.

***Example: The International Council on Mining and Metals: Understanding Company-Community Relations Toolkit[[36]](#endnote-36)***

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

* Building and maintaining positive relationships with local communities is vital to the success of mining and metals operations.
* The Toolkit is designed to help companies understand the nature of their relationships with communities; irrespective of whether these are supportive or otherwise. Ultimately the emphasis is on helping companies achieve relationships that are supportive.
* It aims to help companies understand the factors that influence community support and measure the level of community support at a particular project or operation.
* It provides a tool to visualise the levels of community support that different stakeholders or stakeholder groups have for a project or operation and offers practical guidance on how this tool can be used to monitor and strengthen community support and, ultimately, community–company relationships.
* This approach outlined in the Toolkit recognises that a company's attitudes and behaviours towards host communities, and the context in which it operates, play a fundamental role in determining the degree to which communities support a particular project or operation and the quality of relationships between the company and the community.
* The Toolkit has been adapted into training materials for companies to use and adapt to support communication of key concepts and tools internally to different audiences, including senior leadership, non-community relations specialists and new community relations practitioners. The slide decks include speaking points and suggested facilitated exercises.

**Disclosure and reporting frameworks**

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

***Example: The Corporate Human Rights Benchmark[[37]](#endnote-37)***

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

**Appendix Three: The role of Human Rights Defenders**

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

**Shared Space Under Pressure – Business Support for Human Rights Defenders[[38]](#endnote-38)**

The report Shared Space Under Pressure – Business Support for Human Rights Defenders, published in September 2018, was commissioned by the Business and Human Rights Resource Centre and International Service for Human Rights.[[39]](#footnote-2) The report responded to the growing pressure on civic freedoms and civil society around the world—and the increasing attacks on human rights defenders. It offers an analytical and operational framework to guide companies as they determine whether—and if so how—to act in support of this agenda.

The reportdraws on over 90 interviews with company and industry associations representatives, responsible investors, civil society advocates, human rights defenders, as well as leaders of multi-stakeholder initiatives, academic experts as well as government and UN officials.

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

* The **normative responsibility** based on the UN Guiding Principles **plus** **the** **discretionary opportunity** to act to support human rights defenders and the shared space;
* A **spectrum of actions and flexible pragmatism** to guide companies on whether and how to act;
* Analysis of the **relative risks of action versus inaction;**
* A set of **“spotlights”** highlighting how companies in different sectors and countries have addressed civic freedoms and human rights defenders plus initiatives/actors making a difference.

**The UN Working Group on Business and Human Rights: The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders[[40]](#endnote-39)**

The UN Working Group’s guidance[[41]](#endnote-40), published in June 2021, emphasizes the need to address the adverse impact of business activities on human rights defenders. It “unpacks” for States and business the normative and practical implications of the UN Guiding Principles on Business and Human Rights (UNGPs) in relation to “protecting and respecting the vital work of human rights defenders.” The guidance is informed by engagement with diverse stakeholders, including human rights defenders as well as civil society, business and States, and a public call for contributions.

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

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

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

The Working Group guidance to business focuses primarily on the implications with respect to human rights defenders arising from the corporate responsibility to respect human rights as articulated in the UNGPs. As such it does not elaborate much on the “business case” for companies to act to defend or protect the rights of human rights defenders when the UNGPs do not apply. However, it refers to the Shared Space framework for the articulation of the business case and furthermore recognizes that business also benefits from engaging human rights defenders as “partners.”

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

**ENDNOTES**

1. https://www.weforum.org/ [↑](#endnote-ref-1)
2. www.ihrb.org [↑](#endnote-ref-2)
3. https://www.weforum.org/global\_future\_councils/gfc-on-human-rights/articles/business-esg-affected-stakeholders [↑](#endnote-ref-3)
4. Board Guidance Note: Board duties in ensuring company engagement with affected stakeholders, World Economic Forum, May 2022. [↑](#endnote-ref-4)
5. https://www.weforum.org/agenda/2020/12/business-human-rights-must-find-a-permanent-place-in-the-boardroom/ [↑](#endnote-ref-5)
6. https://www.weforum.org/agenda/2021/01/klaus-schwab-on-what-is-stakeholder-capitalism-history-relevance/ [↑](#endnote-ref-6)
7. https://globalnaps.org [↑](#endnote-ref-7)
8. https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\_en.pdf [↑](#endnote-ref-8)
9. https://ec.europa.eu/info/sites/default/files/1\_1\_183885\_prop\_dir\_susta\_en.pdf [↑](#endnote-ref-9)
10. https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\_en.pdf [↑](#endnote-ref-10)
11. https://www.worldbenchmarkingalliance.org/corporate-human-rights-benchmark/ [↑](#endnote-ref-11)
12. https://www.unpri.org/ [↑](#endnote-ref-12)
13. https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\_en.pdf [↑](#endnote-ref-13)
14. https://ec.europa.eu/info/sites/default/files/1\_1\_183885\_prop\_dir\_susta\_en.pdf [↑](#endnote-ref-14)
15. https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights [↑](#endnote-ref-15)
16. Board Guidance Note: Board duties in ensuring company engagement with affected stakeholders, World Economic Forum, May 2022 [↑](#endnote-ref-16)
17. https://www.ihrb.org/other/governments-role/human-rights-due-diligence-and-corporate-boards-reflections-on-european-commission-proposals-relating-to-director-duties-and-board-oversight [↑](#endnote-ref-17)
18. https://ec.europa.eu/info/sites/default/files/1\_1\_183885\_prop\_dir\_susta\_en.pdf [↑](#endnote-ref-18)
19. https://www.europarl.europa.eu/legislative-train/theme-a-european-green-deal/file-review-of-the-non-financial-reporting-directive [↑](#endnote-ref-19)
20. https://www.worldbenchmarkingalliance.org/corporate-human-rights-benchmark/ [↑](#endnote-ref-20)
21. Sustainability Report 2020, 2020: [corporate.ford.com](http://corporate.ford.com/) & Charter of the Sustainability and Innovation Committee of the Board of Directors, 03/2015: [corporate.ford.com](http://corporate.ford.com/)] [↑](#endnote-ref-21)
22. https://www.worldbenchmarkingalliance.org/corporate-human-rights-benchmark/ [↑](#endnote-ref-22)
23. Total, Human Rights Internal Guide, 2015: total.com & Safety Health Environment Quality Charter, 2014: total.com. Video on the Human Rights Briefing Paper, 2018: total.com & Human Rights Internal Guide, 2015: total.com. [↑](#endnote-ref-23)
24. https://www.worldbenchmarkingalliance.org/corporate-human-rights-benchmark/ [↑](#endnote-ref-24)
25. Adidas Stakeholders relations guideline, 2016; Adidas Group Assessment for Accreditation, Oct 2017: fairlabor.org [↑](#endnote-ref-25)
26. https://www.worldbenchmarkingalliance.org/corporate-human-rights-benchmark/ [↑](#endnote-ref-26)
27. Human rights policy statement: unilever.com; Human rights progress report, 2017: unilever.com [↑](#endnote-ref-27)
28. https://www.business-humanrights.org/en/big-issues/human-rights-defenders-civic-freedoms/ [↑](#endnote-ref-28)
29. https://ec.europa.eu/info/sites/default/files/1\_1\_183885\_prop\_dir\_susta\_en.pdf [↑](#endnote-ref-29)
30. https://www.worldbenchmarkingalliance.org/corporate-human-rights-benchmark/ [↑](#endnote-ref-30)
31. Human Rights Policy version 2, 2018: angloamerican.com & Social Way: australia.angloamerican.com; Social Way: australia.angloamerican.com [↑](#endnote-ref-31)
32. https://www.worldbenchmarkingalliance.org/corporate-human-rights-benchmark/ [↑](#endnote-ref-32)
33. Reuter's article on child labour in DRC, Nov 2017: reuters.com & Response to Amnesty International, 27/10/2017: download.microsoft.com; Response to Amnesty International, 27/10/2017: download.microsoft.com [↑](#endnote-ref-33)
34. https://bangladeshaccord.org/updates/2020/01/07/the-accord-complaints-mechanism-and-the-brands-due-diligence-requirements [↑](#endnote-ref-34)
35. https://www.oecd.org/corruption/ethics/whistleblower-protection/ [↑](#endnote-ref-35)
36. https://www.icmm.com/en-gb/guidance/social-performance/understanding-company-community-relations-toolkit [↑](#endnote-ref-36)
37. https://www.worldbenchmarkingalliance.org/corporate-human-rights-benchmark/ [↑](#endnote-ref-37)
38. https://media.business-humanrights.org/media/documents/fdfe07e3d812cfcfed4235fbbf820a3d77599b13.pdf [↑](#endnote-ref-38)
39. The report was prepared by Bennett Freeman, a longtime leader and innovator in the business and human rights field (since serving as U.S. Deputy Assistant Secretary of State for Democracy, Human Rights and Labor from 1999-2001). [↑](#footnote-ref-2)
40. https://www.business-humanrights.org/en/latest-news/un-working-group-on-business-and-human-rights-presents-guidance-on-respect-for-human-rights-defenders-to-human-rights-council/ [↑](#endnote-ref-39)
41. Led by UN Working Group member and prominent University of Washington law professor Anita Ramasastry [↑](#endnote-ref-40)