



## PILLARS IN PRACTICE

Advancing the United Nations  
Guiding Principles on Business  
and Human Rights

**in the Zimbabwe Mining Sector**



## WELCOME

This Handbook is part of the “Pillars in Practice” project lead by Social Accountability International (SAI) and the Danish Institute for Human Rights (DIHR). The project is financially supported by the U.S. Department of State Bureau of Democracy, Human Rights, and Labour. The project is being carried out between October 2012 and September 2014.

“Pillars in Practice” refers to the pillars of the UN Guiding Principles on Business and Human Rights developed by Special Representative John Ruggie and team. The Guiding Principles are based on three pillars: the state’s duty to protect, the corporate responsibility to respect and access to remedy. Since being unanimously adopted by the UN in June 2011, the Guiding Principles have been welcomed by governments, the business community and civil society.

They are designed to provide a coherent global framework for preventing and addressing adverse human rights impacts linked to business activity.

Although welcomed, stakeholders also realize that there is still a lot of work to do on the awareness, understanding and implementation of the Guiding Principles worldwide. “Pillars in Practice” facilitates this dissemination and implementation work by targeting three industrial sectors and countries: agriculture in Nicaragua, garment manufacturing in Bangladesh, and mining in Zimbabwe. These countries and sectors were chosen based upon need and partner experience with them. The project activities are implemented and adjusted according to context by a consortium of international and local civil society (CSO), including SAI, the DIHR, the CSR Centre in Bangladesh, UNIRSE and Professionals for Corporate Social Auditing (PASE) in Nicaragua and the Zimbabwe Environmental Law Association (ZELA) in Zimbabwe.

This Handbook contributes to a specific objective of “Pillars in Practice,” which is to produce targeted, country- and industry-specific training curricula, validated by local stakeholders, on the Guiding Principles for companies, their suppliers, CSOs, and government. The Handbook informs the mentioned stakeholders on content, implications and implementation of the Guiding Principles and is an important background document for a training of trainers program, which builds training capacity of the mentioned local civil society partners.

The Handbook leverages two important tools: (1) the Handbook and Toolkit developed by SAI in cooperation with ICCO (Interchurch Organization for Development Cooperation) called: UN Guiding Principles on Business and Human Rights: A Six-Step Approach to Supply Chain Implementation, published in June 2012, and (2) the DIHR’s Human Rights Country Portal briefings on human rights and business in Bangladesh, Nicaragua and Zimbabwe.

These existing tools were complemented with other resources and adapted into three sector/country-specific Handbooks: agriculture in Nicaragua, garment manufacturing in Bangladesh, and mining in

Zimbabwe. Each Handbook has a "general" section, which remains the same for all three handbooks. The country and sector specific sections differ per Handbook and provide information on specific human rights risks and how to prevent and address those risks from a company or government perspective. Each Handbook was vetted and validated through consultations with national stakeholders and industry experts via conference calls, meetings, and electronic document revisions.

The first part of the Handbook introduces the Guiding Principles. It describes the content and implications of the Guiding Principles and details the foundational and operational principles underneath the state's duty to protect, the corporate responsibility to respect and access to remedy. For each of the pillars, general explanation and recommendations leading to implementation are described. The second part is the country and sector specific part of the Handbook. Here we provide general context and background and describe the so called salient risks per country and sector. We conclude with specific steps for state and companies to help prevent and address the described risks.

## 3 PILLARS:

The State Duty to Protect,  
the Corporate Responsibility  
to Respect,  
Access to Remedy

Based on the content description above, this Handbook is applicable to professionals in government, companies and CSOs dealing with the countries and sectors described. For government representatives it increases their awareness and understanding of the Guiding Principles and gives concrete support to help set new policies and legislation that help to bridge identified gaps or help with more effective enforcement of existing legislation. For companies the information can be of use to senior management, as well as professionals in the human resources, corporate social responsibility, sourcing and other departments to help them

implement respect for human rights in their company's policies and procedures. The Handbook can also help CSOs to become a professional and educated partner to governments and companies in improving the human rights situation in their countries.

Our hope is that we bring together knowledge, innovative ideas, perspectives and tools that will accelerate the journey of continual improvement – a journey that will bring stakeholders closer together and will facilitate the embedding of human rights respect in each of the sectors addressed.

## Acknowledgements

This Handbook builds upon (1) the Handbook and Toolkit developed by SAI in cooperation with ICCO (Interchurch Organization for Development Cooperation) called: UN Guiding Principles on Business and Human Rights: A Six-Step Approach to Supply Chain Implementation, published in June 2012, and (2) the DIHR's Human Rights Country Portal briefing on human rights and business in Zimbabwe.

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This Handbook takes the Guiding Principles and translates them into practical implementation steps. Information relating to the explanation, interpretation and implementation of the Guiding Principles is derived from the "Guiding Principles, An Interpretative Guide on the Responsibility to Respect Human Rights" developed by the Office of the United Nations High Commissioner for Human Rights, and draws upon the experience of SAI, DIHR, our members, network of experts, and our multi-stakeholder partners. Other resources include "How to do Business with Respect for Human Rights: A Guidance Tool for Companies," the Hague: Global Compact Network Netherlands.

## About the Partners in Pillars in Practice

**Social Accountability International (SAI)** is a multi-stakeholder NGO whose mission is to advance the human rights of workers around the world. It partners to advance its mission by promoting ethical working conditions, labor rights, corporate social responsibility and social dialogue. Its advisory board includes trade unions, companies and NGOs from 10 countries and five industries. It developed the SA8000® workplace standard, a widely used tool for implementing ILO conventions. SAI is one of the world's leading social compliance training organizations, having provided training to over 50,000 men and women, including factory and farm managers, national and migrant workers, brand compliance officers, auditors, labor inspectors, trade union representatives and other worker rights advocates established in 1997. SAI is active in a range of capacity building partnerships involving industry, CSO and government in diverse countries and sectors. More information on SAI via: <http://www.sa-intl.org>.

**The Danish Institute for Human Rights (DIHR)** was established as the Danish Centre for Human Rights by a parliamentary decision in 1987 and in 2002 was established as a national human rights institution (NHR). As mandated by law, DIHR must endeavour to strengthen the collection, development and communication of knowledge about human rights in Denmark and internationally. DIHR is now one of the largest NHRIs in the world, with a staff of around 100 employees, and is highly respected internationally. The Department works in three main areas: Embedding good human rights policies and practices directly in MNCs, building the capacity of NHRIs, state actors and civil society to play their essential roles in ensuring respect for human rights by business; and participating in international, regional and sector initiatives to develop normative frameworks and operational guidelines for business operations. More information on DIHR via: <http://www.humanrights.dk>

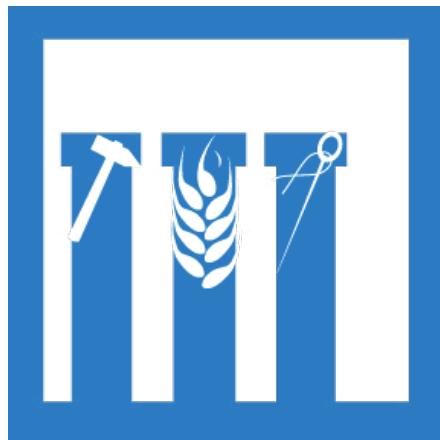
**The CSR Centre in Bangladesh** is an organization that was initiated and established by the private sector; it aims to contribute to the achievement of the human development targets set in the Millennium Development Goals (MDGs) through private sector development. As a joint focal point of the United Nations Global Compact and the lead promoter of the Global Compact Network Bangladesh, the Centre has worked in the ready-made garment sector (RMG) to promote the UNGC principles including labor standards, health & safety, women empowerment, social compliance, and sustainable business practices. The Centre fosters a network and cooperation between existing CSOs and state actors and brings in new players to create sustainable development models for the RMG industry. In the recent initiative of UN Secretary General Ban Ki-moon – "Every Woman Every Child" – CSR Centre played a vital role in engaging with the private sector and obtaining commitments from the corporate sector. More information on the CSR Centre via: <http://www.csrcentre-bd.org>

**The Zimbabwe Environmental Law Association (ZELA)** is a public interest non-governmental organization that seeks to promote environmental justice, sustainable and equitable use of natural resources, democracy and good governance in natural resources extraction. Its work helps poor communities to assert and claim their environmental, economic, social and cultural rights. ZELA's work cuts across different sectors, including mining. Direct and indirect beneficiaries include: rural and urban communities, community based organizations, local authorities, parliamentarians, government departments, industry and civil society organizations. ZELA hosts a multi-stakeholder platform on transparency and accountability in the mining sector and has been instrumental in assisting the Kimberley Process Certification Scheme (KPCS) to gather information on the human rights situation in Marange diamond mining fields and to assess the country's compliance with the KPCS minimum requirements. Since 2010, ZELA has coordinated the activities of the KP Local Focal Point. More information on ZELA via: [http:// www.zela.org](http://www.zela.org)

**Professionals for Corporate and Social Auditing (PASE)** – or Profesionales para la Auditoría Social Empresarial – is an NGO dedicated to the promotion of decent social conditions in Nicaragua through independent monitoring, training, mediation and capacity building programs on compliance with codes of conduct and labor laws. Founded in 2003 with help from the well-known women's NGO Movimiento de Mujeres "Maria Elena Cuadra," PASE and its team of lawyers work to improve labor practices in Nicaragua's manufacturing and agriculture industries. During SAI's Project Cultivar, PASE secured the participation of all six banana farms in Nicaragua. PASE trained a technical team of trade union leaders on occupational health and safety and national labor laws.

The trade union technical team has since replicated the training for 78 union leaders and 100 general workers, a third of whom are unaffiliated to the unions. ASE has also delivered training to workers and management in the sugar and garment sector in Nicaragua.

**Unión Nicaragüense para la Responsabilidad Social Empresarial (uniRSE)** is a nongovernmental business membership organization founded by twenty two member companies on April 29, 2005. It currently has over 70 members, from a variety of businesses, all of whom are committed to a common goal and business culture of promoting Corporate Social Responsibility as a way of doing business by sustainably managing their operations with regard to economic, social, and environmental decisions, and recognizing the interests of a diverse set of stakeholders. More information on uniRSE via: <http://www.unirse.org/>



## PILLARS IN PRACTICE

### CHAPTER 1

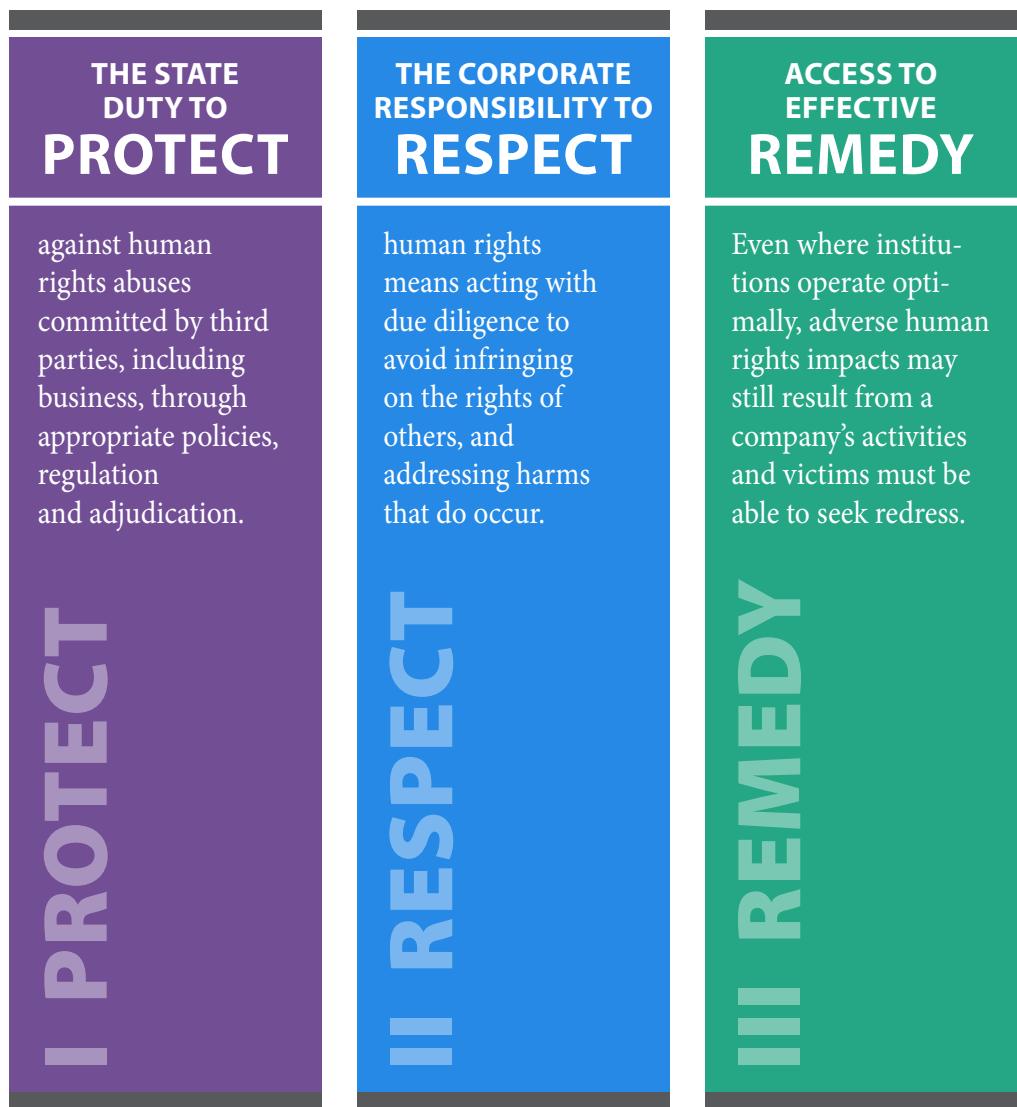
The United Nations Guiding Principles

**“Protect, Respect and Remedy”  
Framework**

# Introduction and Background

This document is based on the United Nations “Protect, Respect and Remedy” Framework for Business and Human Rights (hereafter referred to as the Framework) and the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (hereafter referred to as the Guiding Principles).

The Framework rests on three pillars



The development of the Framework and Guiding Principles was led by the United Nations Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (hereafter known as the Special Representative).

The Framework and Guiding Principles are in part a response to the escalating tension between the growth of the scale, reach, and impacts of transnational business transactions, and the resulting adverse impacts on human rights. The risks of human rights violations by businesses became more visible in the 1990s as oil, gas and mining companies expanded in sensitive areas, and as the footwear and garment industry came under scrutiny for poor working conditions. These tensions have been difficult to address, since international governance is weak, guidelines or regulations on transnational behavior of companies are rare, and national regulation can be lacking or – more commonly – poorly enforced.

"The Guiding contribution lies not in the creation of new international law obligations but in elaborating the implications of existing standards and practices for States and businesses; integrating them within a single, logically coherent and comprehensive template; and identifying where the current regime falls short and how it should be improved."

*– Guiding Principles on Business and Human Rights*

Due to the heightened awareness of these situations by consumers, investors, NGOs and other stakeholders (enabled by improvements in global technology and communications), and due to the myriad risks that these situations posed to business in terms of operational, reputational, legal, and other issues, responses began to emerge. Businesses started to work on their own codes of conduct, individually or with others in their industry. Civil society and nongovernmental organizations (NGOs) developed their own guidance and advocacy positions on business, and on occasion opted to collaborate with business through multi-stakeholder initiatives to protect workers' and communities' rights. Examples of these initiatives include the Ethical Trading Initiative (ETI), the Fair Wear Foundation (FWF) and Social Accountability International (SAI). Other initiatives followed in their footsteps, as various stakeholders undertook work in awareness raising, social auditing, training, capacity building and social reporting.

Many of these initiatives resulted in positive workplace changes. However, there remained little clarity and consistency on the definition of and distinction between the respective responsibilities of states and businesses, which perpetuated the lack of a level playing field for business.

The Special Representative described this situation as "the lack of an authoritative focal point around which the expectations and actions of relevant stakeholders could converge," and aimed to provide that focal point with first the Framework in 2008, followed by the Guiding Principles in 2011. Both were developed through extensive global consultation and research.

The Framework consists of three pillars, aimed at distinguishing and clarifying the respective roles of States and business.

- I. **The first is the State duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication.**
- II. **The second is the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved.**
- III. **The third is the need for greater access by victims to effective remedy, both judicial and non-judicial.**

Both the Framework and the Guiding Principles were supported by all major stakeholders, including unanimous acceptance by the UN Human Rights Council, as well as individual endorsements by governments, business enterprises and associations, civil society and workers' organizations, national human rights institutions and investors. Support for the Framework was further emphasized by the alignment of other influential initiatives that adopted key principles of the Special Representative's work into their own standards. These include the revised OECD Guidelines for Multinational Enterprises, the ISO 26000 standard and the Performance Standards of the International Finance Cooperation (IFC). The Guiding Principles have also been recognized by the European Union as one of the key internationally recognized principles and guidelines representing an evolving and recently strengthened global framework for CSR.

Even unanimous endorsement by the Human Rights Council does not mean that the Guiding Principles are so-called "hard law." As explained in the Special Representative's final report to the Human Rights Council:

"The Guiding Principles' normative contribution lies not in the creation of new international law obligations but in elaborating the implications of existing standards and practices for States and businesses; integrating them within a single, logically coherent and comprehensive template; and identifying where the current regime falls short and how it should be improved."

The Framework and Guiding Principles therefore do not contain new international law obligations. They provide high level guidance on how to operationalize the responsibilities or expectations of State and business on protecting and respecting human rights.

Uptake of the Guiding Principles has already been widespread: some governments are incorporating them into policies; investors and NGOs are using them in their advocacy work with companies; and businesses themselves are applying them because they have practical utility. Because of the variety of sanctions that these stakeholders could impose on companies, would be wise to treat the Guiding Principles as a matter of compliance and as a requirement of responsible international business.

The Framework and Guiding Principles provide crucial clarity on the distinction between the roles and responsibilities of States and companies, and are an important milestone in addressing governance gaps with the aim of preventing and addressing the adverse impacts that business can have on human rights.

#### **UN DOCUMENTS**

**UN “Protect, Respect and Remedy” Framework for Business and Human Rights**

**The Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework**

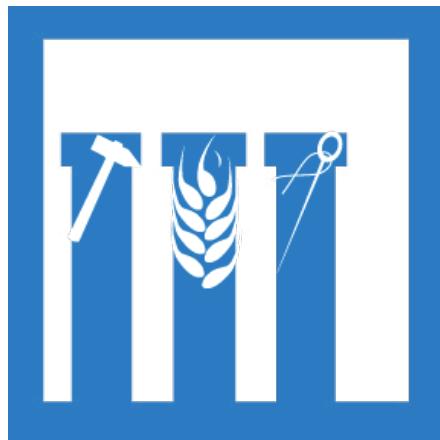
**The Corporate Responsibility to Respect Human Rights: An Interpretative Guide**

This Handbook is intended to give practical guidance on implementation of the three Pillars. Before you read the Handbook, we encourage you to familiarize yourself with the overall structure of the Framework and Guiding Principles by reviewing the official UN documents listed here. Documents available via: <http://www.unglobalcompact.org/>

### **Foundational and Operational Principles**

This chapter introduced the Framework and Guiding Principles. The focus of the next three chapters is on each of the three Pillars contained in the Framework and Guiding Principles. Each Pillar has Foundational Principles and Operational Principles.





## PILLARS IN PRACTICE

### CHAPTER 2

The United Nations Guiding Principles

#### **Pillar I – State Duty to Protect**

# State Duty to Protect

The first pillar of the Guiding Principles is the state duty to protect. This pillar builds upon the human rights obligations of states. In order to provide the right context for the first pillar, these obligations are briefly explained below.

## Human Rights Obligations of State

The concept of human rights was globally formally accepted through the adoption of the Universal Declaration of Human Rights by all UN Member States in 1948. In 1966 human rights were enshrined in international law with the codification of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). After 1966 other human rights treaties were laid down for states. As a result, three types of obligations for states exist:

- > The obligation to respect - "not to interfere with the exercise of a right;"
- > The obligation to protect - "to ensure others do not interfere" with the rights of individuals;
- > The obligation to fulfill - "to promote rights, facilitate access to rights, and provide for those unable to provide for themselves."

States are considered the primary duty-bearers for human rights. States hold each other accountable through a process called the Universal Periodic Review (UPR). This process is based on a mandate of the UN Human Rights Council, which dates back to 2006 and involves a review of the human rights records of all 193 UN Member States. The UPR assesses the extent to which states respect their human rights obligations set out in: (1) the UN Charter; (2) the Universal Declaration of Human Rights; (3) human rights instruments to which the State is party (human rights treaties ratified by the State concerned); (4) voluntary pledges and commitments made by the State (e.g. national human rights policies and/or programmes implemented); and, (5) applicable international humanitarian law. The UN Human Rights Council can decide on measures in case of persistent non-cooperation by states<sup>1</sup>.

## Pillar 1: The State Duty to Protect

Pillar 1 grounds the state duty to protect in recognition of the above – the existing obligations of States to respect, protect and fulfill human rights and fundamental freedoms. The reference to existing obligations is important as the Guiding Principles do not create new international law obligations, limit or undermine any legal obligations a State may have undertaken or be subject to under international law with regard to human rights. "The Guiding Principles' normative contribution lies not in the creation of new international law obligations but in elaborating the implications of existing standards and practices for States and businesses; integrating them within a single, logically coherent and comprehensive template; and identifying where the current regime falls short and how it should be improved".

The Guiding Principles highlight the need for improvements in the field of business and human rights, as states do not always pay enough attention to human rights as opposed to commercial interests. They add that this is “neither in the interest of human rights, nor in the interest of business.” Weak protection of human rights by states results in reputational and other risks for companies and the lack of a level playing field. Both are not in the interest of the business community.

In this chapter we will further elaborate on the first pillar of the Guiding Principles. This is an important pillar; in principle, all three pillars have equal weight, but in reality the state’s duty to protect is most important. States need to provide leadership, direction and vision, helping to develop a level-playing field for business<sup>2</sup>. We will elaborate on the state duty to protect by providing insights in the foundational and operational principles of this pillar. The foundational principles outline the key fundamental concepts behind the Pillars. The operational principles provide practical guidance to turn those concepts into actions. We will provide comments and additional information regarding both set of principles to facilitate further understanding and implementation.

## Foundational Principles of the States Duty to Protect

**Foundational Principle 1:** “States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

***Explanation:***

States are not directly responsible for the human rights abuses committed by private actors. However, states are responsible for setting the “a standard of conduct.” They must take appropriate steps to prevent, investigate, punish and redress private actors’ abuses. Pillar 1 focuses on preventative measures that state should deploy. Pillar 3, Access to Remedy, describes remedial measures states should enforce.

**Foundational Principle 2:** “States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.”

***Explanation:***

States are generally not required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. However, there are strong policy reasons for states to do so. Reasons include ensuring predictability for companies through coherent and consistent messages, and preserving the State’s own reputation, something especially relevant when a company is owned or supported by the state.

## Operational Principles of the States Duty to Protect

The Guiding Principles provide guidance to states in four areas:

1. General state regulatory and policy functions;
2. The State-business nexus;
3. Supporting business respect for human rights in conflict-affected areas;
4. Ensuring policy coherence.

## 1. General State regulatory and policy functions

**Operational Principle 3:** "In meeting their duty to protect, States should:

- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
- (b) Ensure that other laws and policies governing the creation and on-going operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
- (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts."



### **Explanation:**

The Guiding Principles point to the importance of both enforcing the law and reviewing existing laws. A lack of law enforcement of labour, non-discrimination, environmental, property and anti-bribery laws, for example, can lead to significant problems in the exercise of human rights. States are therefore advised to assess and improve their law enforcement capabilities.

Similarly, states should review whether existing law provides sufficient protection and incentivizes the corporate responsibility to respect for human rights. The Guiding Principles point, for example, to the lack of clarity in securities and corporate law in terms of what companies and their personnel are permitted and required to do with regard to human rights. A global survey<sup>3</sup> conducted in 2011 in 40 jurisdictions on the relationship between human rights and corporate law, demonstrated that in corporate law, directors' duties rarely include the consideration of non-shareholders' interests, such as those of employees, customers or communities affected by the company's activities. Additionally, corporate law does not require companies at incorporation, to recognize a duty to society<sup>a</sup>. Other areas that deserve more attention are the laws and policies governing access to land necessary to protect both rights-holders and companies.

Examples of how states can assess and review their current position, laws and implementation of human rights can be found in the White Paper on CSR<sup>4</sup>, released by the Norwegian government in 2009. The EU has responded by giving the Guiding Principles a central position in its CSR and human rights policies. As a result, the European Commission has committed to the publication of a report on EU priorities for the effective implementation of the Guiding Principles. EU member states are invited to develop national plans on the implementation of the Guiding Principles over the course of 2013.

States are also expected to guide companies on how to respect human rights by indicating expected outcomes and by sharing best practices of human rights and due diligence efforts and indicating how to respect rights of women, indigenous peoples, minorities, children, persons with disabilities and migrant workers, for example. In order to be effective, states can collaborate with experienced and knowledgeable partners. The Guiding Principles emphasize the role that National Human Rights Institutions can play in helping states to map the effectiveness of their law enforcement procedures and the coverage of their existing laws, as they develop guidance for companies on how to respect human rights.

<sup>a</sup> A notable exception worth mentioning is the so-called Benefit Corporation in the US. Benefit Corporations are a new class of corporations. Such corporations 1) create a material positive impact on society and the environment; 2) expand fiduciary duty to require consideration of non-financial interests when making decisions; and 3) report on its overall social and environmental performance using recognized third party standards. For more info please check: <http://www.benefitcorp.net/>

This Handbook is an example of how a state (the US government via the US Department of State) enables the development of guidance for stakeholders in the garment, mining and agricultural sector. Other examples of guidance developed by states include initiatives of the EU leading to sector guidance for companies in the employment & recruitment, information & communications technology, and oil & gas sectors. Hosting multi-stakeholder forums or workshops is another way that states can increase awareness and understanding and provide guidance on the corporate responsibility to respect. The Norwegian government has set up a multi-stakeholder network that functions as an advisory group for the government on CSR, with the Guiding Principles as a key agenda point.

At the UN level, the UN Human Rights Council established the Working Group on the issue of human rights and transnational corporations and other business enterprises. The group's purpose is to promote the effective and comprehensive dissemination and implementation of the Guiding Principles, to promote good practices and learned lessons, and to promote capacity-building<sup>5</sup>.

Another important initiative is the United Nations Annual Forum on Business and Human Rights, which first met in December 2012 in Geneva, Switzerland.

Encouragement and/or requirements by states on how companies should communicate on their impacts on human rights can enhance the corporate responsibility to respect human rights. This in particular applies when companies operate in a context that poses serious human rights risks to right bearers. The nature of communication incentives and requirements for companies can further take into account "risks that it may pose to the safety and security of individuals and facilities; legitimate requirements of commercial confidentiality; and variations in companies' size and structures." Below are some examples of existing requirements or incentives set by states for companies on communication on human rights impacts.

- > In the Netherlands, the state has established a transparency benchmark that charts transparency in sustainability reporting. It measures trends in the quality and quantity of CSR reporting (including human rights) in the largest companies in the Netherlands<sup>6</sup>.
- > In 2008 the Danish Parliament adopted the "Act amending the Danish Financial Statements Act (Accounting for CSR in large businesses)." As a result large businesses in Denmark are required to account for and communicate on their work on corporate social responsibility in their annual reports<sup>7</sup>.
- > Recently Denmark, South Africa, France and Brazil teamed up in a group called 'Friends of paragraph 47', a reference to paragraph 47 of the UN Conference on Sustainable Development Rio+20 outcome document released in June 2012. The group aims to advance corporate sustainability reporting, a practice which is based on the vision that corporate transparency and accountability are key elements in enhancing the private sector's contribution to sustainable development<sup>8</sup>.

During the United Nations Annual Forum on Business and Human Rights of December 2012, attendees emphasised the important role that can be played by states' regulation of transparency and disclosure. Such regulation can create due diligence requirements or incentives for companies. It also helps to place information in the public domain, which allows others to become part of an enforcement regime. From this perspective, transparency and disclosure regulation can link Pillar 1 and Pillar 3, Access to Remedy. Civil society and affected groups need access to information.

Transparency is a precondition to allow others to establish whether rights are harmed and whether to seek remedy, for instance via court or a labour tribunal.

Two examples from the United States can illustrate the process above:

- > The State of California's supply chain transparency act requires larger companies to disclose whether the company has taken certain steps to make sure there is no labour trafficking and slavery in its supply chain. The act is built on the premise that companies that have not taken steps are pushed to take steps by their stakeholders.
- > The Dodd Frank act applies at the federal level and relates to the use of conflict minerals originating from the Democratic Republic of Congo and used in the production of electronic products. Companies are required to report on whether or not the minerals in their products are conflict free. Besides incentivizing disclosure, this act also incentivizes human rights due diligence as companies have to be able to demonstrate the origin of minerals.

During the Forum it was also discussed that transparency and disclosure regulation can be helpful for both the home and host states of multi-national corporations. This applies for instance when a host state has governance challenges. An external force (the transparency and disclosure regulation of the home state) can then help to regulate.

Besides communication and/or reporting of "non-financial" aspects, the Guiding Principles also highlight the importance of including human rights impacts in financial reporting of companies if such impacts are "material" or "significant" to the economic performance of a company. Companies currently may not be fully accounting for "stakeholder-related risks". Costs related to such risks, such as project delays or cancellations, higher financing costs, reduced output, reputational damage and increased staff turnover, are in most cases spread out over different company functions and budgets. However, when aggregated, they could be material and therefore require disclosure under existing law.

Here is an example of how negative human rights impacts can become material to companies and even countries<sup>9 10</sup>.

Peru's economy is developing fast. Poverty levels are declining quickly and the World Bank has now classified Peru as an upper middle income country. These positive developments can partly be explained by increased global commodity prices. Peru is a leading producer of silver, copper, zinc, lead and gold. Revenues associated with commodities accounted for 59% of Peru's export value in 2011. The associated big mining projects create social conflicts between companies, the government and communities who are worried about their land and livelihoods. Conflicts are so serious that they pose risks to future investments in the country and are seen as raising credit risk to banks, a threat to the stability of the banking system and to the country's credit rating. As a response, the national regulator for financial institutions has started to develop regulation aimed at the mitigation of social conflict through the banking sector. The regulation will require banks to take specific steps to identify and mitigate the risk that their corporate clients might be contributing to social conflict.

## 2. The State-business nexus

The second area on which the Guiding Principles provide guidance to states is the state-business nexus.

**Operational Principle 4:** "States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence."

### **Explanation:**

Companies owned, controlled or supported by the state and involved with negative human rights impacts may lead to the state's violating its own international law obligations. Additionally, the closer a company is to the state, the more the company relies on public money, state authority, and is expected to set the right example. States should find it easy to stimulate state owned or controlled companies to respect human rights, since such companies are controlled by and report to state agencies. For such companies, states are expected to set and oversee human rights due diligence processes aimed at preventing and assessing negative human rights impacts. This also applies to agencies that are linked to the state and provide services or support to companies. Such agencies include export credit agencies, official investment insurance or guarantee agencies, development agencies and development finance institutions.

Practical examples<sup>11</sup> of how states have acted in this area include the guidance issued by the Chinese government in 2008 to its state-owned enterprises, which recommend systems for CSR and the protection of labour rights. The Danish Action Plan on CSR, released in 2008, describes the important role to be played by export credit agencies, pension funds and development agencies in promoting CSR. The Swedish Guidelines for External Reporting by State-owned Companies<sup>12</sup> are another example, requiring Swedish state owned companies to report using the framework developed by the Global Reporting Initiative (GRI).

**Operational Principle 5:** "States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights."

### **Explanation:**

States do not diminish or lose their international human rights law obligations when they privatize the delivery of services or enter into public private partnerships. For example, this can apply to privatization of water, energy, social care, infrastructure, education or healthcare services. As a result, states need to make sure that companies that provide such services do so in a way consistent with the states human rights obligations. Contracts and legislation related to companies taking over State services should therefore contain the state's expectation that the company respect and conduct due diligence for human rights. For example, the private water provider should guarantee the safety, quality and geographic accessibility of water services, and the private health insurer should accept all customers or patients and not select patients on the basis of their health or financial status.

**Operational Principle 6:** "States should promote respect for human rights by business enterprises with which they conduct commercial transactions."

### **Explanation:**

States purchase a large variety of products and services though central and decentralized government agencies. Such procurement activities, which are often described as public procurement

processes, offer states the opportunity to create awareness and promote the responsibility to respect human rights among companies which want to do business with states. This can, for instance, be accomplished in contract, between states and business, which can be aligned with the states' national and international law obligations.

So far, governments have responded in several ways. The EU sees green and social public procurement as a way to steer the market in a more socially responsible direction and thus contribute more generally to sustainable development. The steering of public procurement processes can have great impact. In the EU, public procurement represents 17% of the gross domestic product of all EU Member States. As a result the EU has published "Buying Green"<sup>13</sup> and "Buying Social,"<sup>14</sup> publications that are intended to help public authorities to buy goods and services with a lower negative environmental and social impact. The guidelines have a voluntary character.

In 1996 the Canadian government<sup>15</sup> introduced procurement measures meant to increase the participation of aboriginal businesses in bidding for federal government contracts. The South African government sees public procurement as an important regulatory technique that can be used to avoid institutional discrimination and inequality. South African legislation outlines a procurement system for national, provincial and local governments which is based on a preference points system. The inclusion of certain social policy goals in contracts is rewarded with preference points for the bidder or tenderer on the contract.

### **3. Supporting business respect for human rights in conflict-affected areas**

The third area on which the Guiding Principles provide guidance to states is in supporting business respect for human rights in conflict-affected areas.

**Operational Principle 7:** "Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

- (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;
- (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;
- (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;
- (d) Ensuring that its current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses."



#### **Explanation:**

There is a shared understanding that some of the most serious human rights abuses take place in conflict affected areas, also referred to as high risk areas. Although no globally agreed upon list of such areas or countries exist, they can be characterised according to the elements<sup>16</sup> below:

- > War and other armed conflicts, or transition from conflicts to peace
- > Presence of illegitimate or unrepresentative government, limited popular sovereignty and avenues for political participation

- > Limited government capacity and/or political will to uphold the rule of law and provide citizens with basic services and infrastructure
- > Systemic corruption, including poor management of revenues.

Governments in such areas are often not able or willing to enforce the law and do not operate as expected of states. Since such “host states” do not function well or are in the process of building up institutional capacity when they are in a post-conflict situation, “home states” have a role in assisting host states and guiding businesses on how to avoid negative human rights impacts when operating in such areas. Home states are required to inform and warn companies in a timely manner, on the increased risks of being involved in gross human rights violations. In order to help host states and companies in a consistent and constructive manner, states should coordinate communication and activities of diverse agencies like development assistance agencies, foreign and trade ministries, export finance institutions and embassies.

States should attach appropriate consequences to company unwillingness or failure to cooperate: such consequences include “denying or withdrawing existing public support or services, or where that is not possible, denying their future provision.” States are required to review whether their measures effectively address the risks they encounter. Identified gaps in states’ actions are to be addressed by appropriate steps which may include “exploring civil, administrative or criminal liability for enterprises domiciled or operating in their territory and/or jurisdiction that commit or contribute to gross human rights abuses”. Beyond acting alone, states should consider multilateral approaches and collective initiatives to help prevent and address adverse human rights impact in conflict-affected areas. States’ individual and collective measures should be seen as additional to states’ obligations under international humanitarian law and international criminal law.

In order to minimize negative impacts in conflict affected areas, states can consider a mix of preventative measures, collective voluntary approaches and extraterritorial jurisdiction.

There can be several preventative measures or incentives. Many countries have set up national or sector-based working groups advocating the mainstream acceptance and implementation of human rights due diligence processes and grievance mechanisms by a group of companies operating in a sector or country affected by conflict. Another preventative action is a post-conflict state seeking the help of civil society or other external actors in e.g. negotiating a contract with a foreign investor, when a state is currently not able to do so by itself. This point is important as post-conflict states are frequently approached by companies to enter into contracts related to agricultural and extractive projects, due to the global “commodity boom” or due to the existence of a relatively cheap work force.

Collective voluntary approaches of states can consist of supporting or joining multi-stakeholder efforts which regulate issues prevalent in conflict areas on a voluntary basis. One example is The Voluntary Principles on Security and Human Rights<sup>17</sup>. States like Canada, the Netherlands, Norway, Colombia, Switzerland, the United Kingdom and the United States have joined NGOs and companies active in the extractive and energy sector in a collective effort to find solutions to complex security and human rights challenges—challenges that often exist in conflict affected areas. In order to address them, participants have agreed on principles in three categories: risk assessment, relations with public security, and relations with private security.

Another multi-stakeholder initiative is the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.<sup>18</sup> The guidance provides management recommendations to help companies manage global supply chains of minerals while respecting human rights and avoiding contributing to conflict through their mineral or metal purchasing decisions and practices. The guidance was adopted by OECD countries on 25 May 2011. They are not legally-binding, but reflect the common position and political commitment of adhering countries.

States can also use extraterritorial jurisdiction to regulate behaviour of companies involved with negative human rights impacts or of companies complicit in severe international crimes.

John Ruggie<sup>19 20</sup> distinguishes between: 1) “true” or direct extraterritorial jurisdiction exercised directly in relation to overseas actors or activities, and 2) domestic measures that have extraterritorial implications. In cases of direct extraterritorial jurisdiction, such as criminal regimes governing child sex tourism, states usually rely on a clear nationality link to the perpetrator as the basis of jurisdiction. Both home and host states have been defensive about direct extraterritorial jurisdiction since it is seen as interference in others’ domestic affairs. Also, companies have opposed direct extraterritorial jurisdiction lest it increase risk, uncertainty and costs. However, especially in conflict-affected areas where a state might not be willing or able to function well, direct extraterritorial jurisdiction can help to close existing governance gaps and end impunity.

In contrast, domestic measures with extraterritorial implications address decisions and operations made or carried out at home. Such measures rely on territory as the jurisdictional basis, even though they may have extraterritorial implications. An example would be a reporting requirement imposed on the corporate parent with regard to a company’s overall human rights impacts, which may include those of its overseas subsidiaries.

Direct extraterritorial jurisdiction can help address company complicity in severe international crimes. In many cases such severe offenses are committed by a company’s business. Complicity then refers to a substantial contribution a company has knowingly made to a human rights violation by a third party (“aiding and abetting”). These may be severe human rights violations such as torture, forced labour or extrajudicial killing. In principle, criminal allegations can be made in relation to all human rights. The appropriate legal standards are however still in development.

One existing route for holding companies accountable for complicity in international crimes is the Alien Tort Statute (ATS)<sup>21</sup> in the United States. The Alien Tort Statute is a section of the United States Code that reads: “The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” This statute is notable for allowing U.S. courts to hear human-rights cases brought by foreign citizens for conduct committed outside the United States.

Until 2010 the ATS rejected the notion of corporate liability for international crimes. This changed with the *Kiobel v. Royal Dutch Petroleum Co.* case. The plaintiffs in *Kiobel* are citizens of Nigeria who claim that Dutch, British, and Nigerian oil-exploration corporations aided and abetted the Nigerian government during the 1990s in committing violations of customary international law. The plaintiffs claim that Royal Dutch Shell compelled its Nigerian subsidiary, in cooperation with the Nigerian government, to brutally crush peaceful resistance to aggressive oil development in the Ogoni Niger River Delta. Plaintiffs sought damages under the ATS. In contrast to earlier rulings, the US courts ruled

that corporate liability was possible under the statute. Unexpectedly however in 2012, the US Supreme Court announced that it would hear additional arguments on the case, and directed the parties to file new briefs on the question “Whether and under what circumstances the Alien Tort Statute, 28 U.S.C. § 1330, allows courts to recognize a cause of action for violations of the law of nations occurring within the territory of a sovereign other than the United States.” And, recently the Court decided not to rule on this case as “all the relevant conduct took place outside the United States.”<sup>22</sup>

Another possible route is available in states that have incorporated the International Criminal Court Statute’s provisions into domestic law. Such statutes provide for corporate criminal responsibility related to severe crimes such as genocide and war crimes, and therefore also provide for direct or indirect corporate criminal responsibility for such crimes. In the 2007 “van Anraat case.” The Dutch appeals court increased the prison sentence of the Dutch businessman Frans van Anraat to 17 years after confirming he was guilty of complicity in war crimes for selling chemicals to Iraq used in deadly gas attacks<sup>23</sup>. Jurisdictions that recognize international criminal liability of legal persons may in the future prosecute companies for complicity in international crimes under these provisions, including through extraterritorial application.

A third example of direct extraterritorial jurisdiction is the UK Bribery Act of 2010. Companies operating in the UK face criminal liability, punishable by an unlimited fine, for failing to prevent bribery. The act concerns bribery of (foreign) governmental and commercial persons and officials, and includes a) bribing another and being bribed, and b) “facilitation payments.”

A fourth type of domestic measures with extraterritorial implications concerns parent-foreign subsidiary liability. This path is based on finding parent corporations liable for criminal offences committed by their subsidiaries, notwithstanding separate legal personality. One ground for liability is the active participation of the parent corporation in offences committed by a subsidiary. In more limited circumstances, the failure of parent corporations to put into place effective mechanisms of control to prevent criminal offences by the subsidiary can also lead to liability<sup>24</sup>.

Most notable examples are cases in the UK, the US and in the Netherlands against Shell. In the Dutch case<sup>25</sup> four Nigerian farmers and the environmental group Friends of the Earth sued Shell in 2012 in the Netherlands, demanding a proper clean-up and compensation for pollution in the Niger Delta. A civil case has been filed against the Shell’s Nigerian subsidiary, the Shell Petroleum Development Company (SPDC), and the parent company in the Netherlands, Royal Dutch Shell. The Dutch court declared itself competent to hear the claim. In January 2013, the Dutch court ruled that Shell Nigeria is responsible for polluting farmlands and said Shell’s subsidiary is accountable for damage caused by oil spills at Ikot Ada Udo, Akwa Ibom State, Nigeria. The court did not return a similar verdict in the cases brought by the plaintiffs from Goi and Oruma communities. The court also decided not to hold the parent company liable for damage done in Nigeria, finding claimants were not able to prove that the parent determines the daily affairs of Shell’s Nigerian subsidiary<sup>26</sup>. This case is expected to be first in a series of similar cases.

Though John Ruggie advises states to more intensely explore the area of extraterritorial jurisdiction, he also advises to take steps with utmost care and to consider a smart mix of formal and informal measures. Most measures and jurisdiction with extraterritorial implications are relatively new or being explored. How do we benchmark such instruments? Are they effective? Some claim, for instance,

that the Dodd Frank Act has unintended consequences by creating incentives not to source from certain areas. As a result, export of commodities from such areas may drop dramatically or may lead to smuggling of commodities involved.

#### **4. Ensuring policy coherence**

The fourth and final area in which the Guiding Principles provide guidance to states is in ensuring policy coherence.

**Operational Principle 8:** “ States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State’s human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.”



**Explanation:**

Although states’ human rights obligations and the interests of companies do not have to be conflicting, states do have to make decisions that balance “different societal needs.” To achieve this balance, states need to ensure both vertical and horizontal domestic policy coherence when managing the business and human rights agenda. Vertical policy coherence is about states’ ability to implement their international human rights law obligations through policies, laws and processes.

Horizontal policy coherence supports for national and subnational departments and agencies, allowing them to shape business practices in a manner compatible with the states’human rights obligations.

**Operational Principle 9:** “States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.”



**Explanation:**

While state economic agreements of states, either with other states or with companies, create economic benefits, they may also limit states in implementing human right legislation. This may be true for bilateral investment treaties, free-trade agreements or contracts for investment projects. States should make sure that they are able to protect human rights under the terms of such agreements or contracts, while also protecting investors.

In the “Principles for Responsible Contracts”<sup>27</sup>, developed as an addendum to the UN Guiding Principles, guidance to state officials is aims at integrating human rights in contract terms, -for example such as those related to the development of large scale as extractive, agricultural or infrastructural projects.

The document stipulates 10 principles that can help guide the integration of human rights risk management into contract negotiations:

- 1. Project negotiations preparation and planning:** The parties should be adequately prepared and have the capacity to address the human rights implications of projects during negotiations.
- 2. Management of potential adverse human rights impacts:** Responsibilities for prevention and mitigation of human rights risks associated with the project and its activities should be clarified and agreed before the contract is finalized.
- 3. Project operating standards:** The laws, regulations and standards governing project execution should facilitate the prevention, mitigation and remediation of any negative human rights impacts throughout the life cycle of the project.
- 4. Stabilization clauses:** Contractual stabilization clauses, if used, should be carefully drafted so that any protections for investors against future changes in law do not interfere with the State's bona fide efforts to implement laws, regulations or policies in a non-discriminatory manner in order to meet its human rights obligations.
- 5. "Additional goods or service provision":** Where the contract envisages that investors will provide additional services beyond the scope of the project, this should be carried out in a manner compatible with the State's human rights obligations and the investor's human rights responsibilities.
- 6. Physical security for the project:** Physical security for the project's facilities, installations or personnel should be provided in a manner consistent with human rights principles and standards.
- 7. Community engagement:** The project should have an effective community engagement plan through its life cycle, starting at the earliest stages.
- 8. Project monitoring and compliance:** The State should be able to monitor the project's compliance with relevant standards to protect human rights while providing necessary assurances for business investors against arbitrary interference in the project.
- 9. Grievance mechanisms for non-contractual harms to third parties:** Individuals and communities that are impacted by project activities, but not party to the contract, should have access to an effective non-judicial grievance mechanism.
- 10. Transparency/Disclosure of contract terms:** The contract's terms should be disclosed, and the scope and duration of exceptions to such disclosure should be based on compelling justifications.

**Operational Principle 10:** "States, when acting as members of multilateral institutions that deal with business related issues, should:

- (a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;
- (b) Encourage those institutions, within their respective mandates and capacities, to promote

business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;

- (c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.”



**Explanation:**

The Guiding Principles emphasize the importance of policy coherence at the international level, for instance when states participate in multilateral institutions that deal with business-related issues, such as international trade and financial institutions. One example of a response is the recently updated Performance Standards of the International Finance Corporation.

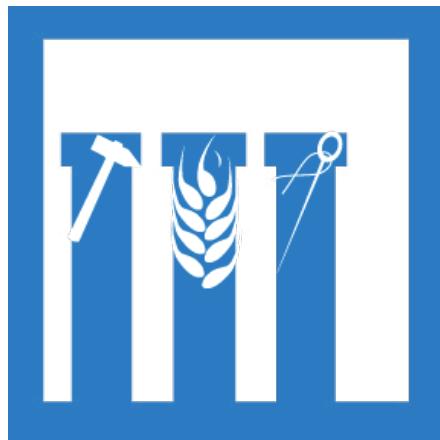
States are expected to live up to their international human rights obligations when they participate in multilateral institutions. To help states, capacity-building, awareness-raising and sharing of challenges and solutions can be important as they help promote shared and consistent approaches. Collective action through multilateral institutions and cooperation between states and other stakeholders is also important to help level the playing field for business’ respect for human rights.

An example of how a multilateral institution can facilitate capacity building and widespread adoption of approaches leading to a level playing field, is the role of the World Health Organisation (WHO) and the Food and Agriculture Organization (FAO) in the right to food<sup>28</sup>. Food safety is a global concern.

States want their citizens to have access to food and consume food that is safe. The WHO and FAO developed the “Codex Alimentarius.” This overarching framework has been embedded and translated into national law and regulations of many states of different development status and institutional capacity.

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26. <https://www.commondreams.org/newswire/2013/01/30>
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## PILLARS IN PRACTICE

### CHAPTER 3

The United Nations Guiding Principles

**Pillar II –  
Corporate Responsibility to Respect**

# The Corporate Responsibility to Respect

This chapter will help you understand the second pillar of the Guiding Principles, the corporate responsibility to respect human rights. Insights are provided for the foundational and operational principles of this pillar. The foundational principles outline the key fundamental concepts. The operational principles provide practical guidance to turn the concepts into actions. We'll provide comments and additional information to both sets of principles to facilitate further understanding and implementation of the corporate responsibility to respect human rights.

## Foundational Principles of the Corporate Responsibility to Respect

**Foundational Principle 11:** "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."



### **Explanation:**

Companies should do business with decency and respect for people. The Guiding Principles set a global social norm for companies. Not respecting human rights has no legal implications<sup>a</sup> under international law but may result in companies losing their "social license to operate."

The Guiding Principles establish that companies are only responsible for avoiding and addressing negative human rights impacts. They do not have to promote or fulfil human rights, since this is the duty of the state. In reality, companies might promote and fulfill human rights due to the character of their daily activities. A bakery contributes to the right to food and most companies contribute to the right to an adequate standard of living. What is important to understand here is that companies should first look at taking measures aimed at preventing and addressing negative impacts on human rights. Going a step further through daily business practices, CSR programs or charity, such as providing scholarships or building hospitals or schools, is very valuable but can never compensate for or off-set negative impacts with which the company is involved.

Thus, the company's responsibility to respect and the state's duty to protect are different from each other. States need to protect, promote and fulfil, while companies need to first focus on avoiding negative impacts. If one party does not live up to its duty or responsibility the other party is still obliged to meet its own. This applies for instance to companies operating in countries where states are unwilling or unable to enforce the law. This does not diminish the responsibility of companies to respect human rights when operating in such countries.

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<sup>a</sup>Companies can be held legally accountable for human rights abuses under national law of host countries or the law of their home country. Also, when in cases of crimes against humanity, they can be considered as legally complicit.

While different, the duty to protect and the responsibility to respect also complement each other. Full protection of human rights is only possible if both states and companies live up to their duties and responsibilities.

**Foundational Principle 12:** "The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a 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."

**Explanation:**

Many companies ask: So which rights exactly do I need to respect?

At a minimum, companies should respect the rights listed in The International Bill of Human Rights and the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. To make this more concrete, we provide a bit more content on both.

The International Bill of Human Rights consists of the Universal Declaration of Human Rights (adopted in 1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966).

The International Labour Organization (ILO) is a United Nations agency dealing with labour issues, particularly international labour standards and decent work for all. The ILO has a tripartite governing structure — representing governments, employers and workers. In 1998, the ILO adopted the Declaration on Fundamental Principles and Rights at Work. This declaration groups eight core conventions under four fundamental labour norms.

*Freedom of association and the effective recognition of the right to collective bargaining, Conventions 87 and 98;*

*Elimination of all forms of forced or compulsory labour, Conventions 29 and 105; Effective abolition of child labour, Conventions 138 and 182;*

*Elimination of discrimination in respect of employment and occupation, Conventions 100 and 111.*

In the commentary on Foundational Principle 12 of the Guiding Principles, there is further context on what rights to respect: "Depending on circumstances, business enterprises may need to consider additional standards. 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."

Thus, companies are required to respect the rights of such groups or individuals as defined in specialized United Nations instruments like the: Convention on the Rights of the Child, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the UN Declaration on the Rights of Indigenous Peoples.

Here are some examples of how different company departments can have negative impacts on human rights:

<i>Human Resources</i>	<i>Are employees hired and promoted solely based on their competences?</i>	<i>Right to equality and Freedom from discrimination</i>
<i>Production</i>	<i>Do all of our workplaces have an environment that is safe to the health of our employees?</i>	<i>Right to just and favourable work</i>
<i>Sourcing</i>	<i>Do our suppliers subscribe and adhere to internationally proclaimed labor standards?</i>	<i>ILO fundamental labour norms</i>
<i>Marketing and Sales</i>	<i>Are any of our products potentially harmful to the health of our customers?</i>	<i>Right to Health</i>
<i>General Management</i>	<i>Is our new branch located in a (potential) conflict area or does it affect indigenous peoples?</i>	<i>International Humanitarian Law and the UN Declaration on the Rights of Indigenous Peoples</i>

For companies, the above might seem like an overwhelming list. The Guiding Principles acknowledge that addressing all these rights at the same time is probably nor practical nor feasible for any company. Later we will teach you how to prioritize human rights risks based on the severity and probability of negative impacts.

**Foundational Principle 13:** "The responsibility to respect human rights requires that business enterprises:

- Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- 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."

For practical reasons, we added the last part of Operational Principle 19 here as well:

"Appropriate action will vary according to:

- 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;
- The extent of its leverage in addressing the adverse impact."

#### ***Explanation:***

The principles above further answer the question: to what extent companies are responsible for respecting human rights? We already learned that companies have to avoid and address negative

human rights impacts and do not have to focus on promoting and fulfilling human rights. We also listed the rights that should be respected. The Principles add further important context.

The Principles offer a resounding yes to the prevalent question of whether businesses are responsible for respecting human rights outside the boundaries of their own company, including their supply chain.

The commentary in the Guiding Principles on Foundational Principle 13 states: "Business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties... For the purpose of these Guiding Principles a business enterprise's "activities" are understood to include both actions and omissions; and its "business relationships" are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services."

These Principles also require companies to consider adverse impacts based on the distinction between causing, contributing or being directly linked to adverse impacts.

The Guiding Principles deliberately use impact as the basis for attributing responsibility. This is in contrast to previous approaches that assigned responsibility based on the size of the company, the degree of influence, or the company's proximity to the human rights abuse. Companies should define their responsibility in terms of the potential or actual impact of their activities, rather than the control or influence they might have.

**Cause** – *A company is causing a human rights abuse when the negative impact is the direct result of the company's own activities. There is causal link between the impact and the company's actions or omissions.*

Examples<sup>b</sup> of the cause scenario found in the Interpretive Guide on the Corporate Responsibility to Respect published by the UN Human Rights Office include: 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.

The appropriate action in the "cause scenario" is for a company to cease or change the activities which caused the negative impact and provide for or cooperate in remediation through legitimate processes.

**Contribute** – *A company may be contributing to human rights abuse via a third party or together with a third party. Through its actions or omissions, it may be pressuring, enabling or encouraging a third party to cause a negative human rights impact. Third parties are suppliers, contractors, customers, governments, etc.*

A clear example of contributing via a third party is applying last minute changes design or increasing order volumes without an adjustment of lead times, leading to extensive overtime at the supplier level. Another example is providing internet users to a government that use data the data to trace and prosecute political dissidents.

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<sup>b</sup>Guide on the Corporate Responsibility to Respect which was published by the UN Human Rights Office

A company is contributing with a third party if the combination of the company's activities and that of a third party creates a negative human rights impact. An example is an oil company polluting rivers and agricultural land, while other oil companies in the region are also contributing to the pollution.

Such pollution not only leads to environmental damage, but also negative impacts on the right to food, water and health of farmers living down-stream.

The appropriate action in the "contribute scenario" is for a company to cease or change the activities that contributed to the negative impact. Additionally, it should use its leverage to mitigate any remaining impact to the greatest extent possible. Also a company should provide for or cooperate in the remediation of the negative impact through legitimate processes.

**Linked** – Finally, a company is directly linked to a negative impact when a 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.

Examples of the "linked to scenario" found in the Interpretive Guide on the Corporate Responsibility to Respect are: 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.

In the "linked to scenario", a company is not primarily responsible for the negative impact and therefore does not have to provide for remediation (although it may choose to do so). However, the company does have the responsibility to use or increase its leverage to encourage the prevention or mitigation of the impact. Leverage is not just determined by the size of orders, but can also be influenced by the reputation of the company and the benefits the relationship offers to the supplier, including capacity building or other incentives.

Where a company lacks the leverage to prevent or mitigate adverse impacts, a company may consider ending the supplier relationship, but should conduct a credible assessment of any potential adverse human rights impacts of doing so. Ending the relationship might be difficult when the relation is 'crucial' to the company because the supplier provides an essential product or service for which no reasonable alternative source exists. The company may then consider prolonging the relationship, taking into account the legal and non-legal consequences and the severity of the human rights impact. The more severe the impact, the quicker the company should try to find an alternative.

**Foundational Principle 14:** "The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts."

#### **Explanation:**

While corporate responsibility applies to all companies, the means applied by small and medium sized companies might be more informal and involve less capacity than for a large company. The

Guiding Principles however emphasize that “the responsibility to respect human rights applies fully and equally to all business enterprises.” Both small and large companies can have severe impacts and will require appropriate corresponding measures.

**Foundational Principle 15:** “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:

- a. A policy commitment to meet their responsibility to respect human rights;
- b. A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- c. Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.”



**Explanation:**

This principle creates a bridge between the foundational and the operational principles of the corporate responsibility to respect. A company cannot only claim or state that it respects human rights. It also needs policies and processes in place. The principle above refers to policies and processes related to policy commitment, human rights due diligence and remediation.

## Operational Principles of the Corporate Responsibility to Respect

As mentioned before, the operational principles provide practical guidance to turn the concepts of the foundational principles into actions. In order to make the implementation as easy as possible we have grouped the operational principles (principles 16 to 22) and the so called issues of context (principles 23 and 24), into six practical steps. For each step we provide you with the text of the corresponding principles and additional explanation.

1. Committing to a human rights policy
2. Assessing risks of adverse human rights impact
3. Integrating human rights in policies, procedures and responsibilities
4. Tracking human rights implementation
5. Communicating human rights impact
6. Remediating adverse human rights impact

### Step 1: Committing to a Human Rights Policy

**Operational Principle 16:** “As the basis for committing their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:

- a. Is approved at the most senior level of the business enterprise;
- b. Is 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. Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
- e. Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.”

**Issue of Context 23:** “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 honour 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;”



**Explanation:**

A statement of policy is a crucial first step to make respect for human rights a part of a company's operational values. It defines the principles and expected conduct for all aspects of business. It also articulates a company's commitment to prevent and address those risks. A policy should include a statement of its intent to comply with all applicable laws wherever it operates.

A statement of policy should uphold the spirit of the principles. Thus, when faced with decisions between conflicting requirements (such as laws and internationally recognized standards), a company chooses whatever is more favorable to the rights holders.

Many companies have already formulated business principles or a corporate code of conduct that serves as a policy statement. In this case a company does not have to start all over again. It can modify the existing policy statement and include the corporate responsibility to respect human rights. A company can note that the commitment is based on human rights formulated within the International Bill of Rights, the ILO Core Conventions and other UN instruments.

A company needs to respect all internationally recognised human rights, but addressing all human rights at the same time is probably not practical or feasible. A company is therefore allowed and advised to prioritize, by identifying the most “salient human rights risks.” It is important to identify salient risks carefully and without pre-conceived ideas, and to revisit the full spectrum of human rights on a regular basis.

In order to identify the most salient risks a company first needs to identify the relevant rights holders. Rights-holders can include customers, employees, suppliers, communities and other stakeholders. To identify salient risks in a responsible and structured way, companies should utilize external experts, conduct sector-specific research, and consult with rights holders (a process often referred to as stakeholder consultation). Identifying salient risks is an on-going process. Situations change due to operational, political, economic or social changes. Therefore, salient risks will change too. So while a company's policy commitment may remain static for a long period of time, a company's human rights risks might change with some frequency.

The salient risks identified will probably differ depending on each group of stakeholders. When analysing supply chain risks, the right to favorable work, the right to join trade unions, the right to rest and leisure and the right to an adequate standard of living might play a role. For employees, it might be freedom from discrimination, and for customers the right to health.

Involvement of senior management is important in several ways. It creates support and adds weight and credibility to the statement both internally and externally. It also allows for the consideration of human rights when key management decisions are taken. Senior management also drives any cultural change needed to respect human rights.

The statement of policy should be embedded throughout a company. It needs to be more than a paper commitment. It should be treated with the same importance in a company as legal compliance issues. All personnel need to be aware of the commitment and perceive it as a core value of the company. They must understand its implications and how they are expected to conduct their work.

The statement of policy should be publicly available and actively communicated internally and externally, to all stakeholders including investors, suppliers and civil society. Through this process, a company informs people what they can expect of it. A company should also let its suppliers, business partners and other stakeholders know what it expects of them.

There is no fixed form for a policy statement. A company can pick one that fits the audience. It can develop one or several in order to effectively reach diverse groups of rights holders (e.g. a supplier code of conduct and an internal code of conduct).

A policy statement provides the basis for dialogue and creates leverage to drive respect for human rights in business relationships. It facilitates the inclusion of human rights provisions in contracts with suppliers and partners. This can provide the basis for auditing or monitoring performance and for factoring the results into decisions on future business relationships. Without a policy statement, human rights might easily become negotiable and side-lined in business relationships, thus hindering a company's ability to effectively address human rights.

Principle 17 below introduces the widely-used term of "human rights due diligence". This is also an "umbrella" for principles 18 to 21. The steps on assessing, integrating, tracking and communicating which we will describe below can be seen as the key elements of a company's human right due diligence efforts.

**Operational Principle 17:** "In order to identify, prevent, mitigate and account for how they address their adverse 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 on-going, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve."

### **Step 2: Assessing Risks of Human Rights Impact**

**Operational Principle 18:** "In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process 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."

**Issue of Context 24:** "Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable."



#### ***Explanation:***

Risk assessment should go beyond identifying and managing material risks to the company itself, to include risks to rights-holders.

The traditional approach of doing a cost-benefit analysis should not be applied in this context. It is not acceptable to simply calculate the monetary costs of preventing or mitigating an adverse impact on human rights versus the costs of being involved or remedying the negative impact should it occur because it is not purely a financial decision.

An assessment should be thorough, but it might not be feasible or practical to assess every risk for all diverse groups of rights holders. Where it is necessary to prioritize, the company should aim to prevent and mitigate the most probable, severe or irremediable harm. Companies can prioritize on risks, on company functions (e.g. the risks encountered in the supply chain might be bigger than the one found for marketing) and country location.

Before defining on priorities, the company should have a complete overview of rights holders and risks involved. This might in particular apply when a company has a complex multi-tiered supply chain. It might have to map its supply chain first.

A company should pay particular attention to the rights of individuals and groups that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women and men.

The assessment should consider actual and potential impacts. It should distinguish among those the company causes, contributes to or is directly linked to.

The assessment processes need to be understood as a value-added activity, an opportunity to gather information that will help to effectively shape activities. It will also help to reduce human right risks, complicity risks and reputational risks. In case human rights infringements do take place that were difficult to foresee, a company's stakeholders will judge a company on the credibility and quality of its general due diligence efforts and the speed and effectiveness of its measures to solve the issue

and to prevent repetition. Engaged stakeholders can defend a company if they are convinced of a good-faith intention.

Assessments should be repeated at regular intervals, because even in existing activities and relationships, situations change. A company should also make an assessment when entering into new activities or relationships such as launching a new product, working with a new supplier, or making a new merger or acquisition. It always needs to consult the applicable rights holders. Continual assessment allows a company to proactively address potential problems and to continually improve its human rights performance.

### **Step 3: Integrating Human Rights in Policies, Procedures and Responsibilities.**

**Operational Principle 19<sup>c</sup>:** “In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.

Effective integration requires that:

- a. Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;
- b. Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.”



#### **Explanation:**

After steps 1 and 2 which facilitated policy commitment and risk identification and prioritization, a company needs to set and implement policies, procedures and responsibilities. This can be done with a human rights management system. This management system measures and improves the effectiveness of how a company deals with human rights issues internally and externally. An effective management system is much more than documentation. It is trained, committed people following procedures that support policies.

It is likely that a management system for one company function will be different and of another size than for other function. The buying department sourcing from so called high risk countries might need a more elaborate system than the finance department.

As part of the management system, a company needs a team to manage and lead a commitment to human rights. This team will have to drive change, because companies implementing the Guiding Principles, will need to think and act differently than before. There are different strategies and different techniques for changing behaviour. But it seems that the experts agree that to create lasting change in a company, senior management must lead the effort.

The team can be formed by a company’s CSR department. This department can drive the effort and form an internal expertise centre. They can also create access to external expertise. But, making the CSR department the department solely responsible for CSR will very probably mean that other departments (with the greatest human rights impacts) will not see human rights as their responsibility. Effective integration requires coordination between the CSR team and representatives of other company functions like sourcing, human resources, marketing and production. It is important to have

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<sup>c</sup>The second part of principle 19 was already mentioned and explained under foundational principle 13.

representation or linkages with the departments that control the activities that have potential negative human rights impact. The people in the team will need knowledge and training in order to be successful.

In order to facilitate change, a company is advised to set specific measurable goals and try to break down the process in small steps. This makes the process manageable and allows success and maintaining of motivation.

Companies should also encourage their business partners like suppliers to form their own Human Rights Performance or CSR teams and systems, to manage human rights issues in their facilities as this will reduce chances of contributing to or being linked to negative impacts of business relationships.

Companies should consider providing incentives and disincentives internally and to business relationships. Examples include: adding CSR or human rights to internal job descriptions and performance reviews; nominate internal human rights champions, set additional departmental goals; include human rights in contracts with suppliers; reward suppliers and other partners who do well on human rights.

#### **Step 4: Tracking Human Rights Implementation**

Operational Principle 20: "In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:

- a. Be based on appropriate qualitative and quantitative indicators;
- b. Draw on feedback from both internal and external sources, including affected stakeholders."



##### **Explanation:**

Tracking is important in order to make sure that a company's human rights policies and procedures are effectively implemented. Since you can't improve what you don't measure, measuring is also important since it provides a baseline needed to start improving practices.

Tracking should take a special look at the effectiveness of a company's program with regards to impacts on potentially vulnerable or marginalized groups.

A company can use various tools to track performance and progress. These include audits, self-assessments, surveys, grievance mechanisms and stakeholder consultation.

Companies will have to track internal and external progress. External progress refers to practices of parties like suppliers. Most supplier audits and assessments focus on so called non-compliances. However, effective change needs a more holistic and developmental approach. A company needs to help to build capacity throughout its supply chain to effectively address the root cause of problems. Root-cause analysis can help a company or its business partners in adjusting practices, policies and procedures needed to obtain the change needed.

Measuring should be based on credible indicators, which can be derived from internal experience, external advice or existing standards or norms. Indicators can be both quantitative and qualitative.

The information collected during the tracking process will gather credible information. It will lay the foundation for internal and external reporting and communicating.

### Step 5: Communicating Human Rights Impact

**Operational Principle 21:** In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

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



#### **Explanation:**

The Guiding Principles emphasize the importance of "knowing and showing" a company's respect for human rights. This can be seen as a response to "naming and shaming". "Naming and shaming" is a response by external stakeholders to the failure of companies to respect human rights. "Knowing and showing" is the internalization of that respect by companies themselves through human rights due diligence.

Communicating processes and results enable a company to be accountable to stakeholders, and to receive input for continual improvement. In addition to helping a company improve its human rights policies, procedures, and impacts, communication can protect and build reputation, set a company apart from competitors, and establish goodwill and relationships with stakeholders that will be useful when negative human rights impacts occur.

Actual or potential impacts on human rights that can affect stakeholders' safety or welfare should be communicated directly to those at risk as quickly as possible. And, a company should explain how it plans to address the impact.

Communication should be honest and transparent. Dishonest or exaggerated claims can turn against a company, while open discussion of progress, problems and dilemmas is often rewarded by stakeholders perceiving a company as more credible and trustworthy.

Some kinds of information about human rights issues could pose risks to affected stakeholders or personnel, so confidentiality and sensitivity should be considered. However, assumptions about such risks should not become justification to avoid sharing information that can legitimately be made public. Confidentiality can also apply to sensitive business information – for instance, contracts, competitive intelligence and trade secrets.

Communication can have many forms and should be tailored to the audience. It should contain enough information for stakeholders to understand the relevant risks, the ways that a company has addressed them and whether it has been effective. However the Guiding Principles expect formal, public reporting by companies where risks of severe human rights impacts are high. The rationale is that due to the significant risks involved, heightened public interest dictates a need for more formal and regular public reporting to account for the systems a company has in place to mitigate such risks.

and to address the harms that might occur. It is important to emphasize that formal public reporting is not just for large companies. It is important, expected and feasible for small and medium-sized companies too. A formal report does not need to be a 60-page glossy booklet. It can be brief, and can be distributed electronically.

Companies can report alone but can also decide to report on human rights through a joint effort. Increasingly, smaller and larger companies operating in sectors where their supply chain operations face considerable human rights risks, have joined multi-stakeholder and industry initiatives. These industry initiatives seek to address issues that companies find difficult to tackle on their own. Such initiatives often report on behalf of what the member companies are doing collectively. Examples of such initiatives are the Business Social Compliance Initiative (BSCI), the Ethical Trading Initiative (ETI), the Fair Wear Foundation (FWF) and Social Accountability International (SAI). We mention this way of reporting since it is not just cost effective and time saving (especially important to smaller companies), it is also perceived as a credible form of reporting since most of such initiatives are multi-stakeholder initiatives.

If a company produces a formal annual report, it has to decide whether or not to integrate human rights in the overall company report or to report on human rights separately. Both can be acceptable. However, integrating financial and non-financial information in one report is often perceived as a clear indication of the importance and integration of human rights in the total policy of a company.

*Communication or reporting based on human rights performance indicators adds transparency and credibility. Many companies use the human rights indicators offered by the Global Reporting Initiative (GRI)<sup>d</sup>. Examples of indicators used are:*

#### ***Investment and Procurement Practices***

1. Percentage and total number of significant investment agreements that include human rights clauses or that have undergone human rights screening.
2. Percentage of significant suppliers and contractors that have undergone screening on human rights and actions taken. Child Labor
6. Operations identified as having significant risk for incidents of child labor, and measures taken to contribute to the elimination of child labor.

#### ***Security Practices***

8. Percentage of security personnel trained in the organization's policies or procedures concerning aspects of human rights that are relevant to operations.

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<sup>d</sup>The human rights indicators of the GRI are currently under revision. For more information please check:  
<https://www.globalreporting.org/Pages/default.aspx>

### Step 6: Remediating Human Rights Impact

**Operational Principle 22:** "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."

We have added Operational Principles 29 and 30 from the third pillar of the Guiding Principles, Access to Remedy, here as they apply to business and collaborative initiatives joined by business.

**Operational Principle 29:** "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."

**Operational Principle 30:** "Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available."



#### ***Explanation:***

From a principle perspective, states have the duty to provide access to remedy to victims of business-related human rights abuses. However, a company has the responsibility of preventing human right abuses and it needs to have processes in place that enable remediation of abuses they have caused or contributed to. When linked to a human rights abuse, a company does not have to provide for remediation but may choose to do so.

Having a remediation system in place is in no way a sign of weakness for a company. On the contrary, it shows that the company is proactive. The company realizes that despite all its efforts, things may go wrong. It is to address the situation, minimize the negative impact and restore the situation quickly and effectively.

Remediation can take many forms: an apology, provisions to ensure that harm cannot recur, compensation (financial or other) for the harm, cessation of a particular activity or relationship, or another form agreed by the parties. It is important to understand what those affected would view as effective remedy.

It may be appropriate to provide remediation by an entity other than the company, such as a government agency, 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.

The Guiding Principles describe grievance mechanisms as an important tool allowing remediation. They are described as "early warning systems" helping to identify and address issues before they escalate and amount to a human rights abuse. It also allows for identification of trends by country, region, business unit, supplier or product and can help adjust policies and procedures accordingly. They also help in tracking the effectiveness of the response.

Most companies have grievance mechanisms. Through their own initiatives or as a result of national laws, they have whistle blower policies, complaint processes, person of trust systems, worker committees, or a customer services department. It is advisable to map existing grievance mechanisms

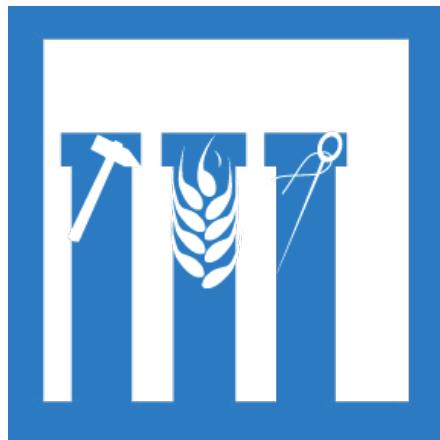
and check if they are open to internal stakeholders only. The Guiding Principles emphasize that grievance mechanisms should also be open to external stakeholders like communities, NGOs, the workers of suppliers, etc. Also check whether existing and new mechanisms are in line with the effectiveness criteria described in the Guiding Principles. Grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights compatible, a source of continual learning, and based on engagement and dialogue.

A company might need separate mechanisms for the different groups of stakeholders. The mechanisms for internal personnel might be different from those for customers (a customer service desk) and for suppliers (a worker hotline).

Companies should have remediation plans in place. Today most companies still wait until a problem occurs. Remediation plans will help to limit the damage to victims of human rights abuses and will also help reduce reputational damage as problems are solved quickly and effectively. Consider developing remediation plans with or reviewed by external stakeholders or multi-stakeholder initiatives as they will already have a level of credibility and experience.

More and more companies collaborate with other companies and other stakeholders like NGOs and trade unions in industry bodies, multi-stakeholder and other collaborative initiatives. They share codes of conduct, performance standards or have entered global framework agreements with trade unions. The Guiding Principles emphasize that such collaborations should have grievance mechanisms in place in order to safeguard the legitimacy of such initiatives.

A final comment is that though grievance mechanisms are important they should never undermine or substitute for other legitimate processes. "They should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access to judicial or other non-judicial grievance mechanisms."



## PILLARS IN PRACTICE

### CHAPTER 4

The United Nations Guiding Principles

#### **Pillar III – Access to Remedy**

# Access to Remedy

Pillar 3 addresses access to effective remedy for groups or individuals whose rights have been harmed. Stakeholders emphasize the importance of this pillar for two reasons:

- > Access to remedy is a human right in itself.<sup>29</sup>
- > Negative impacts associated with business behaviour most often occur in regions where the rule of law is weak or absent, for example, conflict affected regions. In such cases, host country jurisdictions are not willing or able to address negative impacts, while home jurisdictions do not always offer effective alternatives for redress. These situations, or “governance gaps,” can lead to a permissive environment for wrongful business acts due to a lack of effective sanctioning and reparation. This leaves victims without access to remedy.

The foundational and operational principles of access to remedy are described and explained below.

## Foundational Principle of Access to Remedy

**Foundational Principle 25:** “As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

### **Explanation:**

Unless states investigate, punish and redress business-related human rights abuses when they take place, the state duty to protect will be perceived as weak or even meaningless.

Access to effective remedy can be provided through:

- > State-based judicial mechanisms;
- > State-based non-judicial mechanisms;
- > Non-state-based grievance mechanisms, including mechanisms provided by business, industry associations, multi-stakeholder groups and international bodies.

Remedies provided by the above-mentioned grievance mechanisms 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.”

Grievances are described as “perceived injustice evoking an individual’s or a group’s sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities.”

The Guiding Principles state that state-based judicial and state-based non-judicial grievance mechanisms are required to form the foundation of a wider system of remedy. They should be complemented, supplemented or enhanced by operational-level grievance mechanisms run by individual companies, groups of stakeholders and international and regional human rights mechanisms.

## Operational Principles of Access to Remedy

Operational guidance is provided for state-based judicial mechanisms, state- based non-judicial grievance mechanisms and non-state-based grievance mechanisms.

### State-based judicial mechanisms

**Operational Principle 26:** "States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy."

#### *Explanation:*

States are required to ensure the effectiveness of judicial mechanisms in addressing business-related human rights abuses. State-based judicial mechanisms include national courts for domestic and for extraterritorial claims (as described under pillar 1 under Supporting business respect for human rights in conflict-affected areas) and regional human rights courts such as the European Court of Human Rights. States should make sure not to erect legal, practical or other barriers for victims looking for remedy. States should also make sure that court processes are not hindered by corruption or obstruction of human rights defenders and that they are independent of economic or political pressures. Identified barriers to judicial remedy include:

- > Restrictions in attribution of legal responsibility among members of a corporate group. This applies to parent and subsidiary companies that operate as separate legal entities. Under current law it can be difficult to attribute responsibility to a parent company for human rights abuses associated with a subsidiary. At the same time, it may be difficult to hold the subsidiary to account if it is located in a host jurisdiction where the judicial system is under- resourced or affected by bribery and corruption.<sup>30</sup>
- > Denial of access to justice in a host state and inaccessibility of justice in the home state. As also described in Pillar 1, the state's duty to protect, courts in home states may find themselves qualified to rule on cases with extra territorial consequences. In other cases the courts may not feel qualified to rule, a situation referred to as "forum non-conveniens"<sup>31</sup>. Courts then argue that the claim should be heard in a more suitable forum, usually the host state. During the forum on the Guiding Principles in Geneva in December 2012<sup>32</sup>, Mr. Kunda, a citizen of the Democratic Republic of Congo, described such a case. The case concerns extra-judicial killings of over 70 citizens by military forces in Kilwa, Congo in 2004. A company called Anvil Mining is accused of involvement in the events by having provided logistical support to the Congolese army. During trials in Congo, soldiers and former Anvil employees were first indicted but later acquitted. As Anvil is a Canadian company, victims and their representatives filed a class action against Anvil Mining, in 2010. In April 2011, the Quebec Superior Court ruled the case could proceed to the class certification stage. However, the Quebec Court of Appeal, overturned the decision on jurisdiction. The case illustrates the extreme difficulty faced by victims of human rights violations when trying to get access to judicial remedy.
- > Other barriers include lack of access to information for claimants, the safety situation of claimants and lawyers, the costs of bringing claims forward, unavailability of lawyers, states' prosecutors lack of resources and expertise, delays and length of proceedings, corruption and economic or political pressures, and insufficient options for aggregating claims or enabling representative proceedings (such as class actions and other collective action procedures), which prevent effective remedy for individual claimants.

### State-based non-judicial grievance mechanisms

**Operational Principle 27:** "States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse."



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#### **Explanation:**

State-based non-judicial grievance mechanisms include labour tribunals, National Human Rights Institutions, state-run Ombudsman offices and National Contact Points under the Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development (OECD).

The human rights paragraph in the revised OECD Guidelines for Multinational Enterprises is aligned with the Guiding Principles. Each member country of the OECD is required to install a National Contact Point (NCP). NCPs promote the OECD Guidelines and deal with complaints, so called "specific instances" of alleged non-compliance of a business with the OECD Guidelines. NCPs can arbitrate or mediate when such complaints are filed. NCPs have the obligation to make sure a complaint is bona fide. When bona fide, NCPs have the obligation to publish the character of complaints filed.

Companies do not have to accept mediation of NCPs. Statements<sup>a</sup> of NCPs on specific claims are not legally binding.

State-based non-judicial mechanisms are deemed important as they complement and supplement judicial mechanisms. Even well-functioning and well-resourced judicial mechanisms are not able to address all alleged abuses. Judicial remedy is also not always required or favoured by claimants.

Procedures of state-based non-judicial grievance mechanisms can be mediation-based or adjudicative and should be culturally-appropriate and rights-compatible.

### Non-State-based grievance mechanisms

**Operational Principle 28:** "States should consider ways to facilitate access to effective non- State-based grievance mechanisms dealing with business-related human rights harms."



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#### **Explanation:**

Non-State-based grievance mechanisms include those operated by companies alone or with stakeholders, by an industry association or a multi-stakeholder group. Such mechanisms are non-judicial and can have an adjudicative or dialogue-based character. They offer benefits such as speed of access and remediation, reduced costs and/or transnational reach.

**Operational Principle 29:** "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"

As described under pillar 2, Step 6: Remediating Human Rights, companies are expected to provide for or cooperate in the remediation of any adverse impacts that they have caused or contributed to. To identify and address negative impacts companies are required to set-up operational-level grievance mechanisms. Such mechanisms should not function as passive complaint boxes but should actively invite stakeholders for dialogue. They also function as "early warning systems" preventing escalation of damage to individuals or groups and the reputation of parties involved.

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<sup>a</sup>For examples of statements made by NCPs, see: <http://www.oecd.org/daf/inv/mne/ncpstatements.htm>

An example<sup>b</sup> of a company grievance mechanism is described below:

"Tecnofil S.A. is one of Peru's producers of copper and copper alloy semi-finished and finished products (bus bar, flat wire, and bars). The company has maintained a clear strategy of expanding and diversifying its products and markets to become a mid-sized operation today. Tecnofil was originally located in the industrial zone, with no large communities nearby that could be adversely affected. However, as urban dwellings started extending into the area, the company found itself with a number of houses very close to the plant's walls.

Having determined that a new affected community had emerged, Tecnofil proactively engaged in improving its dialogue with the residents. The company appointed a coordinator within its Quality, Environmental, Safety & Occupational Health department whose task is to maintain a relationship with the community, including collecting and addressing their concerns. The company implemented a simple, yet effective, grievance mechanism, which includes periodic meetings with neighbouring residents to monitor their concerns related to noise, vibration levels, and fumes from the plant's furnace. The meetings take place periodically and have proven to be the most appropriate means to collect concerns and provide answers. To build confidence among community members, senior management always attends these meetings, and the community is invited to discuss each complaint with people who are in charge of making decisions. Tecnofil tells people what has been done to reduce negative impacts, and the residents provide feedback.

Following this interaction, the company has made significant improvements to its operations to reduce impact, and has had much to report back to the community. For example, the motors have been covered with noise-protective enclosures, and insulation of the plant's walls has been improved. The company also invited people to see the plant's operations."

**Operational Principle 30:** "Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available."

The Guiding Principles emphasize the importance of grievance mechanisms for collaborative and multi-stakeholder initiatives in order to maintain legitimacy. Grievance mechanisms can be placed on the level of individual members of such initiatives, on the level of the initiative itself or on both levels. Examples of grievance mechanisms operated in collaborative or multi-stakeholder setting include the ones operated by the Fair Wear Foundation<sup>33</sup> and Social Accountability International<sup>34</sup> or the Office of the Compliance Advisor Ombudsman set up by the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA). The Ombudsman responds to complaints from project-affected communities with the goal of improving social and environmental outcomes of IFC and MIGA projects<sup>35</sup>.

Although the Guiding Principles explain that company and collaborative grievance mechanisms complement stakeholder involvement and collective bargaining processes, they cannot replace them. They should never be used to undermine the role of legitimate trade unions or hinder access to judicial or other non-judicial mechanisms.

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<sup>b</sup> Good Practice Note; Addressing Grievances from Project-Affected Communities; Guidance for Projects and Companies on Designing Grievance Mechanisms by the International Finance Corporation, September 2009.

**Operational Principle 31:** “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;
- f. 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.”

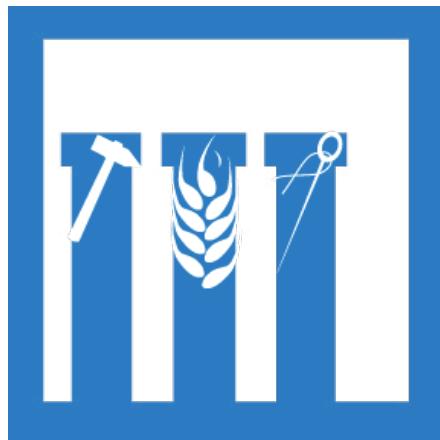


#### **Explanation:**

Grievance mechanisms can only function well if they are known, trusted and easy to use. The criteria above help design or modify non-judicial grievance mechanisms to make sure they are effective.

The criteria described under (a) to (g) apply to any State-based or non-State-based grievance mechanism. Criterion (h) specifically applies to operational-level mechanisms run by companies.

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29. <http://www.un.org/en/documents/udhr/index.shtml#a8> Article 8 of the Universal Declaration of Human Rights: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”
  30. Danish Institute of Human Right; An internal document.
  31. <http://webtv.un.org/search/access-to-judicial-remedy-panel-discussion-forum-on-business-and-human-rights-2012/2012387972001?term=forum%20on%20business%20and%20human%20rights>
  32. <http://webtv.un.org/search/access-to-judicial-remedy-panel-discussion-forum-on-business-and-human-rights-2012/2012387972001?term=forum%20on%20business%20and%20human%20rights>
  33. <http://www.fairwear.org/506/resources/>
  34. <http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&pageId=1173>
  35. <http://www.cao-ombudsman.org/>



## PILLARS IN PRACTICE

### CHAPTER 5

The United Nations Guiding Principles

**Understanding  
Human Rights Risks**



## Guide to Using This Section

### COMMON STANDARDS

In this column, we present the requirements that are typically found in most international codes and standards.

This guide is intended to help you navigate the following section where we look at common human rights risks encountered around the world and in Zimbabwe's mining sector. Stakeholders may use this section as a way to understand the type of human rights risks that they may address by developing appropriate programs.

For each risk topic, we provide a broad perspective on what it means to states, businesses and other stakeholders. We then present the Common International Standards for addressing these risks, Protect, Respect and Remedy Challenges in the Sector, Recommended Due Diligence Actions for Companies, Recommended Actions for States and Multi-Stakeholder Recommendations for the Sector.

Here are the risk topics that we will present:

- > ***Child Labour***
- > ***Working Conditions***
- > ***Rights Holders at Risk in the Workplace***
- > ***Trade Unions***
- > ***Forced Labour***
- > ***Rights Holders at risk in the Community***
- > ***Occupational Health and Safety***
- > ***Environment***
- > ***Land and Property***
- > ***Revenue Management and Transparency***
- > ***Security and Conflict***

## Protect, Respect and Remedy Challenges

Here we highlight the adverse human rights impacts most commonly encountered in the mining sector around the world and specifically in Zimbabwe. This list is intended to be used as a starting point for companies, states and other stakeholders. Remember that consultation with stakeholders is a key resource for identifying and understanding the real problems in your company and your area.

As you look through the following, keep the idea of salient risks in mind, as well as issues related to the probability and severity of the negative impacts.

Take a proactive approach to identifying problems before they occur.

## Recommended Actions for Companies and States

The recommended actions that we present are based on leading practices from around the world. You'll see that having clear policies and procedures, implemented by trained people, is an effective action that spans every type of risk, and stakeholder consultation is an important tool to effectively address issues.

The recommended actions are not an exhaustive list and are provided to get you started. They will need to be tailored according to the situation. While some of actions are preventative, some are actions that mitigate or remediate negative impacts.

If you look at some of the potential solutions, you'll see that a participatory, multi-stakeholder partnership and capacity building approach is an effective way to deal with complex and cross-cutting challenges.

## Multi-Stakeholder Recommendations

The following recommendations were developed by stakeholders who participated in the Pillars in Practice Multi-Stakeholder Advisory Committee consultations. Stakeholders were asked to develop recommendations for companies, the state and civil society on how to address negative human rights impacts.



## Child Labour

### COMMON STANDARDS

- Children under 12 are not allowed to work;
- Minimum age for work should be 15 (possible exception of 14 for developing countries). This is the age at which compulsory schooling ends;
- Minimum age for hazardous work should be 18; and Light work (i.e. work not affecting the child's health, education or development) can be undertaken between the ages of 13 and 15 (possibly between the ages of 12 and 14 in developing countries).
- Children are defined by the UN Convention on the Rights of the Child as those up to 18 years of age.

An estimated 168 million children are engaged in child labour worldwide. Of these, around half are engaged in the worst forms of child labour, including sexual exploitation, slavery, bonded labour and hazardous work. In many ways, patterns of child labour reflect the human rights enjoyment of communities and families. For example, poverty, HIV/AIDS, conflict, limited government capacity and discrimination may be factors that correlate to a higher prevalence of child labour.

Children who work are usually more vulnerable than adult counterparts to exploitation and violence, including sexual exploitation and abuse in the workplace. As child labour often occurs in informal and under-regulated sectors, such factors are exacerbated. Child labour can have permanent negative impacts on children's physical and cognitive development, with permanent consequences on their health, development and well-being. Child labour also interferes with the right to education and can result from the lack of access to this human right. Where this is the case, valuable opportunities for breaking the cycle of poverty in communities can be lost.

Businesses may come into contact with children as consumers, workers, family members of employees and community members. Children are among the most powerless stakeholders in terms of exercising and enjoying their rights, and there is a rapidly growing attention on children's rights within business and human rights.<sup>1</sup>

In Zimbabwe, a child between the ages of 13 and 15 can work as an apprentice or if the work is an integral part of a course or training or technical or vocational education<sup>2</sup>. For light work, work other than apprenticeship or work related to vocational education, the age limit is 15 years of age, but no person under the age of 18 may perform work likely to jeopardise their health, safety or morals<sup>3</sup>. Work involving contact with hazardous substances and work involving underground mining is prohibited.

The ILO reported in 2010 that legal protections did not apply to self-employed workers, despite reports that the informal economy was among the sectors where child labour was the most common<sup>4</sup>. The U.S. Department of State also reported in 2010 that the number of children working in the informal sector appeared to be increasing and that children worked to fill income gaps left by unemployed,

ill or diseased relatives<sup>5</sup>.

The ILO's Committee of Experts reported in 2010 that children worked in mining, scavenging for diamonds, gold, chrome and tin<sup>6</sup>. Sixty-seven percent of children working in this sector reportedly used chemicals, including mercury and cyanide, as well as explosives.<sup>7</sup> Approximately 24 percent worked more than nine hours a day.<sup>8</sup>

Mining may include the extraction of material from underground passages and quarries<sup>9</sup>. In 2011, the UN Special Rapporteur on Contemporary Forms of Slavery reported that mercury had been found in the bodies of children working in artisanal gold mines in Zimbabwe.<sup>10</sup>

The ILO's Committee of Experts reported in 2010 that primary education was neither free nor compulsory, and that the quality of education was low<sup>11</sup>. Bertelsmann Foundation's country profile reported in 2011 that school drop-outs were common and the number has been increasing, affecting girls disproportionately.<sup>12</sup>

## Protect, Respect and Remedy Challenges in the Bangladesh Ready-Made Garments Sector

> Companies may cause, contribute or be directly linked to adverse human rights impacts concerning child labour when they:

- Do not engage in dialogue with stakeholder groups to properly identify areas of child labour risk and its remediation.
- Lack age verification procedures to properly identify eligible and ineligible job candidates based on legal working age.
- Lack registers or other documents indicating the names and ages or dates of birth of employees, including children and young persons employed by them but also of those receiving vocational orientation or training.
- Use apprentice programs permitting children to work or that are improperly used for young workers.
- Do not effectively communicate their child labour to workers and interested parties.
- Do not maintain a child labour remediation plan.
- Do not fortify company policies related to child labour through the use of stakeholder consultation.
- Do not communicate company policies to business partners.

> Governments do not adequately protect against adverse human rights impacts concerning child labour when they:

- Do not properly capacitate labour inspection and related services.

- Do not give priority to planning for and meeting the needs to children and youth in national development policies and programmes.
- Do not enforce children's attendance at school or participation in approved vocational orientation or training programmes.
- Do not closely supervise the conditions of employment in which children and young persons are employed.
- Do not identify and denounce the worst forms of child labour.
- Do not identify, conduct outreach and cooperate with communities where children are at special risk.
- Do not inform, sensitise and mobilise public opinion and concerned groups, including children and their families.

## Recommended Due Diligence Actions for Companies

- > The company does not employ workers less than 15 years of age for full-time work, 13 years of age for light work and 18 years of age for hazardous work (please see the question description for exceptions).
- > If the company employs minors below the age of 18, the company has a list of job functions that can safely be performed by minors.
- > The company is aware of local age-levels for completion of compulsory education and does not employ workers under that age for work that may interfere with such education.
- > The company has a reliable procedure to check the age of young job candidates by birth certificate, other official forms of identification, or by alternative means such as physical appearance or knowledge of historic events.
- > Company apprenticeship programmes do not constitute the main portion of the workforce, are limited in duration, are performed in conjunction with a school programme (or supervised by Labour Ministers or Labour Organisations), and do not interfere with the child's compulsory education.
- > If the company becomes aware that it is employing young workers below minimum age, it ensures that they are enrolled in education programme, and that their dependents are compensated for the resulting loss of income.
- > Communicate child labour policies and procedures to suppliers and contractors.

## Recommended Actions for States

- > The state gives high priority to planning for and meeting the needs of children and youth in national development policies and programmes.
- > The state requires and effectively ensures, up to an age at least equal to that specified for admission to employment, full-time attendance at school or participation in approved vocational orientation or training programmes.

- > The state supervises closely the conditions of employment in which children and young persons under the age of 18 years are employed.
- > The state strengthens labour inspection and related services with special training of inspectors to detect abuses in the employment or work of children and young persons.
- > The state identifies and denounces the worst forms of child labour.
- > The state identifies, reaches out to and works with communities where children are at special risk.
- > The state informs, sensitises and mobilises public opinion and concerned groups, including children and their families.

## Multi-Stakeholder Recommendations for the Bangladesh Ready-Made Garments Sector

The following recommendations were developed by stakeholders participating in Pillars in Practice Multi-Stakeholder Advisory Committee consultations.

### > FOR COMPANIES:

- Business associations should give their members guidance on addressing the needs and challenges of child informal miners.
- Businesses should adhere to international best practices on child labour.
- Foreign businesses should work through local embassies to train groups of companies on the UN Guiding Principles on Business and Human Rights and how they may be applied to address child labour.

### > FOR STATES:

- The state should actively engage communities in their efforts to address child labour.
- The state should seek to attract mining companies whose policies and practices respect human rights.
- The state should ensure an environment conducive to the success of civil society organizations engaged in addressing child labour.
- The state should strengthen the capacity of ministries to engage in dialogue and promote the eradication of child labour.
- The state should strengthen the capacity of civil society organisations to address child labour in communities and also to capacitate the government itself on the issue.
- The state should establish permanent structures to support victims of child labour associated with mining activities.

> **FOR ALL STAKEHOLDERS:**

- Civil society organisations should raise awareness of the issue of child labour in the informal mining sector.
- All stakeholders should work together to devise a conflict management structure to handle child labour discoveries associated with mining. This mechanism should be equipped to handle complaints from any party.
- All stakeholders should engage in collective dialogue and training around child labour



## Working Conditions

### COMMON STANDARDS

- Employers pay regularly and in a timely manner;
- Any wage deductions must be authorised, legitimate and transparent;
- The maximum amount of working hours at 8 hours per day, or no more than 48 hours per week (excluding overtime);
- All personnel must be treated with respect and dignity;
- People must not be abused at work physically, verbally or mentally.

The improvement of working conditions is one of the International Labour Organization's (ILO) principal objectives, in line with the right of every person to just and favourable conditions of work. Working conditions covers issues related to wages, hours of work, social security, employment status and disciplinary practices<sup>13</sup>.

International human rights establish the right of every person to an adequate standard of living. The ILO calls on all member states to adopt minimum wage policies that ensure an adequate standard of living.

Social security is understood as encompassing the following nine branches: adequate health service, disability benefits, old age benefits, unemployment benefits, employment injury insurance, family and child support, maternity benefits, disability protections, and provisions for survivors and orphans.

The risk of exploitative labour practices increases when a company does not recognise or acknowledge a worker's employment status within the company (either as an employee, a hired labourer or otherwise) and without providing her with the same employment benefits and protections as other workers.

Disciplinary practices are necessary to ensure that rules are followed and fairly applied in the workplace. However, without clear guidelines and training, workplace discipline can become abusive or discriminatory.

In 2013, companies and government ministries identified that the greatest challenge in relation to working conditions was the implementation of existing labour laws<sup>14</sup>. The National Social Security Administration (NSSA) is responsible for monitoring work sites across the country. In practice, the capacity of the NSSA to monitor worksites in 2013 was reportedly hindered by a lack of funds and equipment to travel to inspection sites.

Labour legislation does not apply to self-employed workers such as those in the informal sector<sup>15</sup>. The informal sector has reportedly grown in recent years. In 2013, the Zimbabwe Congress of Trade Unions (ZCTU) noted that Zimbabwe's economic challenges have encouraged employers to pay their workers in cash on the black market rather than employ them formally<sup>16</sup>.

Zimbabwe has no single official minimum wage except for agricultural and domestic workers, but there are government regulations or agreements based on collective bargaining setting minimum wages for each sector<sup>17</sup>. The average salary for formally employed workers in Zimbabwe was \$222 per month<sup>18</sup>.

Bertelsmann Foundation's 2010 Zimbabwe Country Report noted that Zimbabwe did not have unemployment insurance.

In 2012, ZimStat reported that 84 percent of the labour force was employed informally<sup>19</sup>, though the in 2013 ZCTU claimed that this was a significant under-estimate<sup>20</sup>.

## Protect, Respect and Remedy Challenges in the Bangladesh Ready-Made Garments Sector

> Companies may cause, contribute or be directly linked to adverse human rights impacts concerning :

- Disciplinary practices when they:
  - Do not maintain clear policies and procedures for acceptable disciplinary action.
  - Do not effectively train workers and supervisors on disciplinary rules.
  - Deduct wages as a disciplinary measure.
  - Maintain separate rules for permanent and contracted workers.
- Remuneration when they:
  - Do not properly educate workers as to how their wages are calculated.
  - Do not explain pay deductions and fines.
  - Do not pay full social security and other benefits as required by law.
  - Do not pay wages on time.
  - Use labour contracting arrangements or consecutive short-term contracts and false apprenticeship schemes to avoid paying the full wages and benefits.
  - Excessively deduct wages for food and supplies.
- Working hours when they:
  - Allow employees to work consistent overtime without assessing the reason overtime is necessary or considering raising wages.
  - Average work hours from several weeks to avoid paying daily overtime premium.
  - Do not focus on improving production planning in spite of bottlenecks.
  - Do not train workers to increase productivity.
  - Do not add shifts and maintain flexible work schedules.

> Governments do not adequately protect against adverse human rights impacts concerning working conditions when they:

- Do not ensure the suitability and enforcement of legislation pertaining to adequate working conditions.
- Do not monitor companies to secure the provision of full fringe benefits for all workers.
- Do not encourage companies to pay a basic needs wage.

- Do not take steps to formalise the informal mining sector.
- Do not engage in programs to identify informal miners and allow them to collectively represent their interests and obtain licenses.

## Recommended Due Diligence Actions for Companies

- > Normal company working hours are limited to 48 per week by both company policy and practice, or fewer if provided by national law, collective agreement or industry standards.
- > Overtime is infrequent, remunerated at premium rate, and does not exceed 12 hours in any one week, or 36 hours per month.
- > The company has a system to plan, record and monitor hours worked by each employee, and regularly evaluates whether the number of workers is sufficient to meet production targets without resorting to overtime.
- > Where overtime per worker systematically exceeds 12 hours per week, the company increases its workforce to correspond to production targets, or puts in place measures to increase worker productivity and reduce overtime. Workers are allowed at least 24 consecutive hours of rest (or more if provided by national law or industry standards) in every seven-day period.
- > The company ensures that workers have no less than a 30-minute break for every 4 hours of work (or more if provided by national law or industry standards) and that workers are allowed to use toilet facilities whenever necessary and not just during designated breaks.
- > It is company policy to provide workers with a living wage sufficient to meet basic food, clothing and housing needs and provide some discretionary income for themselves and their dependents.
- > The company is aware of whether the legal minimum wage in the country of operation meets the requirement for a living wage.
- > If no national minimum wage is established, or if national minimum wage standards are insufficient to meet the basic needs of workers and their dependents, the company calculates a living wage based on the cost of living in its area of operation.
- > Part-time workers receive wages and benefits that are proportionate to those of full-time workers, and receive overtime compensation at a minimum of 1.25 times their hourly salary.
- > The company pays wages at regular intervals and does not take deductions from wages for disciplinary measures or other deductions not authorised by national law.
- > Bonus and piece-rate payment systems are monitored to ensure that the total salary paid meets living wage requirements without resort to overtime.
- > Workers are granted at least three weeks of paid holiday leave per year or more if required by national law or collective agreements.
- > Part-time and short-term workers are provided with paid holiday leave proportionate to the number of hours worked, at a rate equal to that of permanent full time employees.

- > Workers are entitled to paid sick leave in accordance with the applicable national law. If sick leave is not provided for in national law, the company consults with union or worker representatives to establish alternative means of protection in case of illness or injury.
- > The company ensures that sick leave is not deducted from workers' vacation time.
- > Female workers are entitled to no less than fourteen weeks of paid maternity leave per child.
- > The company grants compassionate or parental leave to workers who have recently adopted a child or children, or have taken on the responsibility to care for foster children or other dependent children.
- > The company ensures that all employees receive employment contracts prior to starting work for the company, and those contracts are understood by each employee.
- > Contracts detail each employee's rights and obligations of employment, including clear job description, bonus and salary systems, and reasonable notice periods.
- > Reference to company handbooks or other relevant documents on employment terms are integrated into the contract.
- > The company ensures that contractors provide workers operating within company premises with an official employment status in line with company standards.

## Recommended Actions for States

- > The state ensures the suitability and enforcement of legislation pertaining to adequate working conditions.
- > The state creates and runs practical training courses on adequate working conditions.
- > The state supports and convenes multi-stakeholder initiatives or roundtables to draw on the experience of organisations, non-government and government agencies involved in advocacy or investigation of related issues related to working conditions.
- > The state enhances and ensures the availability of relevant governmental grievance mechanisms. Means of accomplishing this include enhancing the mandate and building the capacity of the Human Rights Commission on human rights and business.
- > The state formulates and pursues a national policy designed to promote by methods appropriate to national conditions and practice, and to conditions in the mining industry, the adoption of the principle of the progressive reduction of normal hours of work<sup>21</sup>.

## Multi-Stakeholder Recommendations for the Zimbabwe Mining Sector

The following recommendations were developed by stakeholders participating in Pillars in Practice Multi-Stakeholder Advisory Committee consultations.

### > FOR COMPANIES:

- Businesses should, where possible, avoid using casual labour. Casual labourers should not be employed for long periods of time, and should be given the same rights and benefits

as permanent employees according to how long they have worked for the company, not their contractual status.

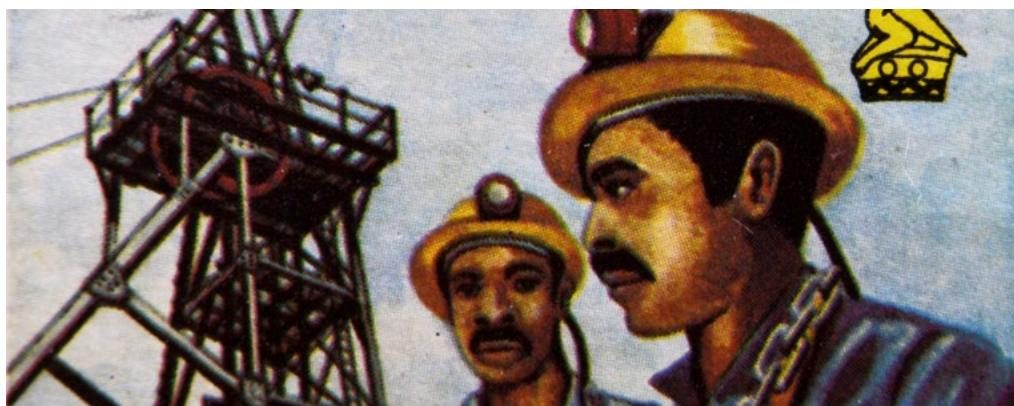
- Businesses should adhere to international best practices relating to working conditions.
- Foreign businesses should work through local embassies to train groups of companies on the UN Guiding Principles on Business and Human Rights and how they may be applied to address issues related to working conditions.

> **FOR STATES:**

- The state should bring the Labour Act in line with international standards.
- The state should implement existing labour laws and incorporate into them the relevant articles from international conventions that have been ratified.
- The state should actively engage communities in ensuring decent working conditions.
- The state should seek to attract mining companies whose policies and practices respect decent working conditions.
- The state should ensure an environment conducive to the work of CSOs focused on decent working conditions.
- The state should strengthen the capacity of ministries to engage in dialogue and promote decent working conditions.
- The state should establish permanent structures to support victims of poor working conditions associated with mining activities.

> **FOR ALL STAKEHOLDERS:**

- Civil society should promote community awareness about their rights as workers, including when they are employed temporarily.
- Civil society organisations should complement government efforts to capacitate businesses and communities in decent working conditions.
- All stakeholders should work together to devise a conflict management structure to handle poor working conditions associated with mining. This mechanism should be equipped to handle complaints from any party.
- All stakeholders should engage in collective dialogue and training around working conditions.



## Rights Holders at Risk in the Workplace

### COMMON STANDARDS

- Prevent acts of discrimination in the workplace, including those rooted in formal structures and cultural traditions;
- Making decisions concerning hiring, wages, promotion, training, discipline, retirement or termination based on unbiased criteria rather than on discriminatory characteristics;
- Procedures in place — accessible and known to all workers—where workers can safely report incidents of workplace discrimination;
- Reasonable steps to enable qualified persons with disabilities or health conditions to gain employment opportunities with the company, for example by providing wheel chair access, flexible working hours, longer breaks etc.

Discrimination in the workplace can occur in various forms and settings, from high-rise office buildings and rural farming communities to factories in export-processing zones. It can affect men or women on the basis of their sex, race, skin colour, national extraction, social origin, religion, political opinions, disability, health or other status.

Rights holders at risk in the workplace may include ethnic minorities, indigenous peoples, migrant workers, persons with disabilities, persons with HIV/AIDS, religious minorities or sexual minorities.

International law prohibits direct and indirect discrimination. Direct discrimination occurs when a law, company policy, practice or procedure targets a particular group of people due to a distinguishing personal characteristic. Indirect discrimination occurs when the result of the application of a law, company policy, procedure or practice negatively impacts a particular individual or group, even if the content appears neutral<sup>22</sup>.

Zimbabwe's 2013 constitution provides protection from discrimination on the grounds of gender, nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether they were born in or out of wedlock<sup>23</sup>. The Labour Act prohibits discrimination on the grounds of race, tribe, place of origin, political opinion, colour, creed or gender<sup>24</sup>.

The Disabled Persons Act and the 2013 constitution provide protection from discrimination in the workplace for persons living with disabilities. As of 2013, there was no legislation aimed at effective equality of opportunity for disabled persons<sup>25</sup>. The U.S. Department of State reported in 2010 that training and education for disabled persons were restricted by the lack of resources and this hinders persons with disabilities from competing for already scarce jobs<sup>26</sup>.

Homosexuality is illegal in Zimbabwe. The U.S. Department of State reported in 2010 that general homophobia and restrictive legislation made it difficult for sexual minorities to feel safe and be open about their sexuality, including in the workplace<sup>27</sup>. Higher rates of unemployment can be found among members of the LGBT community than in the general population<sup>28</sup>.

In 2012, a survey conducted by CV People Africa in partnership with Datasol showed that Zimbabwean women employed in the formal sector were paid an annual average of US\$3,500 less than their equivalently qualified male counterparts.<sup>28</sup> There was also concern that there was discrimination against women in access to certain benefits including maternity leave.<sup>29</sup> According to Bertelsmann Foundation's Zimbabwe 2010 country profile, women had a much more difficult time than men finding jobs in the formal sector.<sup>25</sup> An article in the Journal of International Women's Studies noted in 2013 that women made up half of small-scale miners in the informal sector but less than 10 percent in the formal sector.<sup>27</sup>

Zimbabwe recognises citizenship by birth, descent and registration. Stakeholders consulted in Harare in June 2013 indicated that Chinese workers employed in Chinese-operated mines worked long hours, were not paid overtime wages and were not allowed to leave employment at will<sup>29</sup>.

## Protect, Respect and Remedy Challenges in the Zimbabwe Mining Sector

> Companies may cause, contribute or be directly linked to adverse human rights impacts concerning rights holders at risk in the workplace when they:

- Deny minorities or women equal benefits and job opportunities.
- Do not attempt to reflect workplace demographics in the promotion of managers.
- Hire or promote workers based on religion, gender, race or other non-performance criteria.
- Take retribution against employees for union activities.
- Include non-performance related criteria, such as physical characteristics, in job applications.
- Do not hire workers over a certain age for specific jobs.
- Discriminately offer training that enables advancement.
- Engage in pregnancy testing of women to deny them employment or advancement.
- Attempt to uncover the HIV status of employees to deny employment.
- Use employment agencies that engage in discriminatory practices.
- Use communications channels that exclude minorities or migrant workers that do not know the main language.

> Governments do not adequately protect against adverse human rights impacts concerning rights holders at risk in the workplace when they:

- Do not regularly assess and update laws that prohibit discriminatory practices.
- Do not assure that norms and their application are directed to the specific necessities of a variety of stakeholders.
- Do not make complaint mechanisms available to victims of discrimination, such as effective court systems.
- Do not enforce prohibitions of discrimination.
- Do not promote mechanisms to enhance employer performance in relation to gender.
- Do not prioritise the objective of encouraging underrepresented members of society, such as women, from entering areas insufficiently represented in the economy.

## Recommended Due Diligence Actions for Companies

- > The company identifies different types of discrimination, including those rooted in formal structures and cultural traditions.
- > It is company policy to ensure that decisions concerning hiring, wages, promotion, training, discipline, retirement and termination are based only on unbiased criteria, and are not linked to any of the discriminatory characteristics listed in the description for this question.
- > Each job category in the company has a written description stating the salary level and the qualifications required for that job category.
- > The company ensures that employment advertisements do not reference discriminatory criteria, such as race, gender or age (unless listed as part of a legal equal opportunities promotion).
- > The company ensures that job applicants are not asked to give information about their marital status, pregnancy, intent to have children, number of dependents, or similar information that may lead to discriminatory hiring decisions.
- > All hiring managers receive training regarding the company's non-discrimination policies.
- > The company has established a procedure, accessible and known to all workers, where workers can safely report incidents of workplace discrimination.
- > The company takes reasonable steps to enable qualified persons with disabilities or health conditions to gain employment opportunities with the company, for example by providing wheel chair access, flexible working hours, longer breaks etc.

## Recommended Actions for States

- > The state assesses and updates laws that prohibit discriminatory practices motivated by race, religion, sexuality, nationality, age and disability, in the employment, termination, payment, promotion, hiring, recruitment, training, use of company facilities, testing, benefits, retirement, annual leave, etc.
- > The state assures that norms and their application are directed to the specific necessities of multi-stakeholders, such as provisions included for disabled workers in order to accommodate their needs and avoid causing undue burden.
- > The state establishes and maintains government mechanisms for grievances in order to deal with complaints related to employment discrimination. Means of reducing barriers to remedy include improving access to courts by reducing costs and ensuring impartiality.
- > The state institutes and applies resources and sanctions for negative actions motivated by discrimination.
- > The state develops programs to guarantee that men and women receive the same opportunities and conditions with respect to education and paid labour.
- > The state institutes and implements legislation that requires gender equality in employment, education policy, and social policy.

- > The state works in collaboration with employers by providing advice, practical tools and training to help improve performance in relation to gender.
- > The state convenes multi-stakeholders initiatives to tackle specific issues related to gender equality, such as sexual harassment.
- > The state establishes objectives to encourage women to enter areas insufficiently represented in the economy.
- > The state institutes reporting requirements for businesses to evaluate and report on policies in the areas of gender equality.

## Multi-Stakeholder Recommendations for the Zimbabwe Mining Sector

The following recommendations were developed by stakeholders participating in Pillars in Practice Multi-Stakeholder Advisory Committee consultations.

### > FOR COMPANIES:

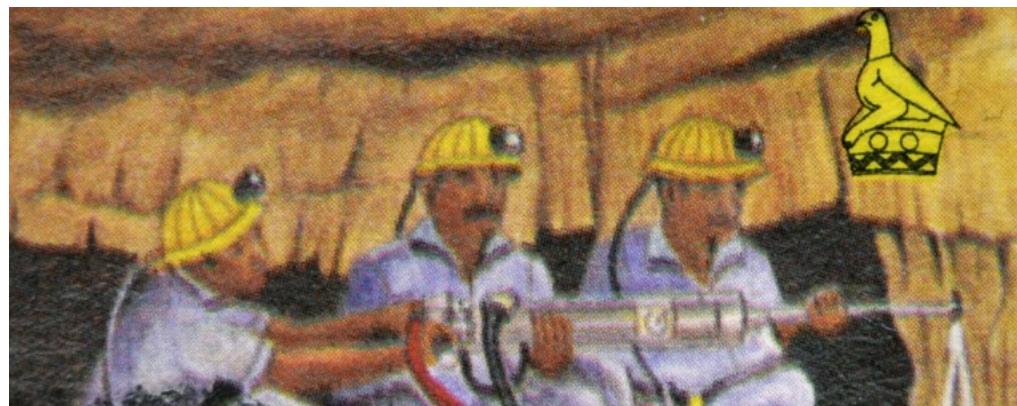
- Businesses should strive to achieve an equal representation of both genders in the workforce.
- Businesses should ensure that their workplaces are gender-sensitive.
- Businesses should not require a period of working before workers can take maternity leave.
- Businesses should adhere to international best practices associated with rights holders at risk in the workplace.
- Foreign businesses should work through local embassies to train groups of companies on the UN Guiding Principles on Business and Human Rights and how they may be applied to address issues related to rights holders at risk in the workplace.

### > FOR STATES:

- The state should actively engage communities in addressing issues associated with rights holders at risk in the workplace.
- The state should seek to attract mining companies whose policies and practices respect rights holders at risk in the workplace.
- The state should ensure an environment conducive to the work of civil society organizations focused on addressing rights holders at risk in the workplace.
- The state should strengthen the capacity of ministries to engage in dialogue and promote decent conditions for rights holders at risk in the workplace.
- The state should establish permanent structures to support rights holders at risk in the workplace who were victims of human rights abuses as a result of mining activities.

> **FOR ALL STAKEHOLDERS:**

- Civil society organisations should complement government efforts to capacitate businesses and communities in issues surrounding rights holders at risk in the workplace.
- All stakeholders should engage in collective dialogue and training around rights holders at risk in the workplace.
- All stakeholders should work together to devise a conflict management structure to handle disputes associated with rights holders at risk in the workplace arising out of mining. This mechanism should be equipped to handle complaints from any party.



## Trade Unions

### COMMON STANDARDS

- No limitations on employees' rights to unionise, collectively bargain or go on strike;
- Improvement of the operations of legal workers' organisation that aim to represent workers' collective interest;
- Establishment or support of unions that are independent of management and genuinely represent the interests of workers;
- No punishment of workers who attempt to form or join trade unions or undertake strike actions.

The right to freedom of association and collective bargaining is at the core of the values of the International Labour Organization (ILO). Freedom of association ensures that workers and employers can associate to efficiently negotiate work relations. Combined with strong freedom of association, sound collective bargaining practices ensure that employers and workers have an equal voice in negotiations and that the outcome will be fair and equitable.

There continue to be major challenges in applying these principles. In some countries certain categories of workers (e.g. public servants, seafarers, workers in export processing zones) are denied the right of association, workers' and employers' organizations are illegally suspended or interfered with and, in extreme cases, trade unionists are arrested or killed.

The Committee on Freedom of Association has ruled that the right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests<sup>30</sup>.

The constitution provides for the right to associate, and in particular to form or belong to political parties or trade unions or other associations for the protection of ones interests<sup>31</sup>. Any group of employees may form a trade union according to the Labour Act<sup>32</sup>. Unions must register with the Ministry of Public Services, Labour and Social Welfare<sup>33</sup>. In 2013, the U.S. Department of State reported that the law gives the Ministry of Public Service Labour and Social Welfare the power to supervise the election of officers of workers' and employers' organizations, to cancel or postpone elections, and gives the minister of labour extensive powers to regulate union activities.

The International Labour Organization (ILO) has pointed to the need to abolish the requirement for registration of unions<sup>34</sup>.

The law requiring notification of police for gatherings does not apply to unions, but according to the Zimbabwe Congress of Trade Unions (ZCTU), police have disrupted meetings of trade unionist<sup>35</sup>. The government has reportedly prevented trade unions from holding peaceful marches<sup>36</sup>.

The Labour Act provides for collective bargaining over wages and conditions of employment. The U.S. Department of State's Human Rights Report noted in 2010 that labour regulations allowed the government to veto collective bargaining agreements that it deemed harmful to the economy<sup>37</sup>.

In March 2010, the ILO Commission of Inquiry found anti-union discrimination to be both systematic and systemic, with 'a clear pattern of arrests, detentions, violence and torture by the security forces against trade unionists that coincide with ZCTU nationwide events, indicating that there has been some centralised direction to the security forces to take such action.'<sup>38</sup>

The National Mine Workers Union of Zimbabwe is affiliated to ZCTU. In 2012, The Worker reported that the union lacked the resources to effectively develop a nationwide communication campaign, and ZCTU reported in 2012 that some employers prevented them from organizing, especially in the diamond mines, where a high amount of bureaucracy is involved<sup>39</sup>.

## Protect, Respect and Remedy Challenges in the Zimbabwe Mining Sector

> Companies cause, contribute or are directly linked to adverse human rights impacts concerning trade unions when they:

- Prevent workers from forming or joining independent workers' associations.
- No clear policy allowing collective bargaining.
- Management appoints worker representative.
- Management favours one worker organisation over another.
- Company advises workers that unions will discourage investment and reduce orders.
- Harass, discriminate against, threaten, fire or 'blacklist' worker representatives or organisers.
- Subject worker association meetings to harassment.

> Governments do not adequately protect against adverse human rights impact impacts concerning trade unions when they:

- Do not promote worker access to information on their rights.
- Stipulate cumbersome legal requirements for strikes.
- Delay or improperly reject union registration or collective bargaining.
- Retaliate or take legal action against unions.
- Take excessive force against demonstrating workers, and exorbitant penalties are given to workers for strike-related crimes such as "obstruction of transport."
- Ban strikes for the first years of commercial production.

## Recommended Due Diligence Actions for Companies

> The company has a commitment to recognise the rights of its workers to freedom of association and collective bargaining, including the right to freely form and/or join independent trade unions, and this commitment is clearly communicated to all employees.

- > The company recognises workers' organisations for collective bargaining purposes and has procedures in place to ensure regular collective bargaining with authorised worker representatives concerning all workplace related issues.
- > The company allows worker representatives access to collective bargaining agreements, company premises, employees and other relevant documentation needed to fulfil their duties.
- > The company prohibits discrimination or adverse actions against worker representatives or employees for participating or refraining to participate in lawful trade union activities.
- > The company has agreed with workers' representatives about the requirements of a fair hearing to be followed in relation to all disciplinary cases and employee grievances.
- > The company has a committee, with participation of employee-elected representatives, which is responsible for hearing, processing, and settling disciplinary cases and employee grievances.
- > The company allows employees to engage in regular employee-only meetings within normal working hours, where employees can discuss concerns regarding working conditions.
- > Where allowed by local legislation, and if independent trade unions are not present, the company informs employees of their right to form independent collective representation at the workplace.
- > Where allowed by local legislation, the company informs workers of their right to engage in regular collective bargaining concerning all workplace issues.
- > Company management meets regularly with worker representatives to discuss work-related problems and any concerns/complaints employees may wish to raise.

## Recommended Actions for States

- > The state sets clear policies and regulations aligned with ILO Conventions 87 and 98.
- > The state sets clear policies and procedures for the appropriate conduct of strikes and the regulation of strikes; refrain from declaring legitimate strikes illegal.
- > The state allocates appropriate resources for staffing and training inspectors and mediators.
- > The state establishes and enforces formal channels for workers and their representatives to file grievances and seek resolution.
- > The state establishes and enforces mediation and arbitration mechanisms for union and company disputes.
- > The state establishes clear regulations that allow unions to operate freely, and avoids indiscriminate and arbitrary prosecution of worker organisations.
- > The state convenes awareness workshops and multi-stakeholder forums to encourage constructive dialogue.

## Multi-Stakeholder Recommendations for the Zimbabwe Mining Sector

The following recommendations were developed by stakeholders participating in Pillars in Practice Multi-Stakeholder Advisory Committee consultations.

### > FOR COMPANIES:

- Businesses should strive to achieve an equal representation of both genders in the workforce.
- Businesses should adhere to international best practices associated with trade unions.
- Foreign businesses should work through local embassies to train groups of companies on the UN Guiding Principles on Business and Human Rights and how they may be applied to address issues associated with trade unions.

### > FOR STATES:

- The state should actively engage communities in addressing issues associated with rights holders at risk in the workplace.
- The state should increase programs to identify informal miners and allow them to collectively represent their interests and obtain licenses.
- The state should seek to attract mining companies whose policies and practices respect trade unions.
- The state should ensure an environment conducive the work of civil society organizations focused on addressing issues associated with trade unions.
- The state should strengthen the capacity of ministries to engage in dialogue and promote trade unions.
- The state should establish permanent structures to support victims of human rights abuses associated with trade unions as a result of mining activities.

### > FOR ALL STAKEHOLDERS:

- Civil society organisations should complement government efforts to capacitate businesses and communities on issues associated with trade unions.
- Civil society organisations should champion the role of trade unions.
- All stakeholders should engage in collective dialogue and training around trade unions.
- All stakeholders should work together to devise a conflict management structure to handle disputes associated with trade unions arising out of mining. This mechanism should be equipped to handle complaints from any party.



## Forced Labour

### COMMON STANDARDS

- Employees have the right to choose their workplace;
- Employees have the right to retain their personal documents and money;
- Employees have the right to leave the workplace after work;
- Employees have the right to resign.

The ILO defines forced labour as work or service exacted from a person under threat or penalty, which includes penal sanctions and the loss of rights and privileges, where the person has not offered himself voluntarily. In 2012, the ILO estimated that 20.9 million people were victims of forced labour globally, trapped in jobs into which they were coerced or deceived and which they could not leave.

This estimate captures the full realm of human trafficking, where people are trafficked for labour and sexual exploitation or what some call modern-day slavery. An estimated 90 percent of forced labour victims are exploited in the private economy by individuals or enterprises, while the remaining 10 percent are in state-imposed forms of forced labour, including prisons, state militaries or rebel armed forces. More than half of the forced labourers (56 percent) can be found in the Asia-Pacific region<sup>40</sup>.

Forced labour is prohibited in the constitution and in the Labour Act in accordance with international standards<sup>41</sup>. In 2013, Zimbabwe was reportedly a source, transit and destination country for forced labour and sex trafficking<sup>42</sup>. There is no comprehensive anti-trafficking law in Zimbabwe, and the country ranked as a Tier 3 country in the U.S. State Department's 2013 Trafficking in Person's Report<sup>43</sup>.

In 2009, Human Rights Watch published reports of forced labour taking place across a range of sectors, including mining. From 2006 to 2008, there were numerous reports of police coercing local miners in Marange to join what amounted to forced labour syndicates. These syndicates would provide police with revenue from the sales of diamonds collected by miners. In November 2008 an estimated 500 syndicates were reportedly operating in Marange<sup>44</sup>. As of 2012, despite security forces being present in Marange, NGO sources indicate that forced labour has ended<sup>45</sup>.

In 2013, South Asians were reportedly subject to conditions of forced labour in Zimbabwe through fraudulent recruitment practices as part of mining investment schemes. Victims of the schemes became indebted to a trafficking ring. The same year, Chinese mining companies reportedly employed slave-like practices, including verbal, physical, and sexual abuse and various means of coercion to induce work in unsafe or otherwise undesirable conditions<sup>46</sup>.

## Protect, Respect and Remedy Challenges in the Zimbabwe Mining Sector

> Companies cause, contribute or are directly linked to adverse human rights impacts concerning forced labour when they:

- Employ workers without pay.
- Employ workers through debt bondage.
- Coerce employees to work against their will.
- Prevent workers from leaving worksites or from resigning from employment.
- Use labour that has been trafficked.
- Retain worker passports or working papers.
- Do not give workers a copy of their contract.
- Do not document workers in the employment records.
- Hold the first month salary as a deposit.
- Require workers to pay for items that make the worker indebted to the company.
- Require workers to sign a termination letter as a condition of employment.
- Employ security forces in mining facilities to coerce workers, especially in the diamond mining sector in which the Zimbabwe Government through the Zimbabwe Mining Development Cooperation (ZMDC) have some shares in the Joint Ventures.

> Governments do not adequately protect against adverse human rights impacts concerning forced labour when they:

- Do not clearly define the prohibitions against forced labour in its various forms – trafficking, debt bondage, restrictions on freedom of movement, etc.
- Do not enforce prohibitions against forced labour.
- Do not levy strong penalties for civil and criminal charges.
- Do not ensure swift and fair resolution of cases brought for court hearings.
- Do not make complaint mechanisms accessible to the public.

## Recommended Due Diligence Actions for Companies

> Workers can give notice and leave employment within a reasonable length of time. This is clearly communicated to workers prior to starting employment.

> The company (or its recruitment agencies) ensures that it does not withhold wages or bonuses and that it pays them in a timely and regular manner.

> The company ensures it does not make deductions from wages for disciplinary measures or other deductions not authorised by national law.

> Within normal working hours workers are able to earn a living wage sufficient to meet the basic needs of themselves and their closest dependents.

- > Overtime work is paid, voluntary and not compelled through threat of pay deductions, termination or other sanctions.
- > The company (or its recruitment agencies) ensures that it does not retain identity cards, passports, travel documents or other personal items without which workers cannot leave employment. If letters of release or other documents are needed for the worker to leave employment, such letters are issued without delay.
- > All workers are allowed to leave company premises during breaks and at the end of their shifts, and workers in company housing may freely enter and exit their accommodation at any time.
- > The company (or its recruiting agencies) ensures that it does not require workers to pay recruitment fees or lodge money deposits.
- > Loans or salary advancements to workers are based on fair terms that are clearly explained to the worker, are not granted to cover basic living expenses, are limited in size, and do not require the worker to remain with the company until repayment is completed.
- > If the company uses prison labour it ensures that all prison workers have been convicted by a court of law, and that the work is voluntary and supervised by a public authority.
- > The company ensures that it does not use labour from agencies or firms involved in human trafficking or other forms of bonded labour.

## Recommended Actions for States

- > The state assesses demographic characteristics of the labour population when granting industrial and mining concessions to businesses in order to understand the:
  - Amount of labour available;
  - Capacities for labour of the population; and
  - Possible adverse human rights impacts that an industrial or concession may have on the social conditions of the population.
- > The state engages with relevant interested parties to pass a comprehensive anti-trafficking law; the International Organisation for Migration, IOM, criticised the Zimbabwean government for lacking anti-trafficking legislation.
- > The state clearly defines the prohibitions against forced labour in its various forms – trafficking, debt bondage, restrictions on freedom of movement, etc.
- > The state strengthens and enforces civil and criminal penalties.
- > The state clearly defines, communicates and upholds procedures for bringing allegations to court.
- > Ensure swift and fair resolution of cases brought for court hearings.

## Multi-Stakeholder Recommendations for the Zimbabwe Mining Sector

The following recommendations were developed by stakeholders participating in Pillars in Practice Multi-Stakeholder Advisory Committee consultations.

### > FOR COMPANIES:

- Businesses should adhere to international best practices associated with combatting forced labour.
- Foreign businesses should work through local embassies to train groups of companies on the UN Guiding Principles on Business and Human Rights and how they may be applied to address forced labour.

### > FOR STATES:

- The state should actively engage communities in addressing forced labour.
- The state should seek to attract mining companies whose policies and practices address forced labour.
- The state should ensure an environment conducive the work of civil society organizations focused on addressing forced labour.
- The state should strengthen the capacity of ministries to engage in dialogue and promote the eradication of forced labour.
- The state should establish permanent structures to support victims of forced labour as a result of mining activities.

### > FOR ALL STAKEHOLDERS:

- Civil society organisations should complement government efforts to capacitate businesses and communities on forced labour.
- All stakeholders should engage in collective dialogue and training around forced labour.
- All stakeholders should work together to devise a conflict management structure to handle disputes associated with forced labour arising out of mining. This mechanism should be equipped to handle complaints from any party.



## Rights Holders at Risk in the Community

### COMMON STANDARDS

- Meaningfully consult with local communities when conducting business in proximity to their land or homes;
- Include marginalised groups in community consultations;
- Ensure adequate compensation of local communities for mining operations on their land;
- Prioritise hiring of members of the local community when seeking labourers for operations on community land.

Individuals and groups are marginalised in different ways in different contexts. Discrimination can affect children, men or women on the basis of their ethnicity, race, skin colour, nationality, social origin, religion, political opinion, disability or health status.

Depending on the country context, rights holders at risk in the community may include ethnic minorities, indigenous peoples, migrant workers, persons with disabilities, persons with HIV/AIDS, religious minorities or sexual minorities. Though many of these groups are the same as those identified as Rights Holders at Risk in the Workplace, this issue is distinct in that the impacts of company operations, unlike those taking place at the worksite itself, may be more difficult to identify and address<sup>48</sup>.

In Zimbabwe, companies have reported that one of the greatest challenges in implementing community development projects was competing priorities between community members, traditional leaders and political/government officials. It was reportedly difficult to identify the wishes of the communities, as distinct from the initiatives of leaders<sup>49</sup>.

According to UNICEF, one quarter of Zimbabwe's children were orphans, many due to HIV/AIDS<sup>50</sup>. They seldom receive external support and lived in child-headed households<sup>51</sup>. The school drop-out rates were high and many children work to survive.

The Internal Displacement Monitoring Center reported in 2011 that Internally Displaced Peoples (IDPs) were among the most vulnerable groups in Zimbabwe, with diminished possibilities to earn a living and disrupted access to social services, including health and education<sup>52</sup>. Without national identity cards it was impossible to gain access to social services, and for many IDPs the cost of such documentation was prohibitive<sup>53</sup>.

Zimbabwe's economic crisis has severely affected women, and maternal deaths have risen because of the breakdown of the health sector. Women's survival often depends on growing subsistence crops, yet in practice, according to the Social Institutions & Gender Index, in 2011 women were rarely landowners<sup>54</sup>. The Southern African Migration Programme & International Development Research Centre reported in 2010 that women were affected by displacement policies meant to relocate people to rural areas, since women's claims to land were far weaker than men's.

## Protect, Respect and Remedy Challenges in the Zimbabwe Mining Sector

- > Companies cause, contribute or are directly linked to adverse human rights impacts concerning rights holders at risk in the community when they:
- Disregard or ignore local customs.
  - Inadequately or inequitably compensate people for land and/or distribution of benefits.
  - Provide unequal pay for equal work, compared to workers from other communities.
  - Engage in practices that lead to environmental degradation.
  - Engage in projects leading to social dislocation and/or land disputes.
  - Provide no mechanism for community members to resolve disputes or grievances.
- > Governments do not adequately protect against adverse human rights impacts concerning rights holders at risk in the community when they:
- Do not address the lack of employment security in urban areas.
  - Do not address the lack of educational opportunities.
  - Do not assure that agreements made between the government or business and community members are transparent and accountable to community members who are the intended beneficiaries.
  - Do not promote cooperation between local communities and businesses, including the facilitation of communication channels such as grievance mechanisms.

## Recommended Due Diligence Actions for Companies

- > The company has a commitment to engage openly with communities in and around its area of operations, prior to, during and after commencing activities that may negatively impact their access to resources (e.g. water, food, land) or livelihoods (e.g. fishing or hunting grounds).
- > The company communicates and consults with local communities prior to, during and after commencing activities to prevent, reduce and mitigate impacts.
- > The company takes steps to remedy the legitimate concerns of local communities regarding any negative impacts of the company's operations on the access to resources or livelihoods.
- > The company seeks to avoid involvement in human rights abuses owing to government or societal practices.
- > If operating in a country or region with systematic human rights abuses, the company seeks to become aware of and avoid the risk of contributing to, endorsing or benefiting from such abuses.
- > Where the company risks involvement in systematic human rights abuses owing to government or societal practices, the company seeks to identify solutions through dialogue with other businesses, civil society organisations, experts and other relevant stakeholders, including where possible with the authorities.

## Recommended Actions for States

- > The state should mainstream Zimbabwe's National Gender Policy and use indigenous knowledge systems to capacitate women.
- > The state should strengthen the capacity of civil society organisations to promote human rights among communities and to capacitate the government itself.
- > The state ensures that laws and standards are established and enforced to protect indigenous cultures and livelihoods.
- > The state adopts and monitors legislative or administrative measures that provide for the regulation of businesses and transnational corporations in their operations with indigenous peoples.
- > The state ensures that indigenous peoples have access to adequate and effective judicial and grievance mechanisms.
- > The state conducts national baseline studies to study the impact of businesses on indigenous peoples.
- > The state, in collaboration with indigenous organisations, develops and activates bilingual and inter-cultural education programmes in order to bridge the education and employment gap between indigenous and non-indigenous peoples.
- > The state should ensure that Parliament exercise its oversight role in ensuring that mineral wealth is returned to the communities where mineral extraction took place.

## Multi-Stakeholder Recommendations for the Zimbabwe Mining Sector

The following recommendations were developed by stakeholders participating in Pillars in Practice Multi-Stakeholder Advisory Committee consultations.

### > FOR COMPANIES:

- Businesses should adhere to international best practices associated with rights holders at risk in the community.
- Foreign businesses should work through local embassies to train groups of companies on the UN Guiding Principles on Business and Human Rights and how they address issues associated with rights holders at risk in the community.
- Businesses should build the capacity of informal miners by purchasing minerals from licensed informal miners.
- Businesses should provide decent accommodation for families, as well as appropriate and safe accommodation for single women.
- Businesses should provide services for the communities where they operate, and should not restrict these benefits to their workers only.
- Businesses should fairly and adequately compensate affected communities and should consult affected communities before deciding the form and amount of compensation.

- Businesses should assign people at the rural level to address women's rights.
- Business should collaborate on specific guidelines and policies around gender equality.
- Businesses should include local communities in employment.

> **FOR STATES:**

- The state should actively engage communities in addressing issues associated with rights holders at risk in the community.
- The state should increase programs to identify informal miners and allow them to collectively represent their interests and obtain licenses.
- The state should seek to attract mining companies whose policies and practices respect rights holders at risk in the community.
- The state should ensure an environment conducive the work of civil society organizations focused on addressing issues associated with rights holders at risk in the community.
- The state should strengthen the capacity of ministries to engage in dialogue and promote respect for rights holders at risk in the community.
- The state should establish permanent structures to support rights holders at risk in the community who are victims of human rights abuses associated with as a result of mining activities.
- The state should take steps to formalize the informal mining sector.

> **FOR ALL STAKEHOLDERS:**

- Civil society organisations should train women to know and understand how to engage with companies. Where appropriate, neutral third parties should be engaged to assist in negotiations.
- Civil society organisations should train communities on participating in human rights due diligence and negotiations with companies seeking to begin operations that may affect them.
- All stakeholders should engage in collective dialogue and training around human rights issues affecting rights holders at risk in the community.
- All stakeholders should work together to devise a conflict management structure to handle disputes arising out of mining associated with rights holders at risk in the community. This mechanism should be equipped to handle complaints from any party.



## Occupational Health & Safety

### COMMON STANDARDS

- Maintain safe and healthy labour conditions and safely functioning equipment;
- Provide and ensure use of protective equipment;
- Appropriate warning signs and training materials;
- No use of banned chemicals or other elements to which exposure has been found to endanger workers' health.

Many workers globally face unhealthy and unsafe working conditions, a situation made worse by the recent global economic crisis and recession. Some 2 million people die every year from work-related accidents and diseases. An estimated 160 million people suffer from work-related diseases, and there are an estimated 270 million fatal and non-fatal workplace accidents per year. The International Labour Organization (ILO) has estimated that 4 percent of the world's annual GDP is lost as a consequence of occupational diseases and accidents. Employers face costly early retirements, loss of skilled staff, absenteeism and high insurance premiums due to work-related accidents and diseases.

Some categories of workers such as migrants, temporary workers and those in the informal economy are particularly vulnerable to unhealthy and unsafe working conditions<sup>55</sup>.

Health and safety standards are determined on an industry-specific basis. Workers have a legal right to remove themselves from dangerous work situations without jeopardy to continued employment.

The Zimbabwe Occupational Safety Council, a quasi-governmental advisory body made up of six representatives each from the government, employers, and trade unions, is tasked with regulating workplace conditions<sup>56</sup>. The ILO reported in 2011 that the council suffers from shortages of staff and budgetary constraints<sup>57</sup>, while in 2010 the U.S. Department of State claimed that the council's status as an advisory council made it largely ineffective<sup>58</sup>.

Media and NGO reports have highlighted a range of employer violations of occupational health and safety provisions, including lack of protective gear<sup>59</sup>. The UN Special Rapporteur on hazardous substances and waste reported in 2012 that miners were exposed to mercury levels of up to 50 times above the limits set by the World Health Organization<sup>60</sup>.

According to statistics from the National Social Security Authority, 107 work-related deaths and 5,144 serious injuries were recorded in Zimbabwe in 2012<sup>61</sup>. The highest number of casualties and fatalities

was reported in the metal fabrication and processing sector, followed by transport and storage, mining and lastly the wood and products sector<sup>62</sup>.

According to the Zimbabwe Congress of Trade Unions (ZCTU), incidents of physical abuse of workers while working in Chinese-owned mines were on the rise. In December 2011, ZCTU announced that it was in the process of approaching the government over the matter. According to the secretary-general, these companies were 'flouting employment rules at will' as a result of protection afforded to them by sections of government<sup>63</sup>.

## Protect, Respect and Remedy Challenges in the Zimbabwe Mining Sector

> Companies cause, contribute or are linked to adverse human rights impacts concerning occupational health and safety when they:

- Fail to maintain safe and healthy labour conditions and safely functioning equipment.
- Fail to provide and ensure the use of protective equipment.
- Fail to provide appropriate warning signs and training materials
- Use banned chemicals or other elements to which exposure has been found to endanger workers' health.
- Interfere with labour inspectors' investigations.
- Do not perform adequate risk assessment and mitigation.
- Preside over poor building and equipment maintenance.
- Allow excessive overtime leading to fatigue.
- Do not keep records of accident and injury incidents.

> Governments do not adequately protect against adverse human rights impacts concerning occupational health and safety when they:

- Inadequately regulate and inspect building and mine safety.
- Insufficiently capacitate occupational health and safety inspectors.
- Do not promote the awareness that workers may remove themselves from dangerous situations without risking employment.
- Do not ensure access to hospitals in areas of great need.
- Refrain from facilitating cooperation between worker and their organisations, with a view to eliminating hazards or reducing them as far as practicable.

## Recommended Due Diligence Actions for Companies

> The company routinely monitors its production processes, machinery and equipment to ensure that they are safe and in good working order.

> Workers and managers are trained to respond to workplace emergencies; first aid kits and fire extinguishers are readily available; and escape exits are clearly marked and free from obstruction.

- > The workplace is maintained to ensure clean and comfortable conditions including a suitable temperature, ventilation and lighting; suitable washing and sanitation areas appropriate for both genders.
- > Residential or overnight facilities are safe and sanitary and meet the basic needs of workers including with regard to safety, space, temperature, lighting, ventilation, food, water, sanitary facilities, privacy, and affordability.
- > The company provides safe drinking water for workers and facilities for clean and sanitary food storage and eating.
- > Where relevant the company has put in place special health and safety precautions for pregnant women, employees with disabilities, night workers, young workers and other vulnerable groups.
- > The company has a procedure to ensure that all workers are provided, free of charge or deposits, with the protective equipment necessary to safely perform their job functions.
- > The company ensures that all workers have the necessary training to safely perform their job functions and keeps workers fully informed, in a language and form understandable to them, of the health and safety procedures.
- > An accurate record is kept of who has been trained and for what tasks. On a regular basis and when assigned to new tasks, workers receive training in the safe use of equipment and processes.
- > A company function or member of staff is responsible for keeping informed of scientific and technological developments regarding health and safety risks and protective equipment.
- > The company consults employees on health and safety issues either directly or through a freely elected safety representative(s) for relevant groups of employees.
- > A health and safety committee has been established including employee safety representatives and representatives from management.
- > Health and safety accidents are reported and investigated including involving the relevant worker(s), and actions are taken to prevent recurrences.
- > Health and safety near-misses (accidents not resulting in injury) are reported and investigated to help improve safety.
- > Health and safety accidents are monitored including hours lost as a result of injury or illness and e.g. compared to total hours worked (lost time injury frequency).

## Recommended Actions for States

- > The state improves enforcement of labour laws and regulations.
- > The state allocates appropriate resources for staffing and training inspectors and mediators.
- > The state properly equips the Zimbabwe Occupational Safety Council with budget and staff so that it may effectively regulate workplace conditions.

- > The state undertakes or promotes studies and research to identify hazards and find means of overcoming them.
- > The state provides information and advice, in an appropriate manner, to employers and workers and promotes or facilitates cooperation between them and their organisations, with a view to eliminating hazards or reducing them as far as practicable.
- > The state establishes and enforces formal channels for workers and their representatives to file grievances and seek resolution.
- > The state takes steps to formalise the informal mining sector.
- > The state increases programs to identify informal miners and allow them to collectively represent their interests and obtain licenses.
- > The state investigates potential long-term health impacts of mining projects before approving concessions.

## Multi-Stakeholder Recommendations for the Zimbabwe Mining Sector

The following recommendations were developed by stakeholders participating in Pillars in Practice Multi-Stakeholder Advisory Committee consultations.

### > FOR COMPANIES:

- Businesses should adhere to international best practices associated with occupational health and safety.
- Foreign businesses should work through local embassies to train groups of companies on the UN Guiding Principles on Business and Human Rights and how they address occupational health and safety.

### > FOR STATES:

- The state should actively engage communities in addressing issues associated with occupational health and safety.
- The state should seek to attract mining companies whose policies and practices provide for occupational health and safety.
- The state should ensure an environment conducive the work of civil society organizations focused on addressing issues associated with occupational health and safety.
- The state should strengthen the capacity of ministries to engage in dialogue and promote occupational health and safety.
- The state should establish permanent structures to support victims of human rights abuses associated with occupational health and safety as a result of mining activities.
- Civil society organisations should complement government efforts to capacitate businesses and communities on issues associated with occupational health and safety.

> **FOR ALL STAKEHOLDERS:**

- All stakeholders should engage in collective dialogue and training around occupational health and safety.
- All stakeholders should work together to devise a conflict management structure to handle disputes associated with occupational health and safety arising out of mining. This mechanism should be equipped to handle complaints from any party.



## Environment

### COMMON STANDARDS

- Reduce impacts on the environmental wherever possible, including reducing air and water emissions;
- Consult with local communities on any environmental impacts that may impact their health or livelihoods;
- Provide community members with access to information on environmental impacts.

The condition and protection of the world's environment and its natural resources, including water, are inextricably linked to the enjoyment of human rights. This relationship was first addressed by the international community at the United Nations Conference on the Human Environment, held in Stockholm in 1972. The conference's main point of focus was how the increasing impairment of the world's environment was impacting on 'the condition of man, his physical and mental well-being, his dignity and his enjoyment of basic human rights in developing as well as developed countries.'

Business has been identified as a major contributor to environmental degradation and human rights violations due to pollution and degradation of land, air and water. A 2010 study by the UN estimated that the world's top 3,000 companies caused US\$2.2 trillion in environmental damage per year, a figure bigger than the national economies of all but seven countries in the world in 2008.

The 2013 constitution recognises the right to an environment that is not harmful to health or well-being and obligates the government of Zimbabwe to protect the environment<sup>65</sup>. The 2002 Environmental Management Act provides the legal framework for environmental management, and its main focus has been on developing an effective and efficient legal and administrative framework to facilitate management of natural resources. The Act is supplemented by the National Environmental Policy and Strategies of 2009<sup>66</sup>.

Environmental challenges affecting Zimbabwe include: deforestation; land, air and water pollution; waste management; droughts, floods and land degradation mainly due to soil erosion; impacts of climate change; fires; poor management of forests, veldts, wetlands, wildlife and protected areas; biodiversity loss; natural resource degradation; and mining practices that have led to toxic waste and heavy metal pollution<sup>67</sup>.

The economic downturn and the lack of capacity to manage aging infrastructure have had a significant impact on the quality and reliability of water and sanitation services<sup>68</sup>.

According to the Southern African Institute for Environmental Assessment, consultation with communities affected by environmental damage was limited<sup>69</sup>. ZELA reported in 2010 that public bodies did not proactively provide information to communities affected by the operations of mining companies until access was demanded. Public participation is a requirement of the process.<sup>24</sup> Despite these provisions, no environmental impact assessments were carried out in and around the Marange diamond fields before the companies currently active in the area were granted concessions<sup>70</sup>.

## Protect, Respect and Remedy Challenges in the Zimbabwe Mining Sector

> Companies may cause, contribute or be directly linked to adverse human rights impacts concerning the environment when they:

- Adversely impact the health or livelihoods of local populations through air pollution, land degradation, water contamination or other environmental impacts.
- Fail to monitor the environmental impact of suppliers, contractors, and other business partners.
- Fail to inform local communities of environmental impacts.
- Fail to conduct environmental impact assessments and to meaningfully consult affected communities as such processes are carried out.
- Contribute to water scarcity or food insecurity through pollution or overuse.
- Engage in corruption when dealing with environmental inspection bodies.

> Governments do not adequately protect against adverse human rights impacts concerning the environment when they:

- Do not require companies to carry out environmental impact assessments according to international best practices before beginning operations.
- Fail to report the results of environmental impact assessments publicly, including to those whose health or livelihoods may be impacted.
- Fail to inspect and monitor the emissions of companies.
- Fail to set statutory maximums for chemical emissions and ensure that these limits are observed by companies in practice.
- Fail to establish mechanisms for communities to report environmental impacts.

## Recommended Due Diligence Actions for Companies

> Take measures to reduce energy consumption and emissions of greenhouse gasses.

> Install emergency procedures to prevent and address accidents affecting the environment and human health.

> Reduce water consumption and treat wastewater.

> Prevent and reduce the production of waste and ensure responsible waste management.

> Prevent, reduce and treat air emissions.

- > Prevent and reduce impacts on the surrounding environment from noise, odour, light and vibrations.
- > Minimise the use and ensure safe handling and storage of chemicals and other dangerous substances.
- > Ensure that natural resources are used in a sustainable manner.

## Recommended Actions for States

- > The state integrates human rights principles of non-discrimination, transparency, participation and accountability into environmental regulations.
- > The state identifies natural disaster risk mitigation measures and climate change management.
- > The state promotes electricity generation from renewable sources.
- > The state formulates policies and plans to reduce environmental vulnerability and to promote sustainable use of natural resources, recovery of ecosystems and equal access to water supply, sanitation services and energy sources.
- > The state improves its national and local biodiversity management processes in order to improve conservation efforts and sustainable use of ecosystems, together with the participation of different actors and groups of the society.
- > The state protects water resources through a comprehensive management plan, including consultation with affected groups.
- > The state adopts a unified system of indicators, targets and benchmarks to monitor compliance with its obligation to progressively realize the right to food.

## Multi-Stakeholder Recommendations for the Zimbabwe Mining Sector

The following recommendations were developed by stakeholders participating in Pillars in Practice Multi-Stakeholder Advisory Committee consultations.

### > FOR COMPANIES:

- Businesses should consider the principles in the UN Declaration on the Rights of Indigenous Peoples, particularly those pertaining to environmental stewardship and the economics of the environment.

### > FOR STATES:

- In practice, the Mining Act overrides all other laws. The government should revisit this framework, and synchronise with other laws. The Environmental Management Act should take precedence.
- Government should revise Zimbabwe's Environmental Impact Assessment framework. This should include consultation of key stakeholders including communities.
- Government should investigate potential long-term health impacts of mining projects before approving concessions.



## Land & Property

### COMMON STANDARDS

- International instruments regulate that no one shall be arbitrary deprived of his property except for reasons of public utility or social interest and upon payment of a just compensation;
- States are bound by general principles of international law when regulating access to land, including in particular the principles of equality and non-discrimination;
- Indigenous peoples have distinct rights regarding resettlement in recognition of their unique relationships to lands and territories, which includes the requirement for the free prior and informed consent of Indigenous Peoples in any resettlement process.

Where companies interfere with land ownership, access and usage, such activities often have impacts on the human rights of individuals and communities. For example, when a company uses land for mining development, this may have adverse impacts on the local community's subsistence farming practices, which in turn impacts upon people's rights to an adequate standard of living and other inter-related human rights (education, health etc.).

The impacts of company land acquisition and management on human rights include information related to land ownership regimes in each country, as well as the impacts of land-intensive sectors already operating.

The international human right to property is not well developed as ideological and cultural differences regarding land tenure regimes and compensation policies, among other issues, differ within the international community. Conflicts may arise from outdated or incomplete land records, long registration processes or corruption or conflict with traditional or customary forms of land ownership<sup>71</sup>.

In 2011, the Academy on Land Governance for Equitable and Sustainable Development reported that the skewed land distribution resulting from both colonial rule and the current land reform program have resulted in tenure insecurity.

Land tenure regimes include land under freehold or simple tenure by either a private individual or an institution. The 2013 constitution recognises communal land rights, but the Mines and Minerals Act does not. The Zimbabwe Environmental Law Association reported in 2010 that the Act has been used to supersede other land rights, allowing the government to displace communities in favour of mining development<sup>72</sup>.

The Indigenisation and Economic Empowerment Act stipulates that indigenous Zimbabweans must own 51 percent of shares in all companies operating in Zimbabwe. In the Act, an indigenous Zimbabwean is defined as any person, or the descendant of such person, who before the date of the country's independence in 1980 was disadvantaged by unfair discrimination on the grounds of his or her race<sup>73</sup>. Of the transferred shares, 25 percent are to be transferred without compensation<sup>74</sup>.

Most of Zimbabwe's rural population depends on subsistence livestock farming and cultivation of small grains. In 2013, the Parliamentary Committee on Mines and Energy reported that because many communities are being relocated without proper resettlement plan, communities are in danger of losing their livelihoods, especially access to fertile land<sup>75</sup>.

In 2013, the Parliamentary Portfolio Committee on Mines and Energy reported that many families in rural areas owned small plots with mineral claims that were recognised by the state, and the trading of these claims has been the source of community conflict<sup>76</sup>. Some of these titling conflicts have been caused by errors by government surveyors<sup>77</sup>. According to the CRD, in mining areas, the cultivation of small grains is no longer possible due to pollution, and livestock no longer have sufficient grazing land<sup>78</sup>. The destruction of forests has also reportedly affected the livelihoods of some women who depend on collecting and selling wild fruits<sup>79</sup>.

## Protect, Respect and Remedy Challenges in the Zimbabwe Mining Sector

> Companies cause, contribute or are linked to adverse human rights impacts concerning land and property when they:

- Disrupt the livelihoods of local populations if they do not establish the ownership and use of land before it is purchased.
- Fail to carry out a comprehensive social and or environmental baseline to provide a benchmark for the potential impacts.
- Fail to involve the local community by not giving them adequate information, consulting them in a meaningful way, and/or not giving them enough time to respond.
- Do not adequately consider the special needs of vulnerable groups
- Engage in land deals that lead to environmental degradation, social dislocation and/or land disputes.
- Provide inadequate or inequitable compensation for land and/or distribution of benefits.

> Governments do not adequately protect against adverse human rights impacts concerning land and property when they:

- Do not bring legal regulations in line with each other, such as the recognition of communal land rights by the 2013 constitution and the lack of consideration of these rights by the Mines and Minerals Act.
- Do not make land negotiations and agreements with companies accessible to the public.
- Do not protect legally mandated compensation for land/or distribution of benefits, thus often leading to inadequate or inequitable compensation.
- Fail to provide land tenure guidelines for indigenous groups.
- Do not promote the awareness that the Administrative Court may be approached in order to challenge issues with compensation provided through land deals.

## Recommended Due Diligence Actions for Companies

- > Prior to buying, renting, acquiring or otherwise accessing land or property, whether directly or through a third party, the company identifies all existing owners and users of the land or property, including information land users and customary owners.
- > The company investigates the past usage and ownership of the land or property to ensure that past users and owners have not been wrongfully removed, and that any expropriations by the authorities have been conducted in accordance with international law.
- > The company consults with affected users and owners of the land or property (including women, tenants, settlers, minorities and other vulnerable groups including indigenous peoples) and seeks their free, prior and informed consent before continuing to acquire or access the land or property.
- > The company ensures that its lease or purchase of residential property and sourcing of food commodities does not considerably make housing and food scarce or too expensive for the local people.
- > The company ensures that affected owners and users of the land or property are adequately compensated to help them restore their standards of living or livelihoods to the same or higher than before, and that the compensation standards are transparent and applied consistently to all communities and persons affected.
- > The company maintains in its code of conduct the respect for the traditional and cultural values of people. It invites community members to explain the sacred or ceremonial aspects of the land in mining areas.
- > Foreign companies work through their local embassies to receive training on the local context and understand their responsibilities in the terms of the UN Guiding Principles on Business and Human Rights.

## Recommended Actions for States

- > The state provides safeguards against the arbitrary removal of indigenous people from their traditional land, with procedural guarantees and environment and land acquisition policies.
- > The state reforms legal frameworks for tenure security and land transfers, and facilitate access to credit and other inputs for rights holders.
- > The state conducts capacity building trainings on land acquisition procedures, rules and regulations as well as land rights issues to sensitise the communities.
- > The state interacts with stakeholders affected by land disputes, and enhances mechanisms for land and natural resource dispute resolution
- > The state decentralises land administration and institute reforms geared toward elected authority for local land administration, to increase responsiveness to local interests and needs.
- > The state strengthens local and community institutions to administrate local land, and oversee and protect customary land rights.
- > The state adopts and monitors legislative or administrative measures that provide for the regulation of businesses and transnational corporations in their operations with indigenous peoples.

## Multi-Stakeholder Recommendations for the Zimbabwe Mining Sector

The following recommendations were developed by stakeholders participating in Pillars in Practice Multi-Stakeholder Advisory Committee consultations.

### > FOR COMPANIES:

- Businesses should adhere to international best practices associated with land and property.
- Foreign businesses should work through local embassies to train groups of companies on the UN Guiding Principles on Business and Human Rights and how they address land and property.
- Businesses should pay compensation that includes the loss of livelihoods and lost utility of land.
- Businesses should look to the Inclusive Business Model as a guide for capacitating and developing local communities and reducing conflict.
- Where mining takes place on communal land, businesses should seek free, prior and informed consent. If mining is to take place on state land, businesses should engage the government.
- Businesses should consider the traditional and cultural values of the people. In some mining areas, the land may have sacred or ceremonial aspects. Companies should have a code of conduct (whether required by the government or not) and this should be encompassed within their code of conduct.
- Businesses should communicate with community leadership with the purpose of allowing communities to express their wishes on land use.
- Businesses should perform due diligence on the land tenure systems where they operate.
- Businesses should comply with existing regulations on land and environment, and should consider entering into partnerships with communities on relevant development indicators.

### > FOR STATES:

- The state should adopt the Vancouver principles on relocation
- The state should issue specific guidelines for compensating communities affected by mining. Compensation principles should be based on the costs to the communities. The higher the costs, the higher the compensation.
- The state should revisit the issue of community entitlements. The rights of communal landholders should be spelled out more clearly. Foreign investors should enter into 'win-win' relationships with communities.
- The state should address the imbalances against women with respect to land.
- The state should produce clear guidelines regarding compensation and relocation of communities as a result of mining activities.
- The state should develop a Mines and Minerals Act as the current one is colonial and outdated.

- The state should synchronise the Traditional Leaders Act, Communal Lands Act, Mines and Minerals Act and Environmental Management Act to facilitate community land titling. Government oversight over land should be systematised.
- The state should hire independent investigators to ascertain the amount of minerals available in area before exploration by companies, and Memoranda of Understanding should include clauses to be updated if original assessments of project duration or profitability change.
- The state should actively engage communities in addressing issues associated with land and property.
- The state should seek to attract mining companies whose policies and practices respect land and property.
- The state should ensure an environment conducive the work of civil society organizations focused on addressing issues associated with land and property.
- The state should strengthen the capacity of ministries to engage in dialogue and promote respect for land and property.
- The state should establish permanent structures to support victims of human rights abuses associated with land and property as a result of mining activities.

> **FOR ALL STAKEHOLDERS:**

- Civil society organisations should consider litigation where businesses do not follow existing regulations.
- When concessions are given to mining companies, all stakeholders should be involved. The community should have first priority over how the land is to be developed.
- Civil society organisations should complement government efforts to capacitate businesses and communities on issues associated with land and property.
- All stakeholders should engage in collective dialogue and training around human rights issues affecting land and property.
- All stakeholders should work together to devise a conflict management structure to handle disputes associated with land and property arising out of mining. This mechanism should be equipped to handle complaints from any party.



## Revenue Management & Transparency

### COMMON STANDARDS

- Report revenues paid to government;
- Ensure that communities affected by company operations are compensated;
- Do not engage in corruption when dealing with the host government.

The management of revenue has the potential for profound impacts on human rights. Government revenue from business activities funds basic services such as healthcare and education, builds infrastructure and lays the foundation for development. For this revenue to fulfil its purpose, communities must know where such revenues are coming from, and where they are being spent.

Corruption in the management of revenue has a discriminatory purpose and a discriminatory effect: it creates distinctions, excludes or prefers in ways that impede individuals from enjoying their political, civil, social, economic and cultural rights on an equal basis. Furthermore, corruption poses a threat to democratic governance. Transparency and access to information empower individuals to make informed decisions, including the monitoring on how state expenditure is spent and holding officials accountable in the use of public revenue.

The Mines and Minerals Act details the mechanism to be used for calculating the royalty paid to government from mining revenues. Zimbabwe's Public Finance Management Act seeks to improve accountability over the use of public resources by Ministries, government departments and parastatals. It further provides the regulatory framework for the management of public finances and promotes good governance and strengthens Zimbabwe's accounting system<sup>80</sup>. Zimbabwe's Anti-Corruption Commission is mandated to combat corruption.

Freedom House reported in 2011 that corruption was common at all levels of government<sup>81</sup>. Zimbabwe ranked 163rd out of 178 countries surveyed in Transparency International's 2012 Corruption Perceptions Index, indicating a perception among experts that Zimbabwe's public sector has high levels of corruption<sup>82</sup>.

According to Revenue Watch Institute and stakeholders consulted in Harare in June 2013, Zimbabwe has no internal systems for tracking the revenue generated by mining<sup>83</sup>. The Parliamentary Portfolio Committee on Mines and Energy reported in 2013 that while 60 percent of the Zimbabwe's exports came from mining, the sector accounted for only 10 to 15 percent of the government's revenue<sup>84</sup>. Limitations on sector transparency, including the fact that mining concessions and contracts were kept secret, barred the public from obtaining regular or detailed information about mining revenues<sup>85</sup>.

In 2010 the Zimbabwe Environmental Law Association reported that in cases where royalties are paid to local authorities, funds have been spent on operational costs rather than on community projects<sup>86</sup>.

## Protect, Respect and Remedy Challenges in the Zimbabwe Mining Sector

> Companies cause, contribute or are linked to adverse human rights impacts concerning land and property when they:

- Pay bribes to expedite government services to which the company is entitled.
- Offer gifts or bribes for high-level government officials to obtain favourable legislation, government grants or the awarding of public tenders.
- Fail to report publicly information concerning the size of public revenues generated from taxes, royalties and other fees paid by the company to the government.
- Discriminatory or unequal distribution of revenues to local communities.

> Governments do not adequately protect against adverse human rights impacts concerning land and property when they:

- Fail to provide a transparent and robust framework for gathering and distributing natural resource revenues.
- Fail to prevent, investigate and punish acts of corruption by public officials, including those related to tendering processes and state-owned enterprises.
- Use revenues generated by business activities to fund security forces or other activities that may increase the risk of armed conflict.

## Recommended Due Diligence Actions for Companies

- > Take a clear and public stand against corruption.
- > Assess the risk of corruption when doing business.
- > Ensure that relevant workers are properly trained.
- > Ensure that internal procedures support the company's anti-corruption commitments.
- > Ensure that anti-corruption initiatives cover agents, intermediaries and consultants.
- > Take joint actions with others to engage in and promote anti-corruption initiatives.

## Recommended Actions for States

- > The state joins the Extractive Industries Transparency Initiative.
- > The state reports all revenues from natural resource extraction, and the use of those revenues.
- > The state ensures that the monitoring and investigation of corruption and collusion by public officials meets international best-practice standards.

- > The state ensures that a process for equitable distribution of natural resource revenues is established and carried out, and includes the participation of communities impacted by resource extraction.
- > The state ensures an enabling environment for civil society organisations to monitor and report outcomes related to natural resource governance.
- > The state monitors living standards of communities in the areas most affected by natural resource extraction, and ensure that they are not disproportionately affected.
- > The state ensures that companies distribute social investment funds equitably and transparently, and do not contribute to existing economic or demographic disparities.
- > The state provides judicial and non-judicial mechanisms for community members to report concerns and grievances related to revenue distribution.

## Multi-Stakeholder Recommendations for the Zimbabwe Mining Sector

The following recommendations were developed by stakeholders participating in Pillars in Practice Multi-Stakeholder Advisory Committee consultations.

### > FOR CIVIL SOCIETY:

- Civil society should promote apolitical workplaces by encouraging companies to make public statements to that effect, as well as building capacity of companies to foster an apolitical workplace.

### > FOR COMPANIES:

- Businesses should make all political dealings transparent. This includes all political donations, as well as affiliations with companies owned by politicians.

### > FOR STATES:

- Civil society organisations should consider litigation where businesses do not follow o The government should devise mechanisms that quantify what percentage companies should pay for the wealth they generate from the resources of Zimbabwe.
- The government should make transparent the payments it receives from mining companies.
- Parliament should exercise its oversight role in ensuring that mineral wealth is returned to the communities where it was taken from.
- The government should hire independent investigators to ascertain the amount of minerals available in area before exploration by companies, and Memoranda of Understanding should include clauses to be updated if original assessments of project duration or profitability change.



## Security & Conflict

### COMMON STANDARDS

- Ensure that company operations do not contribute to societal conflict;
- Ensure that public and private security guards do not violate human rights in the course of defending company property;
- Security guards must respect human rights and act in a defensive and preventive manner at all times;
- Security guards should be armed only under conditions of extreme security risk;
- If defensive force is required, it should be performed without adversely impacting the liberty and security of victims.

Business operations and accountability in high-risk and conflict-affected areas has received significant attention in recent years. Armed conflicts, whether intra-or inter-state, exist in well over 60 countries, according to reports by the International Committee of the Red Cross. In such contexts, there is an increased likelihood of business operations causing or contributing to human rights abuses and violations. As noted by the UN Guiding Principles on Business and Human Rights, “Some of the worst human rights abuses involving business occur amid conflict over the control of territory, resources or a Government itself – where the human rights regime cannot be expected to function as intended.”

In challenging contexts, companies typically contract private security companies to protect their personnel and property. While performing their duties, these private security forces may impacts on the human rights of employees or the local communities in the area of operation. Furthermore, public security forces may be called upon to defend company property or investigate thefts. The interaction between security forces and communities can spark or exacerbate conflict.

Zimbabwean law states that the police may request intervention by the army in regions where police do not have the capacity to maintain order. Stakeholders consulted in Harare in June 2013 reported that this power has been used to partially militarise diamond mining areas<sup>87</sup>.

In October 2008 the government deployed the army and the air force to Marange in a response to the lawlessness in the diamond fields. Human Rights Watch reported in 2010 that the police and soldiers reportedly beat and raped locals, forced them to mine for diamonds and carried out other human rights abuses<sup>88</sup>.

The NGO Network Alliance Project reported that Zimbabwe’s Public Order and Security Act of 2002 has been used to restrict freedom of expression in relation to diamond mining<sup>89</sup>. According to Zimbabwe Lawyers for Human Rights, political opponents, journalists, human rights and civil society activists have been targeted for harassments, arbitrary arrests and detentions<sup>90</sup>.

Human Rights Watch also reported that torture and other ill-treatment were serious problems and that detainees in police custody were at significant risk<sup>91</sup>.

## Protect, Respect and Remedy Challenges in the Zimbabwe Mining Sector

> Companies cause, contribute or are linked to adverse human rights impacts concerning land and property when they:

- Fail to prevent private security guards from harassing or violating the human rights of communities.
- Fail to assess the background of private security forces to ensure that they are not linked to political or ethnic factions.
- Fail to perform a peace and conflict assessment in the local area, with the active participation of local communities, to assess conflict risks.
- Fail to assess the policies and procedures of their business partners and suppliers for security violations and conflict risk.
- Fail to adequately investigate and punish security-related human rights violations when they occur.
- Fail to provide a credible grievance mechanism to employees and local communities.

> Governments do not adequately protect against adverse human rights impacts concerning land and property when they:

- Do not provide clear laws, standards and guidance for companies to prevent security-related human rights violations.
- Allow public security forces stationed to protect company assets to detain or harass members of local communities opposed to company investment.
- Do not provide judicial or non-judicial remedy mechanisms (in line with the criteria set out in the UN Guiding Principles) to affected communities in cases of security-related human rights abuses.
- Fail to investigate or punish persons or companies suspected to have engaged in security-related abuses.

## Recommended Due Diligence Actions for Companies

> Ensure that company security arrangements are in accordance with international principles for law enforcement and the use of force.

> Conduct security risk assessments, and ensure that company security arrangements, including the deployment of private guards or public security personnel, are proportionate to the security risk.

> Select private security firms based on information about professional ability, level of staff training, quality of equipment, past involvement in human rights abuses and links with political factions.

> Contracts with private security firms should include requirements related to international human rights standards for law enforcement and use of force; require the investigation and discipline of any unlawful or abusive conduct by security guards; and allow for termination of the contract in case of such conduct.

## Recommended Actions for States

- > The state ensures that the institutional and legal framework governing the development and management of natural resources addresses the impacts of security arrangements.
- > The state includes a security and conflict component in legal requirements for environmental and social impact assessments.
- > The state ensures that judicial remedy mechanisms include security-related grievances, and are available to those living in extractive-intensive regions.
- > The state provides non-judicial dialogue and complaint-handling mechanisms to address security-related concerns and grievances of communities.
- > The state establishes platforms for tripartite engagement and mechanisms to monitor that agreed-upon security arrangements devised through such engagements are implemented.
- > The state ensures an enabling environment for civil society organisations seeking to monitor and report on the activities of security forces linked to natural resource extraction.

## Multi-Stakeholder Recommendations for the Zimbabwe Mining Sector

The following recommendations were developed by stakeholders participating in Pillars in Practice Multi-Stakeholder Advisory Committee consultations.

### > FOR ALL STAKEHOLDERS:

- All stakeholders should work together to devise a conflict management structure to handle disputes arising out of mining. This mechanism should be equipped to handle complaints from any party.
- All stakeholders should promote best practice exchange visits—countries that have success in security, military, police or army could train Zimbabwe security forces.
- All stakeholders should devote resources to training security forces, whether private or public.

### > FOR CIVIL SOCIETY:

- Communities should be informed about how security forces should conduct themselves so they can bring complaints if standards are violated.
- Civil society organisations should promote education on security sector aspects in relation to human rights.

### > FOR COMPANIES:

- Businesses should have codes of conduct that instruct public and private security forces how to engage with communities. This should include specific provisions on gender-related issues.
- Businesses should monitor security-related violations in communities.
- Businesses should set up a structure for communities to report violations by security forces.

- Businesses should perform due diligence on security-related risks before operations begin.
- Businesses should communicate their security arrangements to communities, including how to make a complaint so that they understand rules but also their access to complaints.
- Businesses should, where possible, include local communities in employment, including in private security arrangements.
- Where possible, businesses should avoid the use of private military contractors.

> **FOR STATES:**

- Government should adopt a code of conduct, procedures and plans for public security officials whenever they provide services to mines.
- Government should promote education and training of public officials on how to engage communities.
- Government should develop a curriculum on human rights for public and private security.
- Government should capacitate the Human Rights Commission as a mechanism to able monitor and investigate human rights abuses perpetrated by government officials. The Human Rights Commission should be allowed to visit mine sites and comment on the conditions there.
- Government should ensure the implementation of existing standards, including on the use of force.

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