

Schedule P Building Blocks

The development of an enterprise-wide culture to address human rights violations in the workplace (including not only modern slavery and child labor but also recruitment fees, confiscation of travel documents, travel, permit, or room and board fees, insufficient pay, harassment, brutal hourly demands, restrictions on freedom of association, toxic exposure on the job site or dangerous facility conditions) is essential. Only such a pervasive culture can identify the risks of a company’s involvement in potential human rights harm that could violate current—and emerging—global regulation.¹ A generalized reference in Schedule P to observance by the supplier of all international human rights or a boilerplate reference to supplier codes cannot yield an effective tool to identify and manage the appropriate response to very real and ongoing threats to breaches of supplier’s representations with respect to the protection of human rights given “salient risks” within a supply chain.²

OVERVIEW

The U.N. Guiding Principles on Business and Human Rights (“UNGPs”) were unanimously adopted by the U.N. Human Rights Council in June of 2011. The Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises (“OECD MNE Guidelines”) were revised to incorporate the UNGPs that same year. Since 2011, the UNGPs and the OECD MNE Guidelines have enjoyed ever-growing recognition in the international business community across sectors as documents that define responsible business conduct (“RBC”) notwithstanding characterization as voluntary standards and therefore “soft law.”

The UNGPs consist of 31 principles grounded in recognition of the following three pillars: (a) states’ existing obligations to respect, protect and fulfill human rights and fundamental freedoms (UNGPs 1-10); (b) the role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights (UNGPs 11-24); and (c) the need for rights and obligations to be matched to appropriate and effective remedies when breached (UNGPs 25-31).

¹ See Elise Groulx Diggs, Mitt Regan & Beatrice Parance, *Business and Human Rights as a Galaxy of Norms*, 50 GEO J. INT’L 309, 312 (2019) (articulating a “Galaxy of Norms” that supports the mapping of liability and the rings of responsibility arising from the rapidly evolving discussion of business and human rights (BHR) that includes both hard law and soft law norms).

² See Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*, Human Rights Council, annex, U.N. Doc. A/HRC/RES/17/31, Principle 24 (Mar. 21, 2011) [hereinafter UNGPs]. The UNGPs expect businesses to prioritize their attention to salient risks of harm. A salient risk is a likely risk of *severe harm* to individuals, as seen from the perspective of the affected person. Greater weight is given to severity than to likelihood; a severe human rights harm has three attributes: (i) scale (the gravity of the harm, e.g., death, rape, or torture); (ii) scope (a large number of people harmed, e.g., poisoning of a community water supply, a factory collapse); and (iii) irremediability (the harmed person cannot be restored to the same position *ex ante*). To be considered severe, harm need not have all three attributes. See OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, UNITED NATIONS HUMAN RIGHTS, THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS: AN INTERPRETIVE GUIDE 8 (2012), https://www.ohchr.org/Documents/Publications/HR.PUB12.2_En.pdf [hereinafter INTERPRETIVE GUIDE].

Schedule P must focus on the second of the three mutually supporting pillars of the “Protect, Respect, and Remedy” framework from the UNGPs, corporate responsibility to respect human rights. The UNGPs insist corporate responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate and independently of any states’ abilities and/or willingness to fulfill their own human rights obligations. The UNGPs further explain such corporate responsibility also exists over and above compliance with national laws and regulations protecting human rights and addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation, and where appropriate, remediation. Businesses are expected to (i) publicize a high-level commitment to respect human rights and embed it in the organization; (ii) conduct human rights due diligence (“HRDD”); and (iii) remedy harm that it caused or contributed to through a business relationship or through its own actions in tandem with another actor or harm that is linked to its operations, products or services.

To comply with the UNGPs, a company must conduct due diligence to measure its human rights impacts according to substantive human rights benchmarks expressed in the International Bill of Human Rights (“IBHR”) and International Labour Organization (“ILO”) Declaration on Fundamental Principles and Rights at Work.³

Identifying a need to promote a common understanding of the meaning and scope of due diligence for responsible business conduct (“RBC”), the OECD developed OECD Due Diligence Guidance for Responsible Business Conduct (“Guidance”) in 2018 to provide practical support to enterprises on the implementation of the OECD Guidelines with explanations of its due diligence recommendations. The Guidance seeks to align with the UNGPs, the ILO Declaration on Fundamental Principles and Rights at Work, the ILO Conventions and Recommendations referenced with the OECD MNE Guidelines, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Note that the OECD has also developed sector-specific due diligence guidance for the minerals, agriculture, and garment and footwear supply chains and good practice papers for the extractives and financial sectors.⁴

The Guidance explains that due diligence is the process enterprises should carry out to identify, prevent, mitigate and account for how they address actual and potential adverse impacts in their

³ ILO, ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK AND ITS FOLLOW-UP (2010), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_467653.pdf [hereinafter ILO Declaration]. The ILO published ILO Indicators of Forced Labour in October 2012, which presents the most common signs or “clues” that point to the possible existence of forced labor in an effort intended to help “front-line” criminal law enforcement officials, labor inspectors, trade union officers, NGO workers and others identify persons trapped in forced labor and who may require urgent assistance. In addition, companies must be aware of the International Recruitment Integrity System (IRIS) Standard created by ILO and IOM, which provides that labor recruiters comply with all applicable legislation, regulations, multilateral and bilateral agreements on labor migration, and policies related to the recruitment of migrant workers in the jurisdictions of origin, transit, and destination countries, including those pertaining to the immigration or emigration of migrant workers.

⁴ See OECD, OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE BUSINESS CONDUCT (OECD Publishing, 3d ed. 2018), <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>; for more information on sector-specific publications, see OECD, *Due Diligence Guidance for Responsible Business Conduct*, OECD, <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>.

own operations, their supply chain, and other business relationships as recommended in the OECD MNE Guidelines. Effective HRDD should, per the Guidance, be supported by efforts to embed RBC into policies and management systems to enable enterprises to remediate adverse impacts that they cause or to which they contribute. HRDD is an ongoing process that should commence pre-contract and must continue during the life cycle of the contract including its end. It should be designed to assess and govern a business enterprise's impact on human rights and not the impact of human rights on a business enterprise. After properly diagnosing risks, ongoing HRDD should assure that corporate responses are fit to context and provide individuals with the type of support they need, actually mitigating and preventing further harm and producing positive human rights outcomes.

Schedule P should refer specifically to the salient risks that the business discovers in its supply chain after extensive HRDD, including not only the possibility of modern slavery and child labor but also, for example, environmental catastrophe, violence from company security forces, compromised workplace safety or discrimination and harassment. Schedule P should be as clear as possible when defining salient risks within the supply chain.

Such clarity is not possible without comprehensive HRDD, mandatory in some European countries with many other countries considering similar bills.⁵ On April 29, 2020, the European Commissioner of Justice, Didier Reynders, announced that the European Union will propose new mandatory HRDD legislation in 2021. Whether that legislation or regulations promulgated under it will identify specific HRDD acts or a safe harbor process is yet to be seen.

The ETI Base Code⁶, founded on ILO conventions⁷ and used widely across sectors, is an “internationally recognized code of good labor practice . . . used as a benchmark against which to conduct social audits and develop ethical trade action plans.”⁸ “The provisions of the Base Code constitute minimum and not maximum standards” but nevertheless include nine categories as follows: “1. Employment is freely chosen [i.e., no forced labor]; 2. Freedom of association and the right to collective bargaining are respected; 3. Working conditions are safe and hygienic; 4. Child labor shall not be used;⁹ 5. Living wages are paid; 6. Working hours are not excessive;

⁵ The French law on the Duty of Vigilance, the Swiss Responsible Business Initiative, and the German Supply Chain campaign embed the UNGPs and OCED due diligence standards into law. Mandatory due diligence laws require companies to “identify, prevent, mitigate, and account for the negative human rights impacts of their activities or those linked to their business relationships.” EUROPEAN COALITION FOR CORPORATE JUSTICE, KEY FEATURES OF MANDATORY HUMAN RIGHTS DUE DILIGENCE LEGISLATION (2018), https://corporatejustice.org/eccj-position-paper-mhrdd-final_june2018_3.pdf. Find the latest news on mandatory HRDD at www.business-humanrights.org/en/mandatory-due-diligence.

⁶ The Ethical Trading Initiative (“ETI”) is an “alliance of companies, trade unions and NGOs that promotes respect for workers’ rights around the globe.” *About ETI*, ETHICAL TRADING INITIATIVE, <https://www.ethicaltrade.org/about-eti> (last visited Feb. 2, 2021).

⁷ See ILO Declaration, *supra* note 7 **Error! Bookmark not defined.**

⁸ See ETHICAL TRADING INITIATIVE, *Introduction to THE ETI BASE CODE* (2018), https://www.ethicaltrade.org/sites/default/files/shared_resources/ETI%20Base%20Code%20%28English%29_0.pdf

⁹ The U.N. Convention on the Rights of the Child (1989) provides: “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” Convention on the Rights of the Child art. 1, *open for signature* Nov. 20, 1989, 1577 U.N.T.S. 3. “In Spanish-speaking countries in Latin America, it is usual practice to distinguish between the boys and girls, on the one hand, and older adolescents, thereby recognizing that adolescents are more mature and can take on more responsibilities than younger children.” ETI BASE CODE, *supra* note 8, at 12.

7. No discrimination is practiced; 8. Regular employment is provided; and 9. No harsh or inhumane treatment is allowed.”¹⁰ Some codes expand these categories to include community-wide impact, environmental issues, and land rights. SMETA¹¹ is an audit methodology providing a compilation of what are recognized as practical and ethical techniques.¹² It includes a rating system for the severity of non-compliance when evaluating any one of the nine categories above, from “[b]usiness critical non-compliance” being the most severe to “[c]ritical non-compliance,” “[m]ajor non-compliance,” or “[m]inor non-compliance” the latter being the least severe.¹³ The corresponding timescales for remediation range from zero to ninety days, with “business critical issues” requiring an immediate response (i.e., zero days) to correct the issue.¹⁴ Once a customer begins or takes corrective action, an auditor verifies the adequacy of the business’s actions either remotely or onsite.¹⁵ SMETA should be used to supplement a business’s systems, as it is not “intended as a standalone document.”¹⁶

Almost all codes adopt a similar approach with varying emphasis and different levels of tolerance for certain non-compliances. The drafters of a company’s Schedule P could use the ETI Base Code and SMETA audit framework as a starting point to identify and map risks determined in the company’s essential, pre-contract due diligence. Schedule P should define what the buyer and supplier agreed will constitute important terms, like “severity,” “salient risks,” and “child labor.” Schedule P also should include a process for handling discovered non-compliances that prioritizes attention to salient risks and expects buyer and/or supplier to respond based on their level of involvement depending on findings of “cause,” “contribution” and “linkage.” A finding of “cause” should trigger a need to fix, remedy and prevent while a finding of “contribution” triggers a need to fix, remedy and prevent through leverage and possible contract suspension and even termination. A finding of “linkage” should trigger efforts to prevent through leverage and possible contract suspension or termination.

MOVING BEYOND ABSTRACT TO THE CONCRETE

The contents of each company’s Schedule P policy statement will vary depending on the parties, the contract, and the salient risks at different tiers of the chain. Schedule P should be the result of extensive, ongoing HRDD. U.N. Guiding Principles 17 through 21 enumerate the due diligence process: (1) identify risks of harm to people and their environment; (2) respond to risk

¹⁰ ETI BASE CODE, *supra* note 8, at 1.

¹¹ The Sedex Members Ethical Trade Audit (“SMETA”) “is designed to help auditors conduct high quality audits that encompass all aspects of responsible business practice,” including “labor, health and safety, environment and business ethics.” *SMETA Audit*, SEDEX, <https://www.sedex.com/our-services/smeta-audit/> (last visited Feb. 2, 2021); *SMETA*, SEDEX, <https://www.sedex.com/wp-content/uploads/2021/01/SMETA-flyer-1-1.pdf> (last visited Feb. 2, 2021) (referencing general flyer about SMETA).

¹² See *SMETA*, SGS (Apr. 1, 2019), <https://www.sgs.com/en/news/2019/04/safeguards-03619-smeta-audits-an-introduction#:~:text=SMETA%20is%20an%20audit%20methodology,%2C%20environment%2C%20and%20business%20ethics>.

¹³ SEDEX, SEDEX MEMBERS ETHICAL TRADE AUDIT (SMETA) NON-COMPLIANCE GUIDANCE 3 (2018), <http://www.sipascr-peru.com/wp-content/uploads/2018/09/Sedex-Members-Non-Compliance-Guidance-v.2-2018.pdf>

¹⁴ *Id.* at 4.

¹⁵ See *id.* at 5.

¹⁶ *Id.* at 1.

in an integrated fashion (which varies according to the mode of involvement; i.e., cause, contribution or linkage); (3) monitor and track performance; and (4) disclose risks and impacts to affected stakeholders.¹⁷ This same process can be broken down to include: (a) risk mapping; (b) regular assessment; (c) actions to mitigate; (d) alert mechanisms; and (e) monitoring and evaluating for specific issues and possible routes to address those issues.¹⁸ For example, there may be pollution of drinking water at one tier, security force violence at a second tier and dangerous working conditions at a third. Boilerplate text to cover all potential risks will not result in a clear understanding by the parties of what needs to be done and may be useful only to identify a breach rather than guide conduct. Schedule P should not consist solely of a list of possible internationally recognized human rights that the supplier reviews and checks off as an assurance of current and ongoing compliance without true investigation. Rather, it should specify in practical and concrete terms the types of conduct by the parties that would constitute human rights abuse and identify which abuses justify suspension or even termination of the contract. Schedule P must also acknowledge there may be other risks or abuses in the supply chain identified later or inadequately during the initial due diligence processes that may have to be addressed with a response other than, or including, suspension or termination.¹⁹ Sector and conduct specific multi-stakeholder human rights standards, such as the Voluntary Principles on Security and Human Rights,²⁰ the Fair Labor Association’s revised Principles of Fair Labor and Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas, as supplemented, might be incorporated or referenced where appropriate. A meaningful Schedule P is the result of extensive and ongoing due diligence and a history of dialogue between buyer and supplier that establishes clear and enforceable standards preserved in a written and understood action plan.

CRITICAL COMPONENTS OF A COMPLIANCE PROGRAM

At a minimum, the content of a Schedule P, which is consistent with international standards, should:

- (1) specify and define clearly the salient human rights risks that the parties have identified in HRDD, the manifestation of which will constitute a breach of Schedule P, leaving flexibility for salient risks that were missed in any pre-contract HRDD;
- (2) specify relevant statutes and regulations that the parties and all subcontractors or other agents are expected to comply with during the course of the contract or other relationship;
- (3) specify the parties’ internal codes that all those in the supply chain are expected to know and honor;
- (4) specify any multi-stakeholder standards that are relevant; and
- (5) specify any relevant auditing protocols.

¹⁷ See Interpretive Guide, *supra* note 2, at 31–63 (discussing UNGPs 17–21).

¹⁸ See *Our Solutions*, SEDEX, <https://www.sedex.com/our-services/> (last visited Feb. 2, 2021) (linking to categories).

¹⁹ See OECD, OECD Due Diligence Guidance for Responsible Business Conduct 74–81 (2018),

<http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>

(recommending training, implementing new policies, or “linking business incentives” to prevent and mitigate risks and ongoing human rights abuses).

²⁰ VOLUNTARY PRINCIPLES INITIATIVE, VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS (2000), <http://www.voluntaryprinciples.org/wp-content/uploads/2019/12/TheVoluntaryPrinciples.pdf>.

For companies looking for a more comprehensive list of Schedule P building blocks, there are a number of concrete tools available to assist a company in designing an effective Schedule P statement that articulates its human rights policies. Schedule P should address pre-contract due diligence at length and a concrete remediation plan should be derived therefrom. This seems logical: buyer and seller should both be reluctant to enter into agreements without knowing in advance whether they might, and how they might, address hypothetical let alone known existing problems. Hence, Schedule P is expected to lead to some form of “remediation plan” that exists at the outset or that the parties agree to develop soon after signing. This plan would articulate long-term goals (on a prioritized basis) and interim steps that each party will take, either alone or in conjunction with others, as well as dates for achieving these steps and reporting and monitoring requirements.

One highly useful practical tool is the 2016 report, *Doing Business with Respect for Human Rights: A Guidance Tool for Companies*,²¹ collaboration between the Global Compact Network Netherlands, Oxfam, and Shift. It provides practical guidance on how a company can set the overall tone on human rights through its policy commitments, how it can embed those commitments into the company’s DNA, how it can move from reactively to proactively assessing its impacts, how it can integrate its human rights policy into its interactions with business partners and act in response to discovered human rights risks, how it can evaluate its successes and failures, how it can make it meaningful by engaging with stakeholders, and how it can respond promptly and effectively to solve human rights problems.²² Appendix B to the report provides a detailed summary of what should go into a policy commitment, including types of general and specific statements, implementation processes, and who is responsible for implementation, evaluation, and updates to the policy.²³

Another widely used resource is the 2017 UN Guiding Principles Reporting Framework,²⁴ collaboration between the Shift Project and international accounting firm, Mazars LLP. It consists of a short list of targeted questions designed to increase internal and external understanding of a company’s human rights policies and practices by assessing the quality of how the company identifies and manages each of its salient human rights risks.²⁵

To be effective, the human rights expectations of the Buyer in the Model Clauses have to be articulated and then enforced at every level of the supply chain. The Supplier, as well as every lower tier supplier, must certify that it is fully familiar with all of the terms of the agreed upon Schedule P and the conditions under which the services are to be performed. Each tier supplier must enter into its agreement based upon its own ongoing investigation of all human rights matters within the scope of its operations and cannot rely on the opinions or representations of other suppliers. Schedule P must, therefore, include a “perpetual clause” such that each supplier binds

²¹ SHIFT ET AL., *DOING BUSINESS WITH RESPECT FOR HUMAN RIGHTS: A GUIDANCE TOOL FOR COMPANIES* (2nd ed. 2016), https://shiftproject.org/wp-content/uploads/2020/01/business_respect_human_rights_full-1.pdf.

²² *See id.* at 4–5.

²³ *See id.* at 123–29.

²⁴ SHIFT PROJECT LTD. & MAZARS LLP, *UN GUIDING PRINCIPLES REPORTING FRAMEWORK* (2015), <https://www.ungpreporting.org/>; *see also* SHIFT PROJECT LTD. & MAZARS LLP, *UN GUIDING PRINCIPLES REPORTING FRAMEWORK WITH IMPLEMENTATION GUIDANCE* (2015), https://www.ungpreporting.org/wp-content/uploads/UNGPRReportingFramework_withguidance2017.pdf.

²⁵ *See* UN GUIDING PRINCIPLES REPORTING FRAMEWORK *supra* note 24, at 2–3.

its lower tier supplier(s) to all of the performance obligations and responsibilities that Supplier assumes towards Buyer under Schedule P.

In this manner, Schedule P would be incorporated into every subsequent agreement or arrangement in the supply chain, insofar as it relates in any way, directly or indirectly, to the services or products in the chain. Each supplier agrees to be bound to the supplier that engaged its services in the same manner and to the same extent as the Supplier who contracted with Buyer in the master agreement. Where, in Schedule P and the Model Clauses, reference is made to Supplier and the work or specifications pertain to Supplier's trade, craft or type of work, such work or specifications shall be primarily interpreted to apply to the next tier supplier. To be precise, there would be a general reference to a requirement, say, for example, no forced labor, and a more specific section prohibiting the use of conflict minerals in a contract for electronics or no Uzbek cotton for a garment manufacturing contract.

It is the Working Group's intention that Supplier shall have the benefit of all rights, remedies, and redress against a subsequent tier supplier that Buyer has against Supplier under the prime contract, and each lower tier supplier shall have the benefit of all rights, remedies, and redress against Supplier that Supplier has against Buyer under the prime contract, subject to the restrictions and limitations of the Model Clauses and only insofar as any of the foregoing is applicable to Schedule P. If deemed desirable and appropriate, both Schedule P and the Model Clauses can make it clear that Buyer has the direct right to claim a human rights breach by a supplier within the chain below the Supplier that is a party to the master agreement and that Supplier and each lower tier supplier has the same right in its role as a lower tier buyer vis a vis the lower tier supplier.

Even if Schedule P goes beyond traditional privity and applies up and down the chain, many insist that there is little enforcement of the Model Clauses that address human rights representations or Schedule P without the inclusion of impacted stakeholders. "Next Generation Supplier Codes," a phrase adopted by the Corporate Accountability Lab, include provisions and enforcement mechanism that:

- allows workers, survivors of deceased workers, land owners and impacted community members to enforce Schedule P [or Schedule Q], i.e., provide third-party beneficiary language, and grant these third-party beneficiaries the ability to assign their rights to a labor union, nongovernmental organization or other organizations providing legal assistance;
- require notification and education of workers with respect to their rights;
- require the supplier to disclose all its production factories so that buyer may access and facilitate compliance monitoring; and
- require the supplier to commit to refraining from retaliation against stakeholders who bring or consider bringing enforcement actions.

Sample third-party beneficiary clauses to be added to a buyer-supplier agreement can be found at Corporate Accountability Lab, "Towards Operationalizing Human Rights and Environmental Protection in Supply Chains: Worker-Enforceable Codes of Conduct" (Feb. 2021), <https://corpaccountabilitylab.org/publications>.

A. Organizational Standards

1. **UN Guiding Principles on Business and Human Rights (2011)**

- a. Sponsor Organization: United Nations
- b. Link:
https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf
- c. Description: The UNGPs are the authoritative global standard on business and human rights, and resulted from a six year process of multistakeholder consultations, research and pilot projects, under the direction of their author, Harvard Kennedy School Professor John Ruggie, then the Special Representative of the UN Secretary-General on Business and Human Rights (SRSG). The UNGPs rest on three interrelated pillars: “the state duty to protect human rights, the business responsibility to respect human rights, and the need for greater access to remedy for victims of business-related abuse.”
- d. Supplementary/Interpretive Documents:
 - i. The Corporate Responsibility to Respect Human Rights (2012)
(https://www.ohchr.org?Documents/Publications/HR.PUB.12.2_En.pdf). The UN Office of the High Commissioner on Human Rights (OHCHR) drafted this document with the full approval of the SRSG, providing a comprehensive guide to the understanding and application of the second pillar of the UNGPs.

2. **OECD Guidelines for Multinational Enterprises (2011, revised 2019)**

- a. Sponsor Organization: Organization for Economic Cooperation and Development (OECD)
- b. Link:
<http://www.mnguidelines.oecd.org/annualreportsontheguidelines.htm>
- c. Description: The voluntary OECD MNE Guidelines were revised in 2011 to substantially augment their human rights section, in order to align with the UNGPs. In doing so, the OECD imported virtually intact the HRDD process of the UNGPs. The OECD has continued to play an important role in providing concrete guidance to companies that do business in or with the OECD and resolves business and human rights disputes through its nonjudicial National Contact Process dispute resolution system.
- d. Supplementary/Interpretive Documents:
 - i. OECD Due Diligence Guidance for Responsible Business Conduct (2018)
(<http://www.mneguiddelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>)

3. **Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (MNE Declaration) (1977, amended 2017)**

- a. Sponsor Organization: International Labour Organization (ILO)
- b. Link: http://www.ilo.org/empent/Publications/WCMS_094386/lan--en/index.htm
- c. Description: The MNE Declaration is the ILO instrument influencing and guiding a number of international and regional organizations, national governments, and employers' and workers' organizations around the world. It provides direct guidance on social policy and inclusive, responsible and sustainable workplace training and practices and includes international labor standards and principles addressing specific work issues relating to forced labor, transition from the informal to formal economy, wages, safety and health, access to remedy and compensation of victims.

4. ILO Declaration on Fundamental Principles and Rights at Work (1998)

- a. Sponsor Organization: ILO
- b. Link: <https://www.ilo/declaration/thedeclaration/textdeclaration/lang--en/index.htm>
- c. Description: The ILO Declaration commits member states to respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions. These categories are: “freedom of association and the effective recognition of the right to collective bargaining; the elimination of forced or compulsory labor; the abolition of child labor; and the elimination of discrimination in respect of employment and occupation.” Member states that have not ratified one or more of the core Conventions are asked each year to report on the status of the relevant rights and principles within their borders, noting impediments to ratification and areas where assistance may be required. These reports are used to create a compilation of baseline tables, by country, and periodic global reports relating to the promotion of the fundamental principles and rights at work.
- d. Supplementary/Interpretive Documents:
 - i. ILO Indicators of Forced Labour (2012).
 - ii. https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index

5. IRIS Standard (Version 1.1, 2019)

- a. Sponsor Organization: International Organization for Migration (IOM)
- b. Link: <https://www.iris.iom.int/iris-standard>
- c. Description: The International Recruitment Integrity System (IRIS) is the IOM's global, multi-stakeholder initiative to promote ethical recruitment of migrant workers. IRIS is referred to under Objective 6 of the Global Compact for Safe, Orderly and Regular Migration and other inter-governmental frameworks. The IRIS Standard articulates what ethical recruitment means in practice and how labor recruiters can demonstrate compliance. The IRIS Standard and corresponding guidelines serve as a reference point for labor recruiters, employers and state actors on how to integrate ethical recruitment principles into recruitment-related management systems, policies, regulations, processes and

procedures. To achieve this, the IRIS Standard defines operational indicators against which labor recruiters can be measured to assess compliance.

6. Human Rights Principles for Companies (January 1998)

- a. Sponsor Organization: Amnesty International
- b. Link: <https://www.amnesty.org/download/Documents/148000/act700011998en.pdf>
- c. Description: Amnesty International asserts that “the business community has a wide responsibility - moral and legal - to use its influence to promote respect for human rights. . . . [It] therefore developed an introductory set of human rights principles, based on international standards, to assist companies in developing their role in situations of human rights violations or the potential for such violations.” Its document deals with the responsibility multinational companies have to promote and protect human rights in their own operations.
- d. It recommends the development of explicit company policies, training, consulting non-governmental organizations and impact assessments. A checklist for use by companies forms part of the document.

7. ISO 26000: Guidance Standard on Social Responsibility (2010)

- a. Sponsor Organization: International Organization for Standardization (ISO)
- b. Link: <https://www.iso.org/iso-26000-social-responsibility.html>
- c. Description: ISO 26000:2010 is both an international consensus and guidance for assessing an organization’s commitment to sustainability and overall ESG performance. It is not a certification process “unlike some other well-known ISO standards. Instead, it helps clarify what social responsibility is, helps businesses and organizations translate principles into effective actions and shares best practices relating to social responsibility, globally. It is aimed at all types of organizations regardless of their activity, size or location.”
- d. Supplemental/Interpretive Documents:
 - i. “Communication Protocol – describes appropriate wordings organizations can use to communicate about their use of ISO 26000.
https://www.iso.org/files/live/sites/isoofg/files/standards/doc/en/iso_26000_comm_protocol_n.15.pdf. ISO 26000 basic training materials in the form of a PowerPoint and training protocol guidance.”
https://www.iso.org/files/live/sites/isoorg/files/standards/docs/en/ISO_26000_basic_training_material_annexslides_2017.pptx
 - ii. Documents that link ISO 26000 with the OECD Guidelines for Multinational Enterprises and the United Nations 2030 Agenda (Sustainable Development Goals)
 - A. ISO 26000 and OECD Guidelines – Practical Overview of the Linkages
<https://www.iso.org/publications/PUB100418.html>
 - B. ISO 26000 and SDGS
<https://www.iso.org/publication/PUB100401.html>

- 8. Doing Business with Respect for Human Rights: A Guidance Tool for Companies (2010, updated 2016)**
- a. Sponsor Organization: Shift/Oxfam/Global Compact Network Netherlands
 - b. Link:
https://www.businessrespecthumanrights.org/image/2016/10/24/business_respect_human_rights_full.pdf
 - c. Description: This is a paper on how to apply the business responsibility to respect human rights under the UNGPs in practice. It provides practical guidance on how to prevent and address human rights impacts for use by company staff in the “sustainability or CSR function” as well as “procurement, sales, legal, and public affairs or risk and in different areas of operation, including business units and country subsidiaries.”
- 9. Blueprint for Imbedding Human Rights in Key Company Functions (2016)**
- a. Sponsor Organization: European Business Network for Corporate Social Responsibility (CSR Europe)
 - b. Link:
https://respect.international/wp-content/uploads/2019/11/Human_Rights_Blueprint_0.pdf
 - c. Description: This blueprint by CSR Europe provides guidance for “embedding human rights across . . . [organizational functions].” Focusing predominantly on three key functions – human resources, risk management, and procurement. It provides examples of current practices taken by companies around each element and explains how these functions can contribute to the overall process of “effectively integrat[ing] human rights” into the corporate culture.
- 10. Children’s Rights and Business Principles (2012)**
- a. Sponsor Organization: UNICEF/Save the Children/UN Global Compact
 - b. Link:
<https://childrenandbusiness.org>
 - c. Description: Children’s Rights and Business Principles articulate the difference between the responsibility of business to respect, i.e., doing the minimum required to avoid infringing on children’s rights; and to support, i.e., taking voluntary actions that seek to advance the realization of children’s rights. These Principles call on businesses to put in place appropriate policies and processes, as set out in the UNGPs, including a policy commitment and a due diligence process to address potential and actual impacts on human rights. The Principles identify a comprehensive range of actions that all businesses should take to prevent and address risks to child rights and “maximize positive business impacts” in the “workplace, the marketplace and the community.”
- 11. FWF Code of Labor Practices (2016)**
- a. Sponsor Organization: Fair Wear Foundation (FWF)
 - b. Link:

<https://www.fairwear.org/wp-content/uploads/2016/06/fwfcodoflabourpractices.pdf>

- c. Description: The core of this Code is made up of eight labor standards derived from the ILO Conventions and the UN Declaration on Human Rights. The Code's articulation of workers' rights includes additional context for: (i) the limitation of working hours; (ii) the free choice of workplace; (iii) no exploitative child labor; (iv) no discrimination in employment; (v) a legally binding employment contract; (vi) safe and healthy working conditions; (vii) unrestricted freedom of association and the right to collective bargaining; and (viii) payment of a living wage.

12. GRI Sustainability Reporting Standards (2016, updated 2020)

- a. Sponsor Organization: Global Reporting Initiative
- b. Link:

<https://www.globalreporting.org/standards>

Description: A flexible framework for creating standalone sustainability or non-financial reports, including ESG reports, which assist businesses, governments and other organizations understand and communicate their impacts on issues such as climate change, human rights, and corruption. Available as a free public good, "organizations can either use the GRI Standards to prepare a sustainability report in accordance with the Standards. Or they can use selected Standards, or parts of their content, to report information for specific users or purposes, such as reporting their climate change impacts for their investors and consumers." Using reference to global standards of sustainability, the resultant report provides an inclusive picture of material topics, their related impacts, and how they are managed. There is a GRI Standards Report Registration System to register information reported using the GRI Standards.

13. International Criminal Court (Rome) Statute, Article 7 (1998)

- a. Sponsor Organization: International Criminal Court (ICC)
- b. Link:
https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

- c. Description: The Rome Statute is the treaty that established the International Criminal Court (ICC). As of November 2019, 123 states are party to the statute which, among other things, establishes the court's functions, jurisdiction, and structure. The Rome Statute established four core international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression. Article 7 defines "crime against humanity" to include "enslavement," "deportation or forcible transfer of population," "imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law," and "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health," "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise

of such power in the course of trafficking in persons, in particular women and children.”

14. The Essential Elements of MSI (Multi-Stakeholder Initiative) Design (2017)

- a. Sponsor Organization: Institute for Multi-Stakeholder Initiative Integrity
- b. Link: https://www.msi-integrity.org/wp-content/uploads/2017/11/Essential_Elements_2017.pdf
- c. Description: This is a guide for how to craft a voluntary policy addressing business and human rights. It does not suggest specific areas of human rights to focus on or provide a framework for the topics that an initiative such as this should cover, but it does identify ideal qualities of the design and structure of such a policy. This guide is used by MSI Integrity to evaluate the strengths and weaknesses of a company’s initiative but using an evaluation form such as this can provide guidance on how to write a comprehensive policy initiative for business and human rights.

15. UN Guiding Principles Reporting Framework (2015)

- a. Sponsor Organizations: Shift and Mazars
- b. Link: <https://shiftproject.org/resource/un-guiding-principles-reporting-framework>
- c. Description: The UNGPs Reporting Framework is a comprehensive reporting framework focused on the internal understanding and external reporting of a company’s human rights performance under the UNGPs. The Reporting Framework is a short series of questions to which any company should have answers, both to know whether it is doing business with respect for human rights and to show others the progress made. The Reporting Framework is supported by two kinds of guidance: implementation guidance for companies that are reporting, and assurance guidance for internal auditors and external assurance providers. It is used by over 150 major multinational publicly traded companies and is backed by governments, investor coalitions with approximately “\$5.3 trillion assets under management,” investors, stock exchanges, law firms, and other reporting initiatives.
- d. Supplementary/Interpretive Documents:
 - i. UNGPs Assurance Guidance (2017)
<https://ungpreporting.org/assurance/>
The UNGPs Assurance Guidance is a “subject matter guidance that serves two purposes: (1) to help internal auditors assure companies’ human rights performance, and (2) to support external assurance providers’ assurance of companies’ human rights reporting.”

16. International Bar Association, *Practical Guide on Business and Human Rights for Business Lawyers* and the companion *IBA Reference Annex to the Practical Guide on Business and Human Rights for Business Lawyers* (2016)

- a. Sponsor Organization: International Bar Association

- b. Link: <https://www.ibanet.org/Document/Default.aspx?DocumentUid+d6306c84-e2f8-4c82-a86f-93940d6736c4>
- c. Description: The first comprehensive practical guide for implementing the UNGPs into the practice of law worldwide. It was drafted by a team of international legal experts, following nearly two years of research and consultation, and was endorsed by all of the nearly 200 international bar associations and law societies that comprise the IBA.

B. Examples of Companies with Human Rights Initiatives

1. Adidas
<https://www.adidas-group.com/en/sustainability/managing-sustainability/human-rights/>
2. BHP Billiton
<https://www.bhp.com/our-approach/operating-with-integrity/respecting-human-rights>
3. H&M
<https://hmgroup.com/sustainability/fair-and-equal/human-rights>
4. Kellogg's
<https://crreport.kelloggcompany.com/human-rights-employee-safety>
5. Marks & Spencer
<https://corporate.marksandspencer.com/sustainability/business-wide/human-rights#5abe14057880b264341dfbf3>
6. Nestle
<https://www.nestle.com/csv/impact/respecting-human-rights>
7. Patagonia
<https://www.patagonia.com/corporate-responsibility.html>
8. Rio Tinto
<https://www.riotinto.com/en/sustainability/human-rights>
9. Total
https://www.total.com/sites/default/files/atoms/files/human_rights_internal_guide_va.pdf
10. Unilever
<https://www.unilever.com/sustainable-living/enhancing-livelihoods/fairness-in-the-workplace/advancing-human-rights-in-our-own-operations/>

C. Other Resources

1. Alliance 8.7

Alliance 8.7 is a global partnership, chaired by the ILO, which fosters multi-stakeholder collaboration to support governments in achieving target 8.7 of the 2030 Sustainable Development Goals designed by the United Nations General Assembly in 2015 and part of UN Resolution 70/1, known as the “2030 Agenda”. It promotes 1) “accelerat[ed] action” “to eradi[cate] forced labour, modern slavery, human trafficking and child labour;” 2) research, data collection and knowledge sharing on prevalence and “what works”; and 3) “driving innovation and leveraging resources.” The Alliance works globally through four thematic Action Groups, a Communication Group and supports the national efforts of countries that have committed to accelerate action, organize national multi-stakeholder consultations and set up respective time-bound action plans with measurable targets.

<https://www.alliance87.org>

2. Business & Human Rights Resource Centre

An independent, non-profit global organization that provides resources and guidance for businesses “to advance human rights . . . and eradicate abuse.” Its website is in eight languages: English, Arabic, Chinese, French, German, Portuguese, Russian and Spanish. The Centre has regional researchers based in Australia, Brazil, China, Colombia, India, Kenya, Jordan, Mexico, Myanmar, Philippines, Senegal, South Africa, Tunisia, the United Kingdom, Ukraine, and the United States of America. It draws global attention to businesses’ human rights impacts (positive and negative) in their region, seeks responses from companies when civil society raises concerns, and establishes close contacts with grassroots NGOs, local businesspeople, and other stakeholders.

<https://www.business-humanrights.org/en>

3. Business for Social Responsibility

BSR™ is a global nonprofit organization “that works with its . . . network of more than 250 member companies [and other partners] to build a just and sustainable world. From its offices in Asia, Europe, and North America, BSR™ develops sustainable business strategies and solutions through consulting, research, and cross-sector collaboration. It has developed several “collaborative [industry] initiatives, . . . including the Global Network Initiative and the Electronic Industry Citizenship Coalition, which [it] then spun off into independent institutions. More recently developed collaborative initiatives, including the Future of Fuels and the Future of Internet Power, and HERhealth and HERfinance, help companies across industries and sectors focus on cross-cutting issues like energy and women’s empowerment.” Environmental issues, particularly energy and climate, ecosystems services, and water, are a growing focus of its time and resources, fostering a “growing recognition at the highest level of business that sustainability is core to success.” <https://www.bsr.org>

4. Fair Labor Association

FLA is “a collaborative effort” of universities, civil society organizations and socially responsible companies dedicated “to protecting workers’ rights around the world.” It is headquartered in Washington, D.C., with offices in China and Switzerland. “FLA places

the onus on companies to voluntarily meet internationally recognized labor standards wherever their products are made.” It offers: (i) a “collaborative approach allowing civil society organizations, universities and socially responsible companies to sit at the same table and find effective solutions to labor issues;” (ii) “innovative and sustainable strategies and resources to help companies improve compliance systems;” (iii) “transparent and independent assessments, the results of which are published online;” and (iv) a “mechanism to address the most serious labor rights violations through a Third Party Complaint process.”

https://www.fairlabor.org/sites/default/files/sci-factsheet_7-23-12.pdf

5. Labor Exploitation Accountability Hub

“The Accountability Hub aims to improve both government and corporate accountability for human trafficking, forced labour and slavery in national and global business supply chains The Hub . . . provides a platform for . . . research and advocacy on accountability issues, including by fostering connections and information sharing among key stakeholders from different parts of the world. The main feature of the Hub is the publicly accessible Labour Exploitation Accountability Database, which provides a broad inventory of national laws and regulations addressing corporate accountability for severe labor exploitation in supply chains. The database is searchable by country, legal topic, and by keywords, and includes brief notes on the implementation of the collected legal mechanisms. Country summary pages also provide an overview of the national context and legal framework, and highlight key implementation issues.”

<https://www.accountabilityhub.org>

6. Modern Slavery Registry

Modern Slavery Registry was a central registry for statements published pursuant to Section 54 of the United Kingdom Modern Slavery Act, which “requires commercial organisations that operate in the UK and have an annual turnover above £36m to produce a statement setting out the steps taken to address and prevent the risk of modern slavery in their operations and supply chains.” The Registry was guided and supported by a governance committee which includes: Freedom Fund, Humanity United, Freedom United, Anti-Slavery International, the Ethical Trading Initiative, CORE Coalition, UNICEF UK, Focus on Labour Exploitation (FLEX), Trades Union Congress, UN Principles for Responsible Investment, and Oxfam GB. Modern Slavery Registry is now closed, however, because the Government of the United Kingdom will launch its own registry in 2021. Historical records and guidance information are still available on their website.

<https://www.modernslaveryregistry.org>

<https://www.gov.uk/government/publications/contacts-database-for-guidance-on-modern-slavery-reporting/contacts-database-for-guidance-on-modern-slavery-reporting>

7. Responsible Business Alliance

“Founded in 2004 by a group of leading electronics companies, the Responsible Business Alliance (RBA), formerly the Electronic Industry Citizenship Coalition (EICC) is a nonprofit comprised of electronics, retail, auto and toy companies committed to supporting the rights and well-being of workers and communities worldwide affected by the global supply chain. RBA members commit and are held accountable to a common

Code of Conduct and utilize a range of RBA training and assessment tools to support continual improvement in the social, environmental and ethical responsibility of their supply chains.”

<https://www.responsiblebusiness.org>

8. Shift

Shift, founded in 2011 by core members of Professor John Ruggie’s United Nations Mandate Team, is internationally renowned as the “leading center of expertise on the UN Guiding Principles on Business and Human Rights.” It is chaired by Professor John Ruggie. “Shift is a non-profit, mission-driven organization headquartered in New York City,” whose purpose is to transform how “business gets done” to ensure respect for people’s lives and dignity. It “works across all continents” with businesses to help shape their practices, culture, and behavior and works with governments, financial institutions, civil society, and other stakeholders to embed the right requirements and incentives into businesses’ operating frameworks.

<https://shiftproject.org>

9. Verité

An “independent, non-profit, civil society organization, Verité . . . [has partnered,] since 1995[,] with hundreds of corporations, governments, and NGOs to illuminate labor rights violations in supply chains and remedy them to the benefit of workers and companies alike [It] provide[s] businesses with tools that help to eliminate labor abuses . . . , [endeavors] to empower workers to advocate for their rights . . . , create[s] publicly-shared resources that enlighten and drive action . . . [and] contribute[s] . . . to government labor and human rights policy.” Verité assists companies in “benchmarking policy,” “evaluating sourcing to field-based interviews,” and “developing a portrait of their supply chain that identifies risk and labor rights abuses.” “Verité has a history of work in over 70 countries, with a global network of experts in Africa, Asia, Europe, South America, North America and Australia.”

<https://www.verite.org>