

Government Roundtable, August 9, 2016
Wellington, New Zealand

Government Action on Business and Human Rights

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Shift



Putting Principles into Practice

About Shift

- Leading center of expertise on the UN Guiding Principles on Business and Human Rights
- We facilitate dialogue and build capacity through direct engagement
- We work with select companies, governments, civil society, industry and international organizations
- Non-profit, mission-driven
- We help bring strategy and commonsense to how businesses address human rights

Agenda

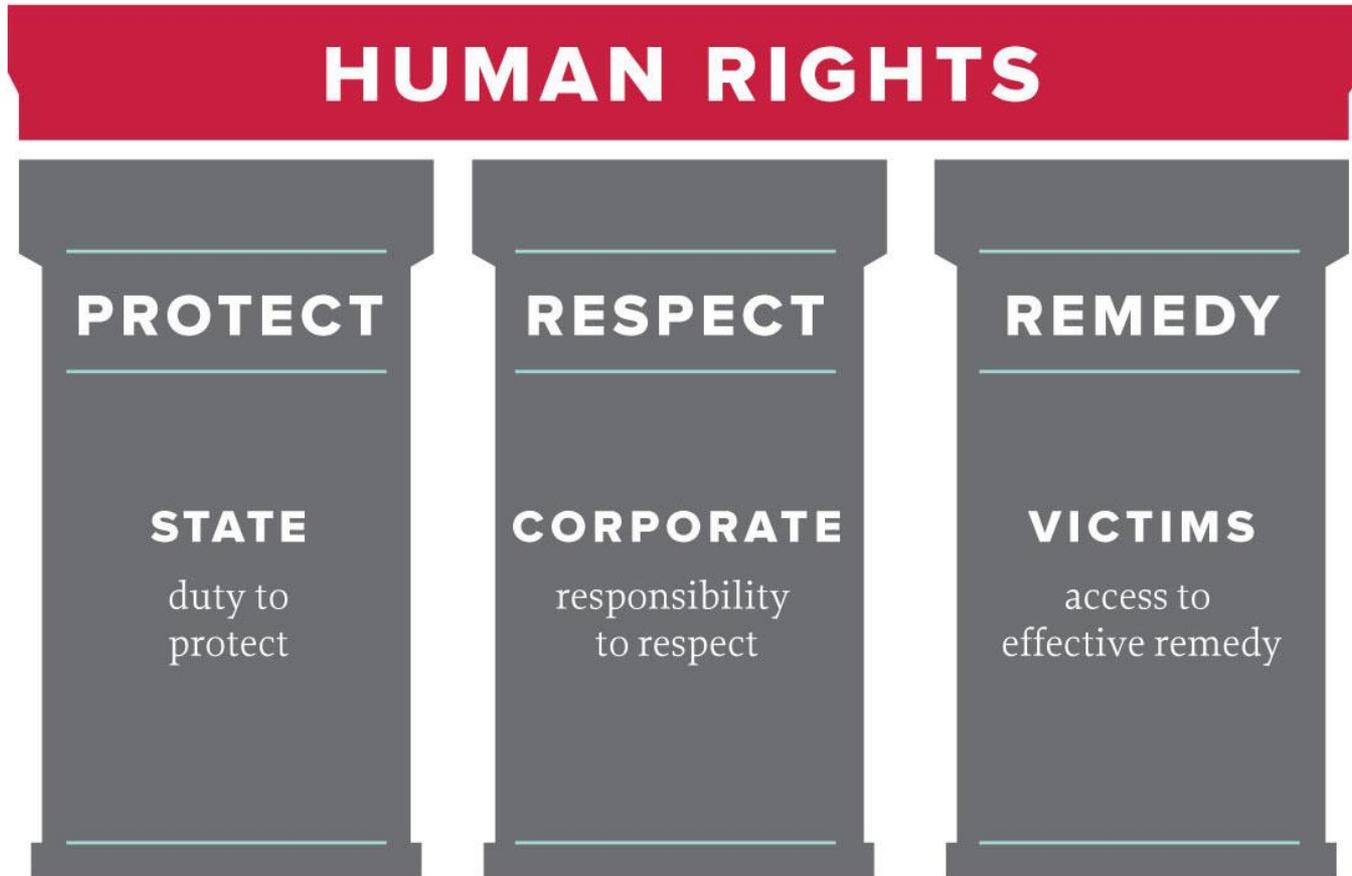
1. What are the UNGPs?
2. What are the new expectations of business?
3. What is expected of states?
 - Examples of state action
 - Human rights disclosure
 - Public procurement
 - NAPs

1. What are the UNGPs?

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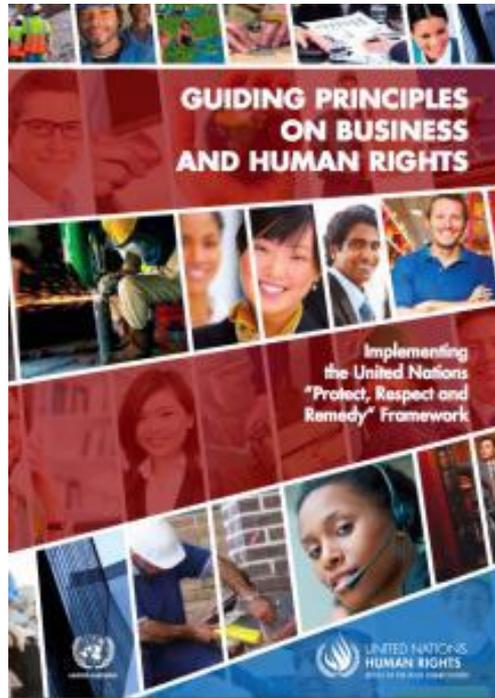
UN Framework



Converging standards



OECD Guidelines
for Multinational Enterprises



Key features

OECD Guidelines

- Apply to 34 member and 12 adhering countries
- Negotiated among governments
- Recommendations from states addressed to business
- Cover human rights, labor, environment, anti-corruption, consumer protection, science and technology, competition, taxation
- National Contact Points (NCPs)

UNGPs

- Unanimously endorsed by UN Human Rights Council
- Authored by Special Representative of the S-G after global multi-stakeholder consultative process
- Addressed to states and business (3 pillars)
- Focused on human rights (including labor rights)
- Informed drafting of OECD Guidelines

2. What is Expected of Business?

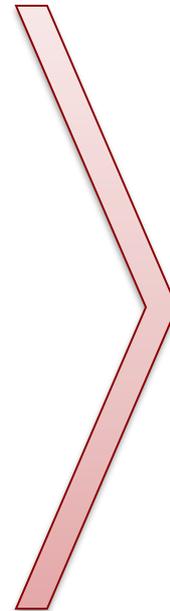
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Responsibility to respect

Corporate Responsibility to Respect Human Rights

- Focus on risk to people, not just risk to business
- In own operations and all business relationships
- Compliance with local law may not be sufficient
- Cannot offset negative impacts by 'doing good'

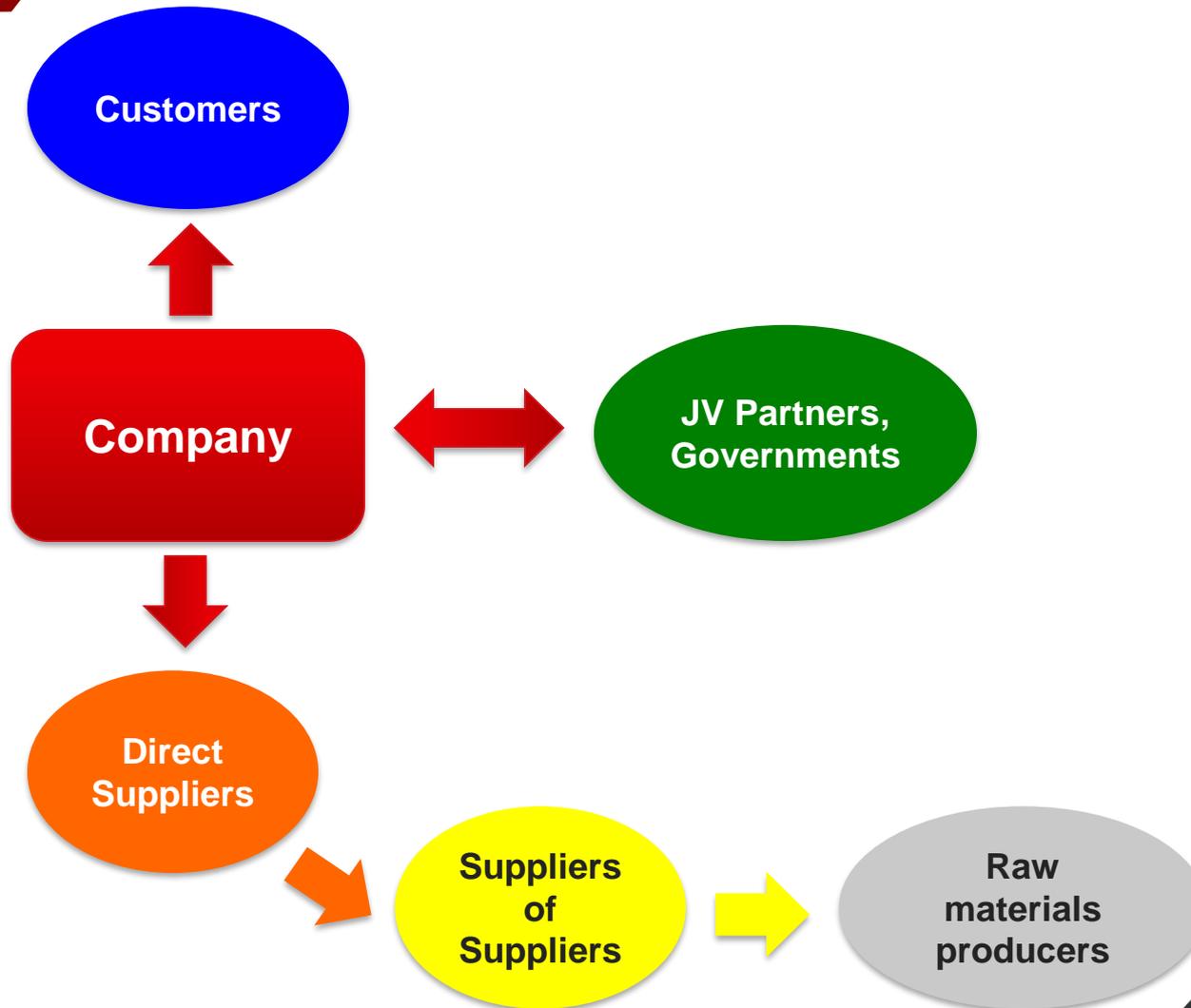


Policy Commitment and Embedding

Human Rights Due Diligence

Remedy and Grievance Mechanisms

Expanding the scope



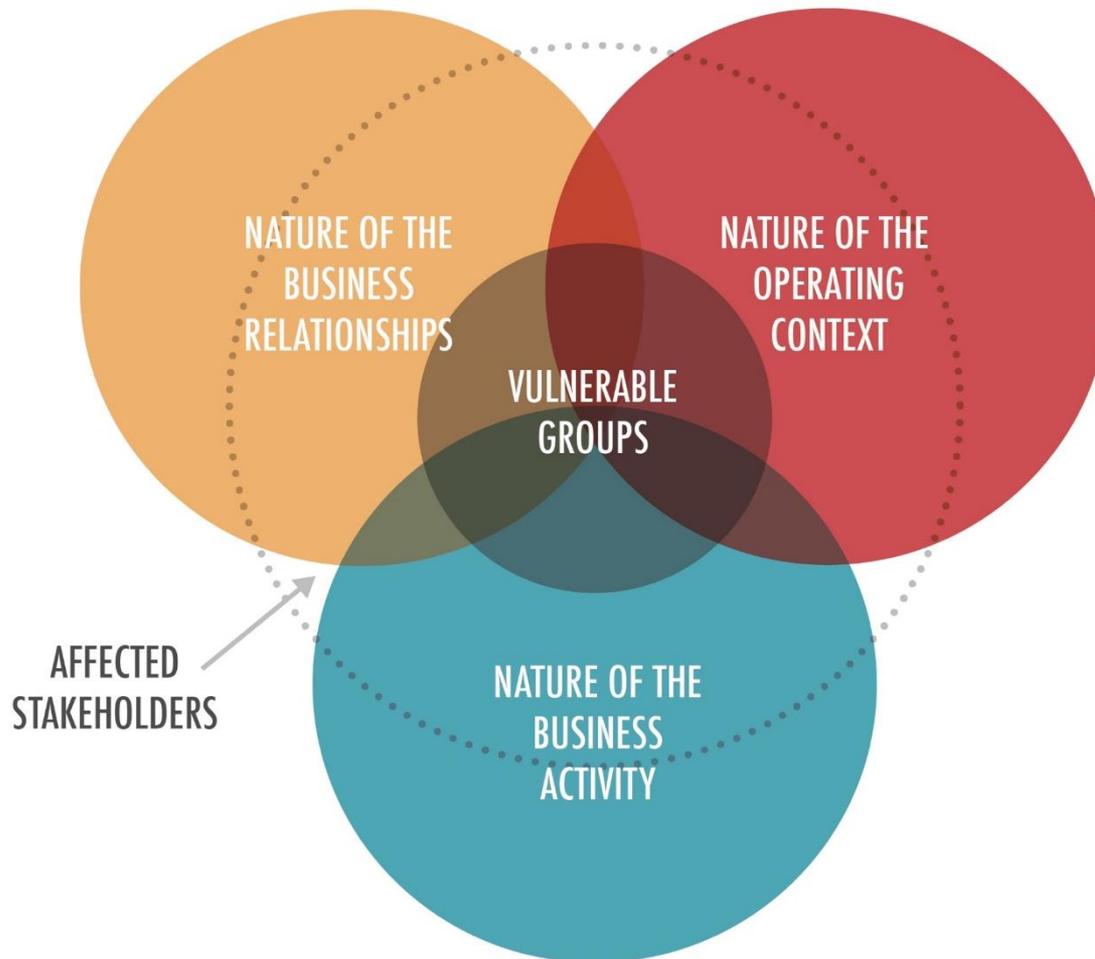
Differentiated actions

Involvement	Prevention – own actions	Prevention – others' actions	Remedy
Cause	Mitigate / prevent		Remediate
Contribution	Mitigate / prevent	Use / build leverage with others	Contribute to remediation
Linkage to company's operations, products or services through a business relationship		Use / build leverage with others to seek to mitigate / prevent	<i>No responsibility to remedy but may choose to do so</i>

Human rights due diligence



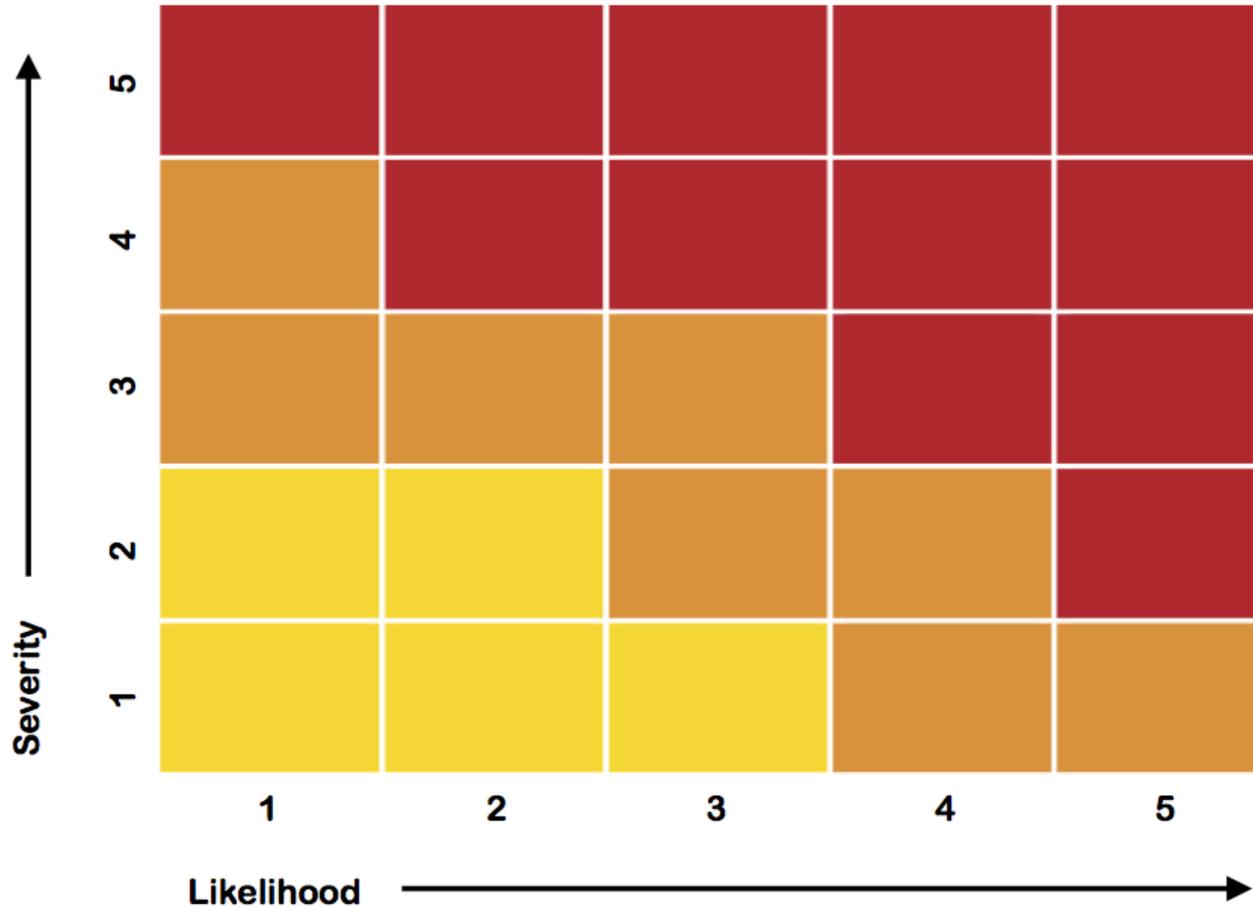
Prioritizing the focus of HRDD



Assessing severity

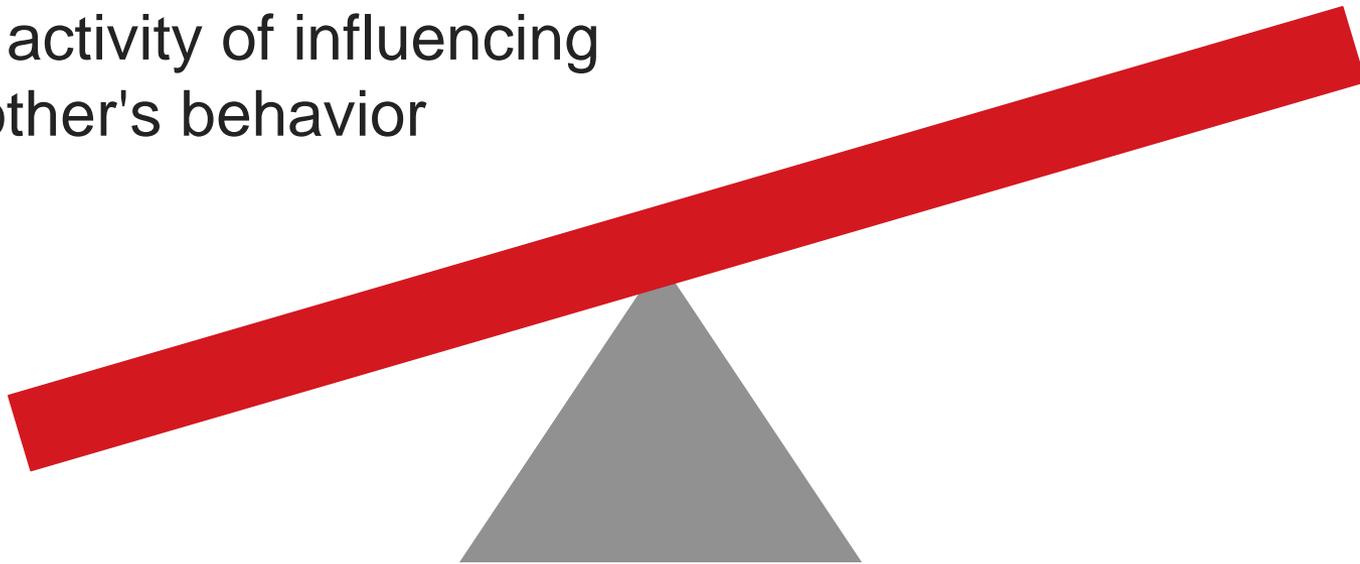
SCALE	What is the gravity of the impact that might occur?
SCOPE	How many people might be impacted?
REMEDIABILITY	Can you restore those impacted to a situation at least the same as, or equivalent to, their situation before the impact occurred?

Human rights risk heat map



Using leverage

Leverage:
the activity of influencing
another's behavior



Leverage is not just about what is possible today,
but also **how leverage could be built to have
more influence tomorrow**

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3. What is expected of states?

State duty to protect

- Set clear expectations for business
 - Policy coherence (or at least reduce incoherence)
 - Need for a smart mix of policy and regulation
- Pay attention to the state-business nexus
 - Eg, state ownership, procurement, export credit
- Establish a foundation of state-based remedy

Examples of state action

- Providing information or guidance to companies
- Convener encouraging / requiring sector-wide action
- Directors' duties
- Import and export controls
- Tying human rights to trade promotion and support
- Inquiries into / proceedings against individual businesses
- Licensing requirements
- Independent commissioner or industry ombudsman
- As hosts of mega-sporting events
- Multilateral leadership

Human rights disclosure

- US
 - Dodd-Frank Act and SEC rules on conflict minerals
 - State Department reporting requirements for Burma
 - California Transparency in Supply Chains Act (and federally?)
- UK
 - Companies Act requirements for directors of listed co's
 - Modern Slavery Act 2015 for all companies with turnover > £36 million in UK
- EU
 - Non-Financial Reporting Directive 2014 applies to c 6,000 largest companies
 - Conflict minerals?

Procurement

- US Federal Acquisition Regulation (FAR):
 - Covers trafficking and forced labor with additional requirements if contract involves overseas goods or services
 - Disqualification of contractors that have repeatedly violated US labor laws
 - Agencies may choose to require disclosure of sub-contractors
 - GSA guidance and training tool

Procurement cont.

- EU
 - 2014 Directive requires adoption of policies including compliance with international labor standards, also by sub-contractors
 - Disclosure of sub-contractors
- Netherlands, Sweden and other examples from International Learning Lab report
- Australia?
- NZ – discussion underway

Examples of NAPs

- NAPs published or underway in >35 countries
- UK (v2), Swedish, Norwegian NAPs – encouragement of improved human rights disclosure using UNGP Reporting Framework
- Key NAPs in process:
 - US
 - German
 - Indonesia, Malaysian Strategic Framework
 - Australia?

Lessons from NAPs?

On the positive side:

- Have helped set clear expectations for business
- Whole-of-government engagement

But... not much 'action':

- Accountability: setting expectations but without any consequences
- State-business nexus: credibility gap
- Remedy: limited action on judicial remedy

The logo for Shift, featuring the word "Shift" in a bold, italicized sans-serif font. The letter "i" is red, while the other letters are white. The logo is set against a dark grey background that is part of a larger graphic element consisting of a dark grey triangle pointing right and a red triangle pointing left, meeting at a diagonal line.

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shiftproject.org