

EVERSHEDS



On the right path

Human rights at work 2016 report

Contents

Foreword	03
Our survey: key findings	04
Reporting	06
Key challenges: awareness and resources	07
Commitment and responsibility concerns	08
Implementing respect for human rights	09
Using leverage on suppliers and customers	10
The ethical leadership of in-house lawyers	11
Company case study: British Telecommunications plc	12
Appendix	14

Foreword

The expectation that businesses should not harm fundamental human rights is set down in the United Nations Guiding Principles on Business and Human Rights ('UNGPs'). They represent a fundamental shift, moving the onus away from organisations simply reacting to human rights problems to proactively 'knowing' (identifying and preventing) and 'showing' (disclosing) their human rights risks.

Governments have reinforced this change in emphasis by introducing new human rights procurement conditions, governance codes, reporting duties and national action plans. New legislation includes the EU Non-Financial Disclosure Directive, UK Modern Slavery Act, US Dodd-Frank Act and California Transparency in Supply Chains Acts.

Some businesses have embraced the business and human rights agenda. They may see it as a competitive advantage and a way to reduce reputational and supply chain risks, respond to customer and investor pressures, strengthen corporate governance and compliance or just "do the right thing". However, many businesses have yet to respond.

Eversheds and RSG Consulting conducted a survey of over 200 senior corporate participants¹ to assess levels of business engagement with human rights and identify areas for improvement. We focused on:

- the practical challenges
- human rights awareness, commitment and responsibility
- whether organisations are reporting their progress
- the key role of in-house lawyers

We hope that the findings of this report, together with our practical commentary, will make a valuable contribution to advancing global Business Initiative on Human Rights on the fifth anniversary of the UNGPs. We would like to thank all those who took time to answer our questions and to our Advisory Panel (John F. Sherman, III, Shift Project and Harvard CSR Initiative; Brian Lowry, Deputy General Counsel, Monsanto; Nina Cronstedt, General Counsel Strategic Business Units and Centres of Expertise, Nestle; Pip McKenzie, Legal Director – Business Integrity for Europe, Unilever; Peter Rees, QC, Thirty Nine Essex Street) and Moira Oliver, Head of Policy & Chief Counsel, British Telecommunications plc. Our thanks also to The Law Society of England and Wales.



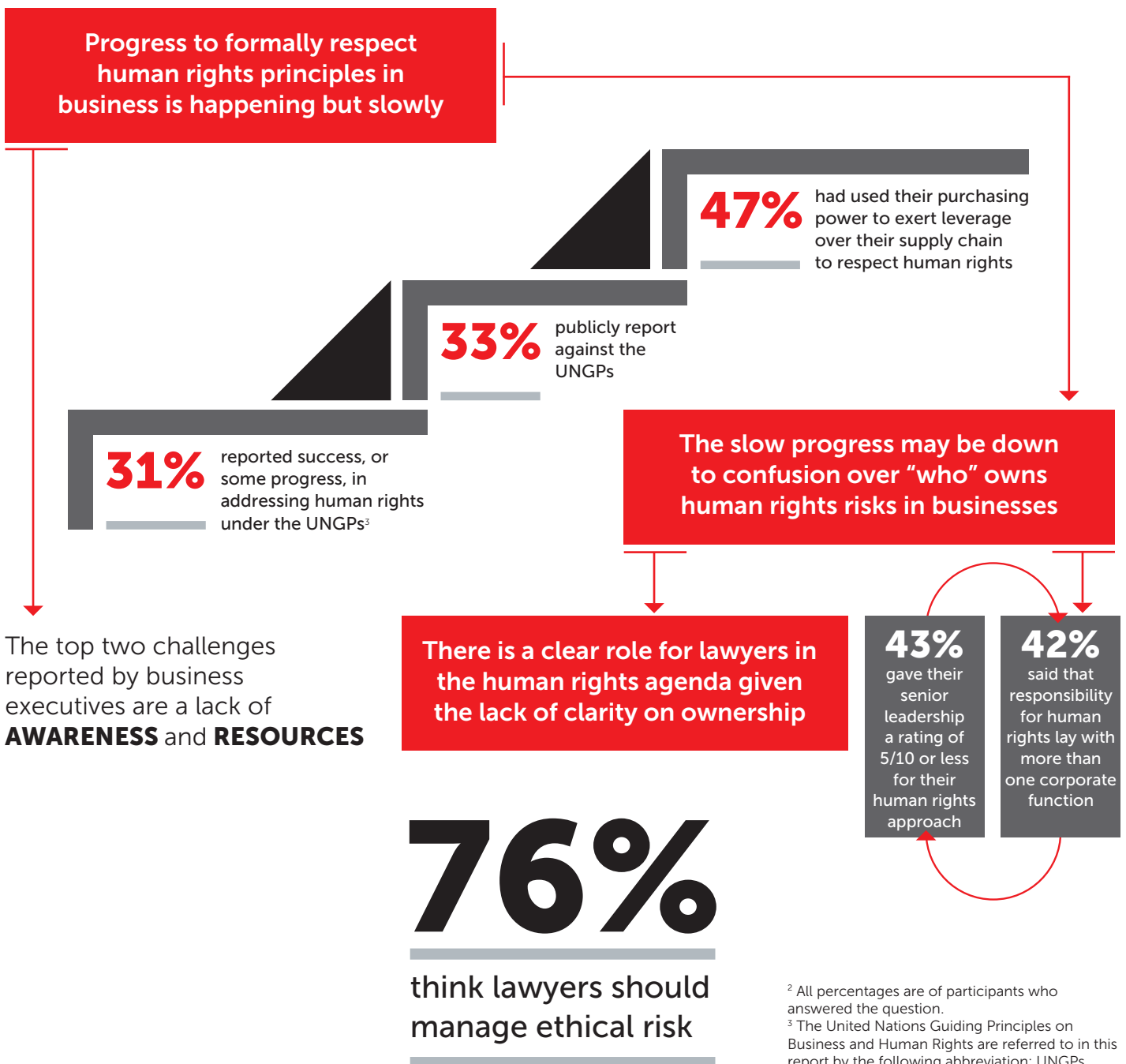
Thomas Player
Partner

T: +44 29 2047 7574
thomasplayer@eversheds.com

¹ The report surveyed 53 board directors, 51 human resources directors and 99 in-house general counsel or chief legal officers working in different major corporations globally. Each of the ten major industry sectors are represented (GISC classification) across a wide group of companies including 36 Fortune 500 companies, across six regions and 34 different countries.

Our survey: key findings

Our survey of over 200 in-house general counsel, board directors and human resource directors, in different companies representing ten major industry sectors and 34 countries, focused on human rights commitment, challenges, change, reporting and the role of in-house lawyers. The survey's key findings are summarised across these two pages, with further details set out in the report².





Over one quarter of organisations surveyed are already making positive progress: 31% reported progress with implementing respect for human rights under the UNGPs and a small minority have pockets of good practice. But ...



Awareness and resources are the biggest challenges for businesses implementing respect for human rights: without both, organisations will struggle to make progress.



A surprising number of businesses have exercised leverage over suppliers to support human rights. A smaller number would also attempt to apply leverage over customers to respect human rights. Yet ...



Few companies report on their management of human rights risks: this needs to change given the global trend for new public reporting duties, such as the EU Non-Financial Reporting Directive and UK Modern Slavery Act.



Weak senior level commitment and unclear human rights responsibilities are prevalent: this is a potentially hazardous combination for some organisations, such as those with supply chains or operations in high risk human rights contexts. This provides ...



A clear opportunity for lawyers working inside businesses to improve their ethical leadership: many participants agreed that managing ethical risk is part of a lawyer's role and general counsel (those working as senior lawyers inside companies) acknowledged their key role in raising human rights awareness in businesses.

Detailed findings: in practice

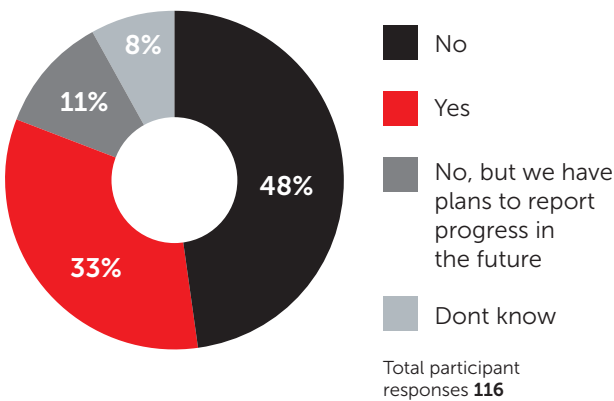
Reporting



Survey insight



Does your company publicly report its progress in implementing the UNGPs?



Only one in three companies (33%) where participants were familiar with the UNGPs publicly report on how they respect human rights, for example, in their annual or sustainability reports.

With the advent of new reporting duties and frameworks⁴, businesses are under increasing pressure to be more transparent in their approach to human rights in both their operations and value chains. Organisations unwilling to do so run the risk of negative 'naming and shaming' reputational campaigns, adverse investor, regulator, customer and employee responses and even litigation.

Variance across business participants: 35% of human resource participants and 34% of general counsel participants stated that their business was reporting progress (of those familiar with the UNGPs or who had responsibility for human rights risk management).

"We report our progress in implementing our Human Rights policy based on the UNGPs mainly in our annual Communication on Progress to the UN Global Compact and in our company annual report (F-20 form and registration document). We are considering the possibility of going further in the future, on the basis of the UN Guiding Principles Reporting Framework."

General counsel,
Energy Company

"The principles themselves rarely are discussed, it is a different approach to human and employee rights in China compared to America and Europe, it is very much an issue that is kept in the dark."

General counsel,
Industrials Company

Practical implications – Eversheds commentary

Before reporting on their human rights performance, organisations must undertake preparatory work. This focuses on understanding how the business manages risks to human rights, so that it can report externally on steps taken to address any significant risks identified.

In practice, preparing to report will typically require a gap analysis (on what it is doing and what it should be doing), a human rights risk assessment, stakeholder engagement and a due diligence action plan to address significant risks. New training, policies, codes of conduct, procurement terms and KPIs to assess progress may also be necessary. The checklist in the Appendix provides a practical step-by-step guide.

⁴ These include the UNGPs Reporting Framework, the Modern Slavery Act, California Transparency in Supply Chains Act and EU Non-Financial Reporting Directive.

Key challenges: awareness and resources



Survey insight



awareness

resources

cultural differences

understanding

global implementation

balancing objectives

role of state

commitment

lack of clear legal requirements

supply chain implementation

"Lack of staff - difficulties to implement because the real situation is not black or white but grey...and it is difficult to estimate if an infringement of human rights happens intentionally or not and if the victim is not the indirect author of such infringement."

General counsel,
Financials company

"There is not enough time to introduce another initiative, albeit there should be tangible benefits."

Human resource director,
Financials company

The top two challenges to implementing respect for human rights in a business are, firstly, lack of awareness and, secondly, lack of resources, according to the survey.

Awareness: The UNGPs expect organisations to communicate their human rights policy to employees and externally to business partners. Training key personnel, such as procurement, compliance, HR, operations managers and the board, is integral to embedding an understanding of, and responsibility for, human rights across business operations.

Resources: Any organisation taking steps to address human rights risks will need to allocate sufficient resources to fund the training, organise risk assessments, change existing processes, engage with business partners, remediate harm, comply with reporting duties and more.

Variance across business participants: General counsel also reported 'cultural differences' and 'supply chain implementation' as major challenges in UNGPs implementation. Human resource participants reported 'global implementation' as a major challenge.

Practical implications – Eversheds commentary

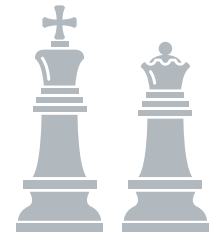


Successfully embedding respect for human rights in an organisation, while overcoming cultural differences, competing objectives, unhelpful governments, supply chain and other challenges, requires a top-down awareness of the issues and the resources to respond.

Training and funding should be prioritised at the outset. Some businesses adopt awareness campaigns used successfully elsewhere, such as in safety or anti-corruption. Key issues to consider include:

- ensuring the relevance of human rights to employees' daily work and their responsibilities
- explaining how they are expected to report their suspicions
- making a clear economic case for addressing human rights risks
- being sensitive to different perceptions of human rights across countries

Commitment and responsibility concerns



Survey insight



43%

of those familiar with the UNGPs gave their senior leadership a rating of 5/10 or less for their human rights commitment

42%

said that responsibility for human rights lay more than one corporate function

Those businesses where participants highly rated their senior leadership commitment were more likely to report progress publicly and to use their leverage in the supply chain to encourage responsible human rights standards.

Setting the tone from the top is integral to advancing human rights in organisations. Under the UNGPs, the human rights policy should be approved at the most senior level. Similarly, the Modern Slavery Act and upcoming EU reporting duties require approval at director level.

Variance across business participants: Human resource directors report the lowest level of confidence with their senior leadership commitment, reporting an average rating of 5 out of 10. Less than two in five board director participants indicated awareness of the UNGPs, and only four (out of 53) felt that the board should be responsible for managing human rights risk within their organisations.

"There is sometimes willingness at the top but actually driving through the change in culture is difficult."

General counsel,
Financials company

"There must be strong commitment from the board and senior management to implement and enforce such policies - the "tone from the top" is key."

General counsel,
Industrials company

Practical implications – Eversheds commentary



To strengthen senior level commitment, businesses should allocate responsibility for overseeing human rights issues to a board member or committee and provide training to raise their awareness of how human rights may be impacted by their business, as well as any external reporting obligations.

The CEO or other board members approving the organisation's human rights policy statement and communicating it internally to all workers will also signal its importance and their commitment. Requiring senior managers at country or regional level to approve reporting on human rights issues and tying executive reward systems to the implementation of policy commitments are other helpful practical steps.

In terms of allocating day-to-day responsibility for human rights, there is no right answer and it will depend on the business and its context. However, the risk of shared responsibility, as reported by survey participants, is that meaningful ownership by individual functions may be lost.

Implementing respect for human rights



Survey insight



31%

reported making progress with implementing the UNGPs

Close to a third of participants (31%) reported successfully implementing, or making progress with implementing, the human rights framework under the UNGPs. General counsel were more likely to report progress: over half (62%) of general counsel with such responsibilities reported success or progress on advancing human rights.

A small minority reported significant progress in their organisations, suggesting that pockets of good practice are emerging.

Variance across business participants: General counsel reported a higher level of success and progress than board and human resource participants.

“HR has implemented the UNGPs in relation to labour conditions. Global Labour Guidelines have been developed and implemented globally.”

Vice president,
Health care company

Practical implications – Eversheds commentary

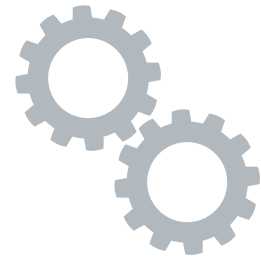


The key drivers of human rights change are typically external, such as negative publicity, new reporting duties, procurement conditions, competitor activities and supply chain risks.

Developing a rights-respecting business culture and implementing a programme to address human rights risks is challenging and takes time. Seeking to do both when under external pressure is far from ideal. Organisations considering how to respond are advised to act now, away from adverse scrutiny and on their own terms.

“We categorise success in this agenda in two ways: firstly, we are successfully implementing the UNGPs in a formal sense, and secondly, we are involved in several voluntary social responsibilities initiatives.”

General counsel,
Health care company

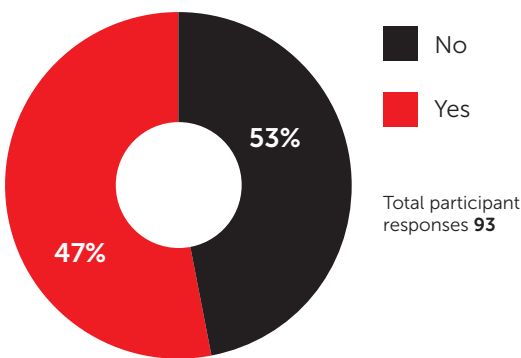


Using leverage on suppliers and customers

Survey insight



Have you used the organisation's purchasing power or another form of leverage with the companies in your supply chain to encourage their adherence to the UNGPs?



Nearly half (47%) of participants familiar with the UNGPs had used purchasing power to exert leverage over companies in their supply chain to respect human rights. In terms of their clients or customers, a small minority (19%) would attempt to influence a client and apply leverage, if there was a human rights conflict.

Where a business contributes, or is directly linked, to a human rights harm through a business relationship, such as a supplier or customer, the UNGPs state that it should exercise any leverage it has to prevent or mitigate the effect. It goes further; if a business lacks leverage there may be ways to increase it and the severity of the harm should be considered when prioritising building and exercising leverage.

Variance across business participants: Board and human resource directors were more likely than general counsel to say they had used leverage to encourage adherence to the UNGPs.

"We clearly mention in our Code of Conduct and policies that we expect our suppliers to adhere to principles equivalent to those in our Code of Conduct, including the UNGPs, and to make sure that their own suppliers and subcontractors respect equivalent principles. More particularly, our fundamental procurement principles specify the commitments that we expect of our suppliers in different areas, including respect for human rights at work. These principles, or an equivalent, shall be part of our purchase contracts. Yet, as mentioned, this supply chain issue represents a major challenge for companies on the ground."

General counsel,
Energy company

Practical implications – Eversheds commentary



An increasing reliance on long and complex supply chains, some in countries with lower or poorly enforced human rights standards, means that that leverage is attracting attention.

Leverage is considered to exist where a business has the ability to effect change, for example, in its suppliers and their suppliers to prevent or reduce harm to human rights. This might include training suppliers, incentivising better practices, renegotiating commercial contracts, influencing local government or sector practices and more, in response to issues found in human rights due diligence. Lack of direct control over suppliers and the sheer numbers involved pose difficulties and complex issues can arise where harm exists deep in the supply chain, there is public pressure to act and the harm is particularly grave.

For some organisations, this a delicate balance to achieve and they should be guided by the severity of any human rights risks and whether they have, or can build, leverage. Proportionality and reasonableness should also be taken into account, including their own size and resources and the countries involved. One risk being that simply terminating a supplier could precipitate more harm to workers in the long run.

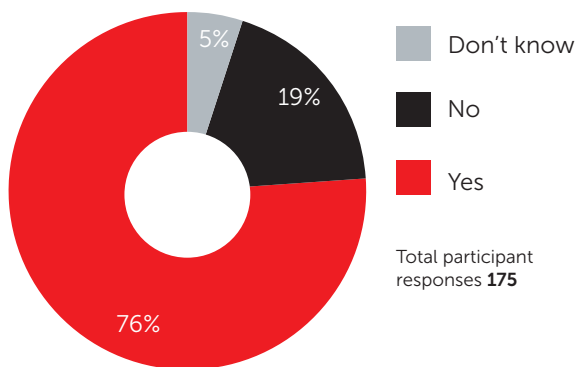
The ethical leadership of in-house lawyers



Survey insight



Do you consider managing 'ethical risk' to be part of the lawyer's role?



"It really doesn't matter - it all dovetails under the risk function of the bank - be it legal or ethics - under the umbrella of risk is the right place - it would be a huge reputational risk for our company to have a bad human rights reputation."

General counsel,
Financials company

"It is [the] heart of the lawyer's role."

Managing director,
Industrials company

The majority (76%) consider managing ethical risk to be part of a lawyer's role. In particular, 86% of general counsel agreed. While ethical risks are potentially broader in scope than human rights risks, there is significant overlap. Nearly two thirds (64%) of general counsel also reported that the business' legal function had full or partial responsibility for managing human rights risks and many believe they have a key role in raising awareness to achieve change (poor awareness being one of the top challenges to progress – above).

Variance across business participants: General counsel were more likely to say they believed the management of ethical risk should be part of the lawyer's role, while board director participants were the least likely with 58% indicating yes to this question. In addition, half of human resource participants familiar with the UNGPs said they would welcome more collaboration with their internal legal function.

Practical implications – Eversheds commentary



As a 'trusted advisor' within a business, the legal department often plays a critical role in shaping how a business approaches its responsibility to respect human rights. However, a compliance-driven approach by the legal department is unlikely to deliver success, due to the lack of global, legally binding human rights law and the prevalence of non-binding standards. Instead, showing ethical leadership by playing an active role in resolving the inevitable human rights dilemmas encountered by the organisation will do more to build a sustainable business.



Company case study: British Telecommunications plc

Shared Responsibility – building the business case for human rights

BT started their human rights journey as an original signatory to the UN Global Compact in 2000. Since the early 2000s, they've had initiatives that include standards to promote human rights in their supply chain and a statement of business practice called 'The Way We Work'. This policy sets out the company's commitment to human rights, giving employees, suppliers, and anyone working on behalf of BT guidance as to the behaviour that's expected of them.

Three years after the UNGPs were introduced, the company took the process to the next level. They decided to review their UK operations against the UNGPs. Moira Oliver, Head of Policy and Chief Counsel (Human/Digital Rights) at BT who led the legal review says *"We wanted to understand more fully the detail of the UNGPs, how they fit with hard law and their impact as soft law. We wanted to look at how far we had come."*

Led by the in-house legal team, recognised by the FT as the most innovative legal team in 2015, the first step was to establish a human rights project team with champions from various departments including policy, compliance, risk, investor relations, CSR and legal. A risk mapping and assessment exercise was undertaken with external advisers. Interviews were conducted across the various lines of business to understand how the company's policies and procedures lined up against the UNGPs as well as other FTSE100 companies' practices. The board approved an implementation programme to further enhance the company's approach to human rights, and set up a human rights steering committee – led by a member of BT's executive committee – to oversee progress.

A large part of the success was down to the personal commitment of key executives in the working group. *"It is personally important to me, it's part of my own values but it is also part of the company's values and our strategy"*, says Ms Oliver.

Similar to other multi-nationals seeking to implement the UNGPs, the group encountered several challenges. The soft law impact of the UNGPs was one of the biggest challenges faced, with greater clarity needed on how human rights is being embedded into law and regulatory frameworks.

The BT team say their learnings have been broad and deep but some of the key ones have been:

- setting clear priorities and a long term plan so as not to be overwhelmed by the broad scope of the principles
- building a cross-functional team
- internal engagement efforts to 'translate' human rights in the business context

'Our business can impact a broad range of human rights. We have a responsibility to respect the human rights of employees, customers, workers in our supply chain and communities in which we operate. Impacts on human rights may be felt directly through a person's interactions with BT, or indirectly through the way people use our products and services.' BT Delivering our purpose report, 2015.



Appendix

Business and human rights in overview: five key steps to accelerate results

Steps - overview	Output
<p>1 Leadership, resource and funding</p> <ul style="list-style-type: none"> – executive engagement and leadership is essential, including board approval of a public policy commitment to respect human rights – ensure the right people have clear day-to-day responsibilities: beware of opaque accountability with cross functional teams – identify funding: for training, expert advice, extra resource etc 	<p>A funded and focused human rights working party, reporting to an engaged board</p>
<p>2 Human rights governance gap analysis</p> <ul style="list-style-type: none"> – what is the business already doing to communicate and embed respect for human rights? Existing policies, procurement and operational procedures, contract terms, codes of conduct, CSR-type reporting, supplier vetting, due diligence processes, staff training, ethics programmes, stakeholder dialogue, incentives, whistleblowing and complaints mechanisms etc? 	<p>Governance action plan of training, policies and practices to improve or develop</p>
<p>3 Due diligence risk assessment</p> <ul style="list-style-type: none"> – how may the business be involved with harming the human rights of people? Conduct a risk assessment to identify potential human rights risks across the business and value chain, for example: <ul style="list-style-type: none"> – work towards mapping own activities and value chains, prioritising own operations and immediate relationships initially – use independent, recognised risk resources and internal data to identify high risk geographies, sectors, commodities, activities, labour practices, relationships etc – test results with internal and external stakeholders – prioritise human rights risks identified based on their severity – as judged by their “scale, scope and irremediable character⁵” – conduct more detailed risk assessments of those risks prioritised – due diligence should be reasonable and proportionate: reflecting the severity and likelihood of the risk, the size of the business and its resources, the nature and context of its operations, the capacity to stop harm, e.g. a business may have limited influence deep in its supply chains, but it might be reasonable to apply top-down leverage on mid-stream suppliers or to build leverage by collaborating with others – integrate and act upon due diligence findings e.g. ensure policies and operational practices (step 2 above) are amended as necessary 	<p>Risk prioritisation report</p>
<p>4 Risk management steps</p> <ul style="list-style-type: none"> – where the business is causing the risks prioritised, take action to stop or prevent them – where the business is contributing to the risks prioritised, take action to stop or prevent them and use its leverage to mitigate remaining harm – where the business has caused or contributed to harm, provide for, or cooperate in, remedying the harm – where the business is directly linked to the risks prioritised, through its business relationships, seek to prevent harm by using any leverage it has or can build, or, as a last resort, terminating the relationship if necessary 	<p>Human rights action plan</p>
<p>5 Track performance and report</p> <ul style="list-style-type: none"> – identify KPIs and monitor the effectiveness of steps taken to respect human rights – be prepared to communicate externally, such as through corporate sustainability or strategic reports, modern slavery statements – the UNGPs expect businesses with severe human rights risks to report formally 	<p>Annual modern slavery or stand-alone human rights report</p>

⁵ According to UN Guiding Principle No.14. The accompanying FAQs interpret ‘scale’ to mean the gravity of the harm, ‘scope’ to mean the number of individuals that are or will be affected. “Irremediability” means any limits on the ability to restore those affected to a situation at least the same as, or equivalent to, their situation before the adverse impact.

Respect for human rights is not a one-off task:
prepare for ongoing commitment

There are no off-the-shelf solutions:
each business is different and so are its human rights challenges

It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you'll do things differently.

Warren Buffett

Risk assessment, prioritisation and proportionality are key:
or you may be overwhelmed by the scope of the issues

Beware of making commitments which are unrealistic or not implemented locally

Survey methodology

Three stakeholder groups were surveyed to produce this report: board directors, human resource directors and in-house counsel. The decision to survey different stakeholders acknowledges how functional responsibility for implementing the UN Guiding Principles (UNGPs) or managing human rights risk varies from business to business.

Due to the relatively new nature of the UNGPs, the questions asked of the different stakeholder groups were split into two strands – one each for those who were familiar with the principles and one for those who were not. Of the latter, questions were asked around the management of human rights risk in general. Different questionnaires were used for each stakeholder group. Some questions were common to each group, and others were tailored to the group.

