

# Understanding human rights due diligence requirements for the financial sector

This workshop is kindly hosted by UBS

Zürich, September 25<sup>th</sup> 2018

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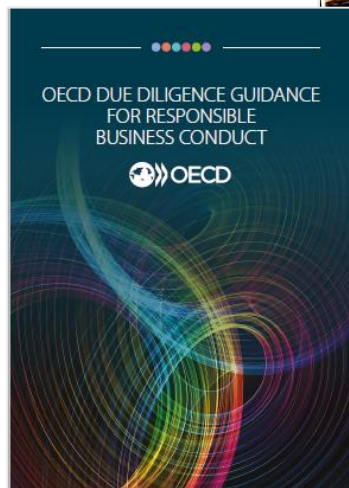
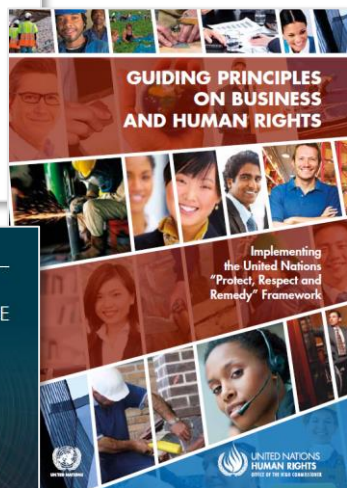
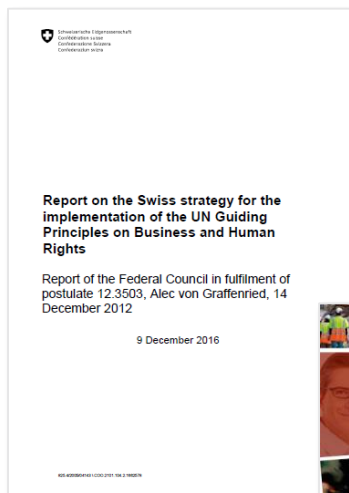
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- Participate
- Respect each others views
- Don't dominate
- The 'Chatham House' rule

**“When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.”**

# Context



- Mandated by the **EAER** and **FDFA**
- Implementation of **NAP Policy Instrument 6**
- In cooperation with the management-consultancy **twentyfifty ltd.**
- Provide **practical and pragmatic support** to implement HRDD

Awareness raising

Workshop ✓

Tour de Suisse



Trainings

# The twentyfifty difference



- We understand big corporates, SMEs, and how to bring about change
- We offer multiple capabilities; including change management, stakeholder engagement and human rights
- We have more than 14 years' experience as a business
- We are proud to be an exemplary business ourselves



# Workshop objectives



- Understand the expectations of business to respect Human Rights in a Swiss and international context
- Describe the implications for the financial sector
- Identify practical steps you can take to identify risks in your portfolios & transactions and start prioritizing business actions

# Agenda

- 09:45 – 10:15 **Human Rights Due Diligence: Requirements and implications for the financial sector**
- 10:15 – 11:45 **What does it mean for my business? Practical exercises**

# Human rights due diligence: Requirements and implications for the financial sector



# What are human rights?



- What Human Rights do you know?

# Business impacts



- What individuals/group of individuals are impacted by your business activities?

# Who is responsible?



Source: banktrack

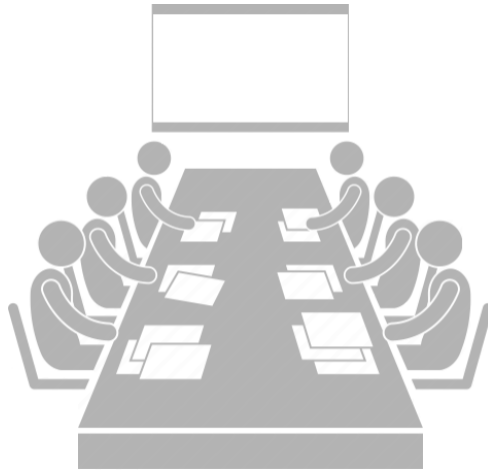


Source: Money Talk News



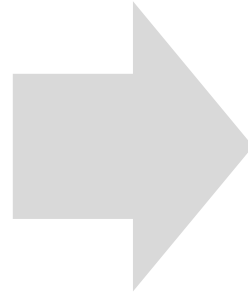
Source: eco-business

# From risk to business to impact on people



Stakeholder

**Risk to the Business**



Source: Devex

Rights holder/affected group

**Impact on People**

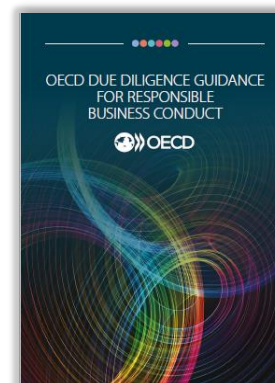
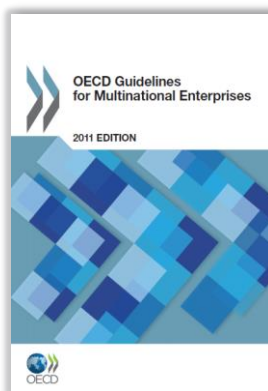
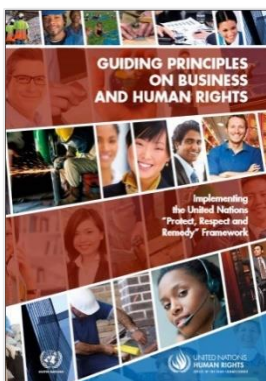
# International and national frameworks

## The 'Protect, Respect, Remedy' Framework

**The State duty** to protect human rights

**The corporate responsibility** to respect human rights

Access to effective **remedy**



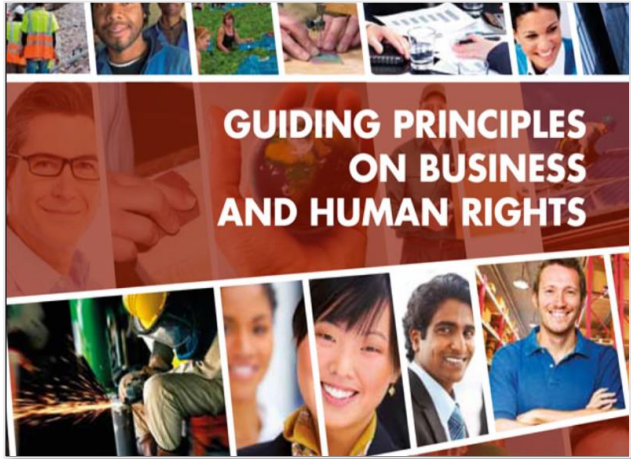
**National Action  
Plan on Business  
and Human Rights**



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra



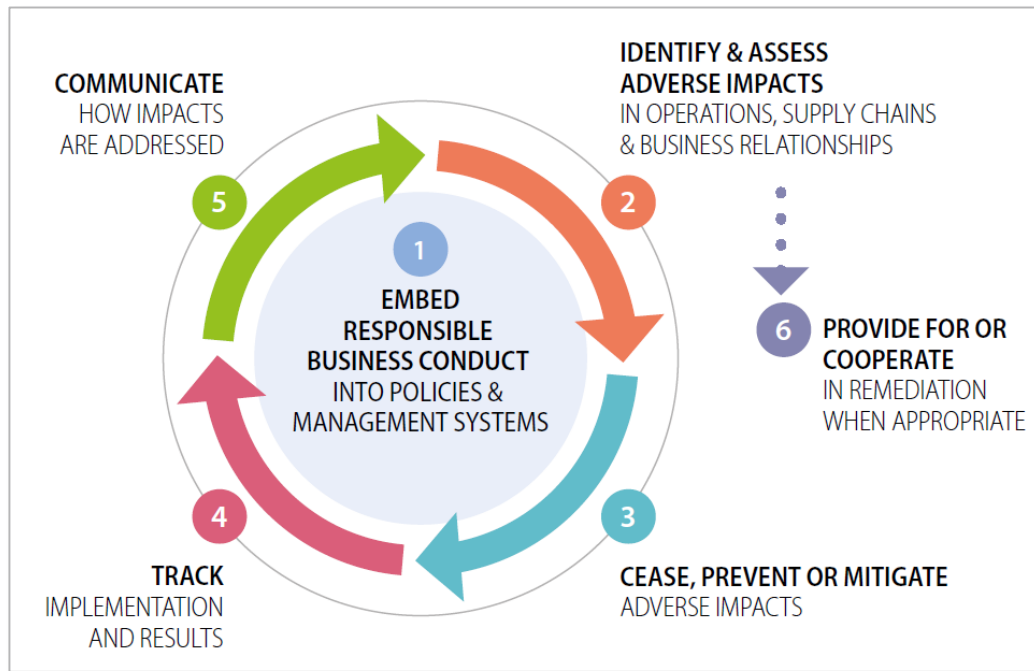
# UNGP: Corporate responsibility



Source: United Nations

- **Responsibility means that businesses:**
  - Avoid causing/contributing to adverse human rights impacts through their own activities
  - Address such impacts when they occur
  - Seek to prevent/mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships
- **Operational principles:**
  - Policy commitment
  - Due Diligence:
    1. Identify
    2. Prevent
    3. Mitigate
    4. Monitor/track
    5. Communicate
  - Remedy

# OECD Due Diligence Guidance



Source: OECD

- Applies to **all enterprises** regardless of their size, sector, operational context, ownership and structure, hence including SMEs.
- May vary according to these factors
- Includes **own operations, supply chains, and business relationships**

# OECD Due Diligence Guidance – Finance sector

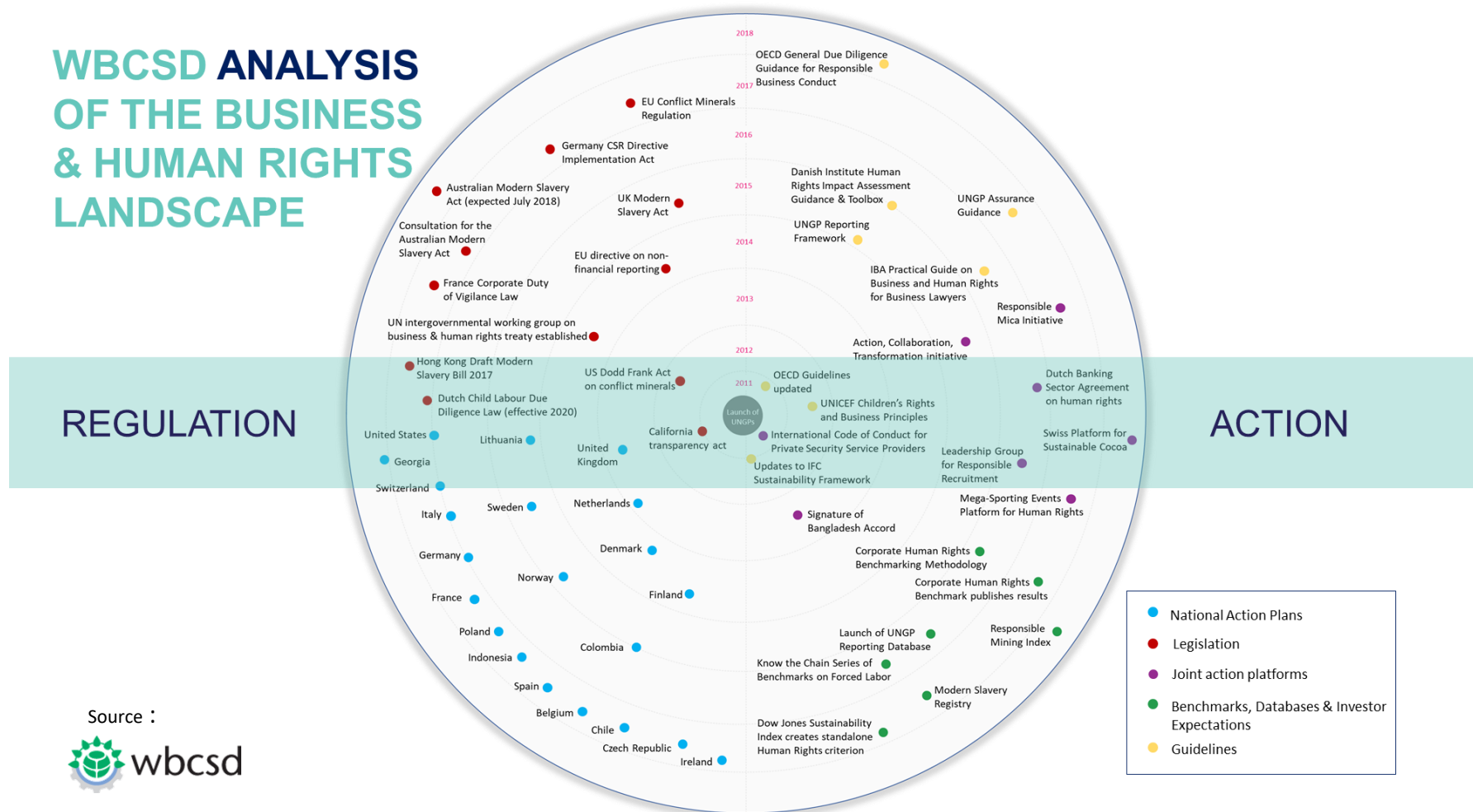


- Guide for **institutional investors**
- A “**business relationship**” : investor - investee company, incl. a minority shareholding
- Investors (incl. minority shareholdings), may be directly linked to **adverse impacts caused or contributed to by investee companies** as a result of their shares in the company causing or contributing to social or environmental impacts.
- Investors shall consider RBC risks throughout investment process and use their “**leverage**” with companies they invest in
- Investors are not responsible for addressing those adverse impacts themselves.



# Political and legal framework

## WBCSD ANALYSIS OF THE BUSINESS & HUMAN RIGHTS LANDSCAPE



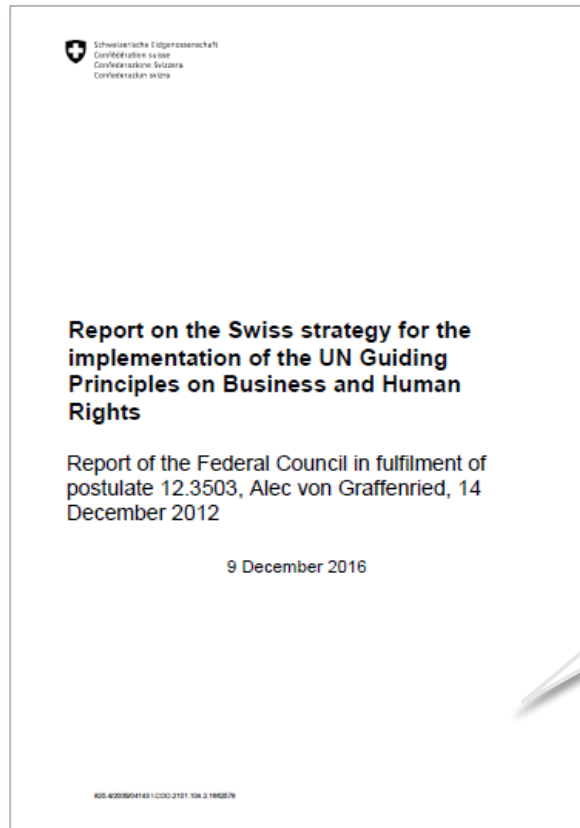
Source :



# Swiss National Action Plan on Business and Human Rights



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra



«... business enterprises that are based and/or operate in Switzerland should respect human rights in all of their business activities, wherever they operate. Accordingly they should seek to prevent adverse human rights impacts.»

# Swiss Responsible Business Initiative

	Responsible Business Initiative (RBI)	Counter-proposal (May 2018)
<b>Scope of application</b>	<ul style="list-style-type: none"> <li>• All companies (except low-risk SME)</li> <li>• Subsidiaries and economically controlled entities</li> </ul>	<ul style="list-style-type: none"> <li>• Companies exceeding two of these thresholds: <ul style="list-style-type: none"> <li>• Balance sheet total of 40mio. CHF</li> <li>• Sales of 80 mio CHF</li> <li>• 500 full-time employees</li> </ul> </li> <li>• Companies with particular high-risk activities</li> <li>• Exception for certain Swiss entities in a corporate group (to avoid duplication)</li> <li>• Only (legally controlled) subsidiaries, and only when control is really exercised</li> </ul>
<b>Requirements</b>	<ul style="list-style-type: none"> <li>• According to UNGP/ OECD Guidelines: <ul style="list-style-type: none"> <li>• Identify risks for rights holders and environment</li> <li>• Take appropriate measures</li> <li>• Report publicly</li> </ul> </li> <li>• Risks in all business relationships</li> </ul>	<ul style="list-style-type: none"> <li>• Similar</li> <li>• Also mentions remediation Due diligence must be «appropriate»</li> <li>• Measures to be taken depend on «leverage»</li> </ul>

# Arguments for a human rights approach

## **Informs long-term business strategy:**

- Operating successfully as a investor or asset manager / Reducing investment risk
- Meeting increased legal or voluntary standards
- Gaining competitive advantage / meet clients expectations /better management of investment risks
- Meeting increasing stakeholder expectations / protecting reputation

## **Avoids costs:**

- Crisis management
- Reputational risk
- Client dissatisfaction
- Legal
- Finance
- Reputation

What appears to be happening is that such costs are atomized within companies (...) and not aggregated into a single category that would trigger the attention of senior management and boards.

**John Ruggie**

# Examples of what companies have done

**Green & sustainable  
bond framework**



***Rabobank***

**Dept product for  
sustainable investing**



**SOCO withdrawal  
from Virunga**



Source: WWF

# What does it mean for my business?

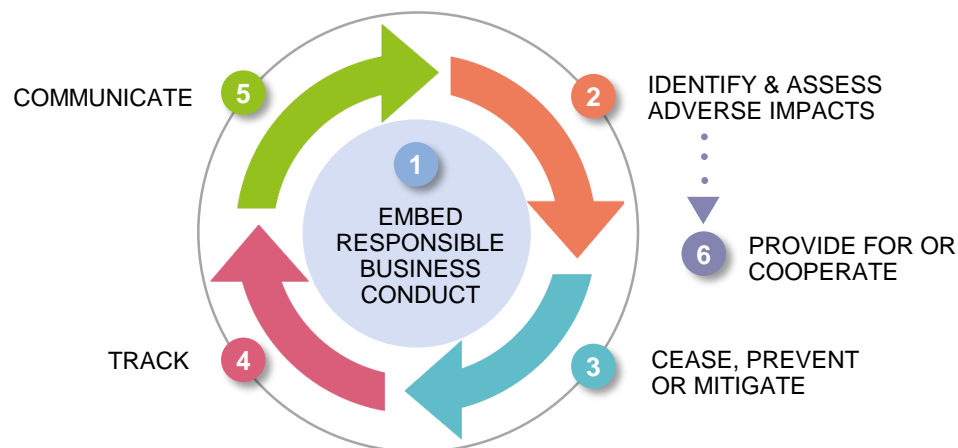
## Practical exercises

# Getting started with human rights due diligence

## A) To get started:



## B) Apply human rights due diligence following the OECD Guidelines:



Source: OECD

# 1. Building understanding



Before you take action in your company:

- Who needs to understand?
- How will you build that understanding (e.g. presentation, meeting, booklet, workshop)?



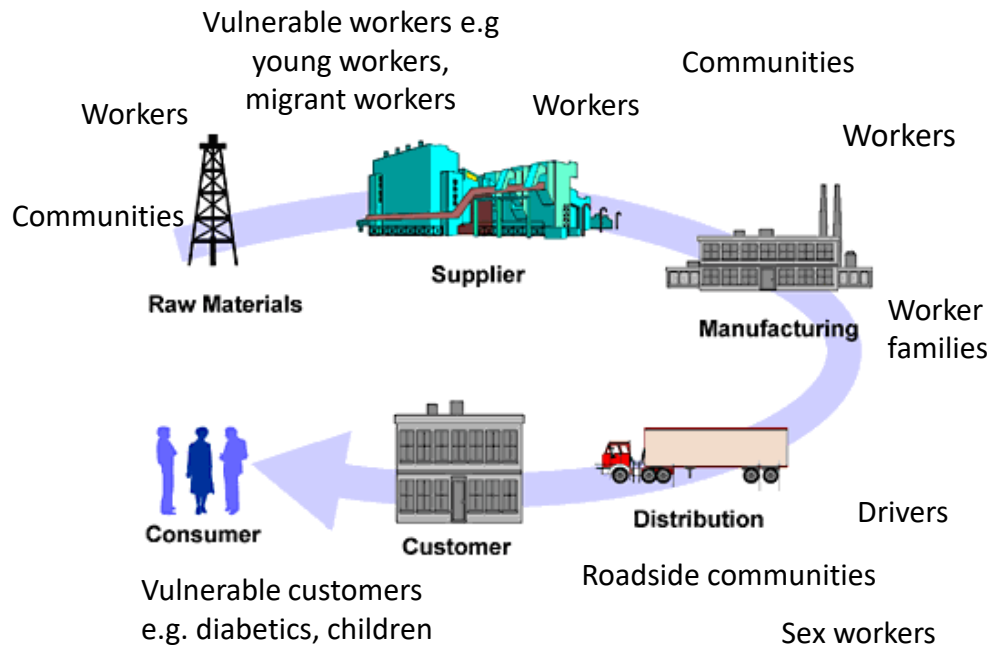
## 2. Map potential impacts



- Which groups/individual might be impacted by your business operations across your value chain
  - Where, Who and How?
  - Direct vs indirect linkages

## 2. Map potential impacts

### A: Value Chain Map

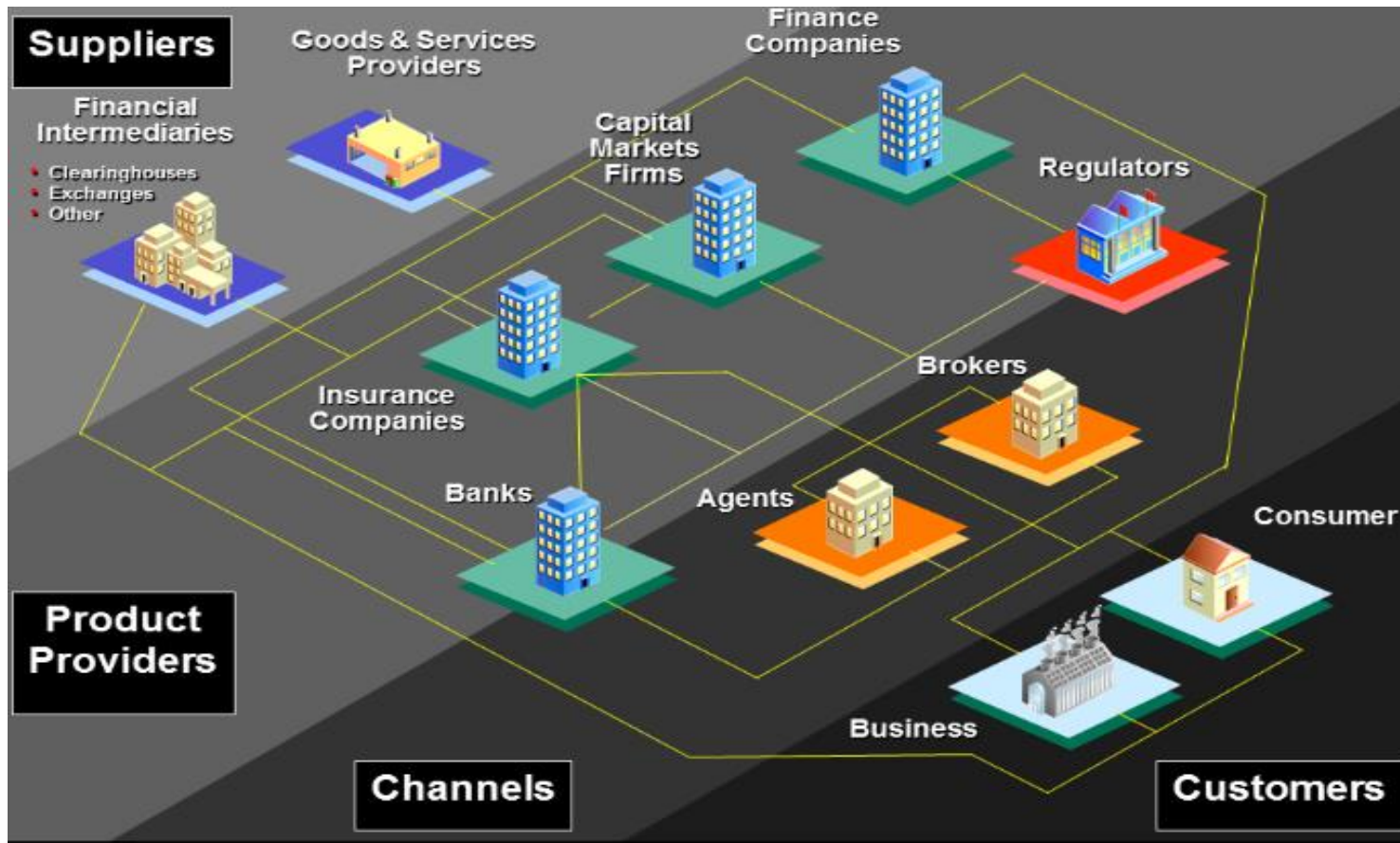


### B: Identify who could be affected and how

Where	Who	How
Raw materials	Communities	Displacement Land rights
Raw materials	Workers	Labour rights Child labour
Distribution	Drivers	Working hours
Distribution	Roadside communities	Environmental impacts (health, noise)
.....		
.....		

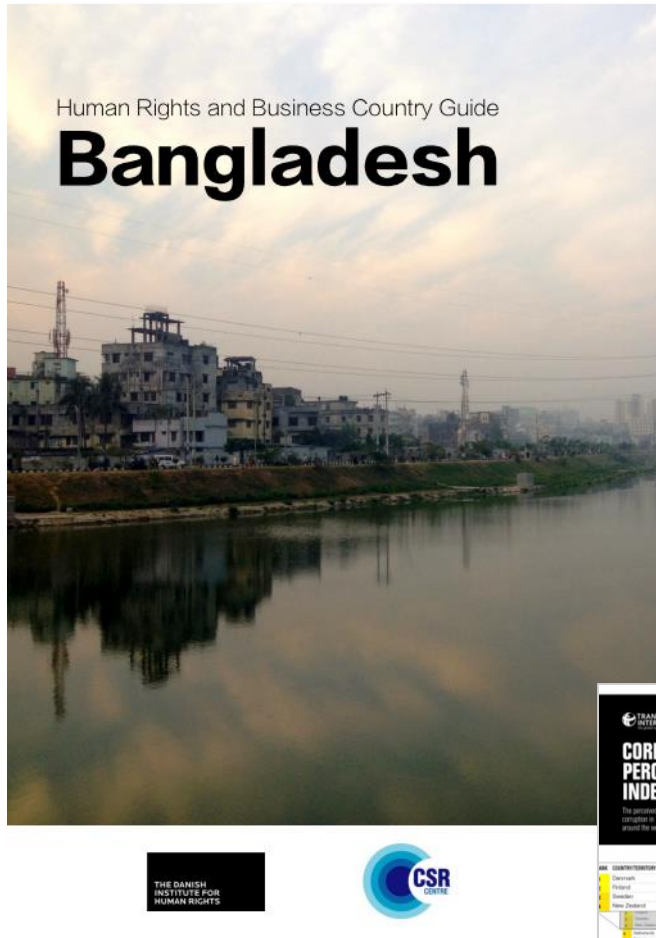
## 2. Map potential impacts

### Value Chain Map

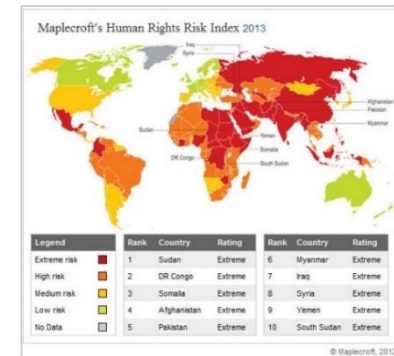
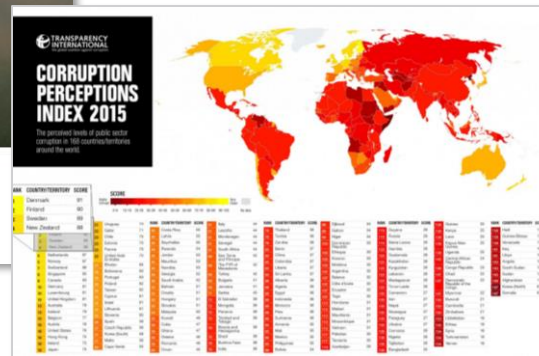


Source: Business Analytics 3.0

## 2. Map potential impacts – Information sources



- Transparency International (CPI)
- DIHR Human Rights and Business Country Guides
- CSR Risk Check
- Walk Free Foundation (Global Slavery Index)
- UN Reports (Special Rapporteurs, Treaty organs)
- Social media & blogs
- Local contacts/ „community“- groups
- For a fee: Verisk Maplecroft Human Rights Risk Data

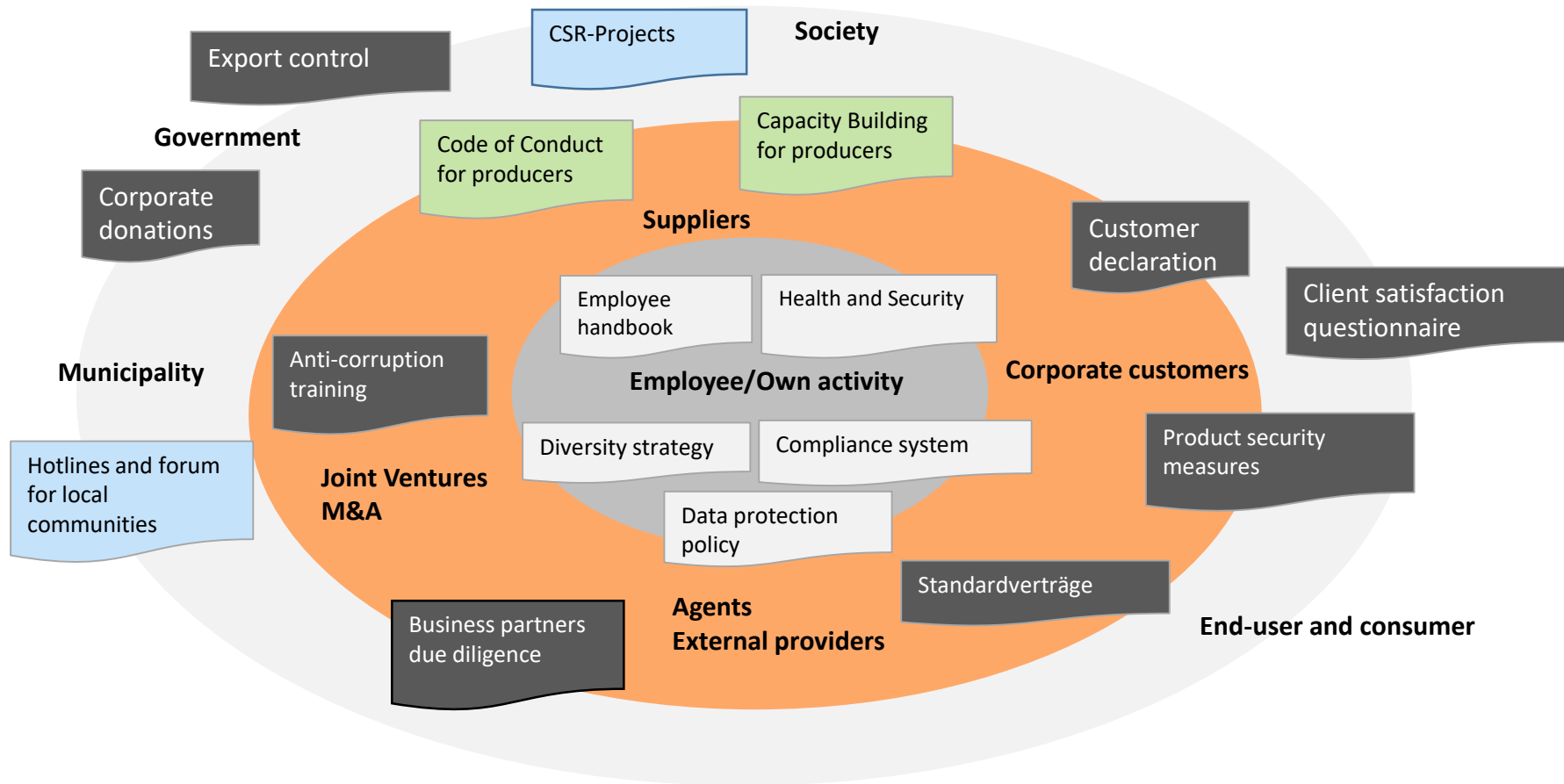


### 3. Identify existing processes and gaps



- What processes do you have already in place?
- Where are remaining gaps?

### 3. Identify existing processes and gaps



## 4. Prioritise actions, define next steps



▶ Video

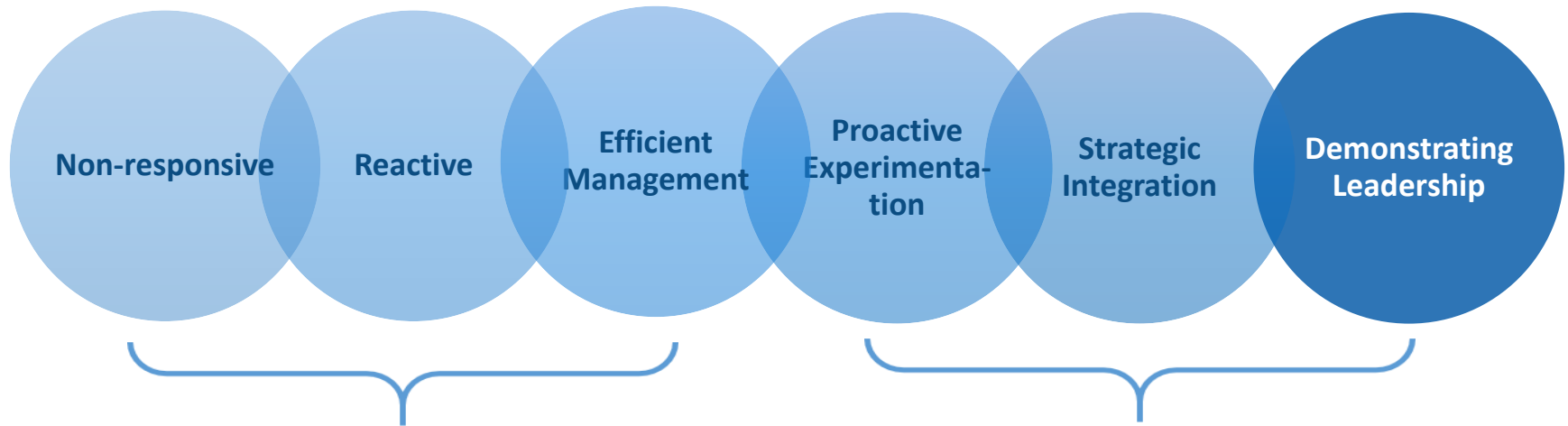
Video by UNGP Reporting Framework

<https://www.ungpreporting.org/resources/salient-human-rights-issues/>

**Salient human rights** - “The most salient human rights for a business enterprise are those that stand out as being most at risk. This will typically vary according to its sector and operating context....”

OHCHR: The corporate responsibility to respect human rights – An Interpretive Guide

# 5. Towards Ongoing Due Diligence




- Issues management mindset
- Basic governance structures
- Integration of some human rights elements in existing systems
- Ad-hoc engagement with stakeholders and affected groups
- Communication in response to requirements

- Management team supportive of proactive approach
- HR integrated into strategic decision making and management practise
- Proactive identification and management of issues
- Capacity building and continuous improvement
- Innovative approaches to address dilemmas
- Meaningful dialogue and cooperation with affected groups
- Strengthening a human rights respecting culture



# 5. Towards Ongoing Due Diligence




## HUMAN RIGHTS DUE DILIGENCE INFO PORTAL

GETTING STARTED   ADVANCED PRACTITIONERS   HUMAN RIGHTS CAPACITY DIAGNOSTIC


Human Rights Due Diligence Info Portal > Human Rights Capacity Diagnostic

### HUMAN RIGHTS CAPACITY DIAGNOSTIC



Welcome to the Human Rights Capacity Diagnostic (HRCD) – a short self assessment of your company's management capacity to respect human rights and conduct ongoing due diligence. If you are familiar with the tool and want to get started right away, click the button below. If this is the first time you are using the tool, please read the following introductory information.

**Start the Assessment**



<https://www.twentyfifty.co.uk/en/our-work-clients/human-rights-capacity-diagnostic/>

# Action plan



## **What are the next steps for you?**

Formulate a project or action plan that you can implement

Describe the project in terms of:

- Its objectives: what do you want to achieve?
- Internal stakeholders: who needs to be involved?
- Starting point: what needs to happen first to get the project moving?
- Activities: what will you do to meet the objectives?

# Thank you!

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# Other supporting documents and links

# Thun Group of Banks – Discussion papers

## First discussion paper

### UN Guiding Principles on Business and Human Rights

#### Discussion Paper for Banks on Implications of Principles 16–21

The Thun Group of Banks  
October 2013

## Second discussion paper

### THUN GROUP OF BANKS

#### DISCUSSION PAPER ON THE IMPLICATIONS OF UN GUIDING PRINCIPLES 13 & 17 IN A CORPORATE AND INVESTMENT BANKING CONTEXT

1 | DISCUSSION PAPER – THUN GROUP OF BANKS

## John Ruggie's answer



#### Comments on Thun Group of Banks Discussion Paper on the Implications of UN Guiding Principles 13 & 17 In a Corporate and Investment Banking Context

John G. Ruggie  
21 February 2017

I welcomed the Thun Group of Banks' initiative to elaborate on the application of the UN Guiding Principles on Business and Human Rights (UNGPs) to banking when it first started up some five years ago.<sup>1</sup> A paper published by the Group in 2013 marked an important first step.

I am also keenly aware that, beyond their own walls, corporate and investment banking may face greater challenges resulting from diverse and complex business relationships than, say, a mining company. But banks are not alone in this respect. Other sectors, such as telecoms and social media, encounter comparably complex challenges. I applaud all efforts conducted in good faith to clarify and bring greater granularity to the implications of the UNGPs for different sectoral and operational contexts.

Having said that, I am deeply troubled by the discussion paper the Thun Group has just recently published.<sup>2</sup> It misconstrues the central Guiding Principle regarding the corporate responsibility to respect human rights (UNGP 13). This takes the subsequent analysis in the paper off-track and poses the risk of confusing if not undermining what has been the common understanding since the UN Human Rights Council unanimously endorsed the UNGPs in 2011.<sup>3</sup>

Below, I divide my comments into two parts, the first focusing on the analytical discussion in the paper, and the second on the illustrative cases.

#### Contribution/Linkage

UNGP 13 specifies that business enterprises can be involved with adverse human rights impacts either through their own activities or as a result of their business relationships. In turn, the latter comes in two forms: where the enterprise *contributes* to harm caused by a third party, and where the enterprise neither causes nor contributes but its operations, products or services are *directly linked* through its business relationships to the harm. UNGP 13 then refers to UNGP 19 for the implications of this distinction for action to be taken by a company. That commentary states:

- "Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact.
- Where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible.

# OHCHR response to request from BankTrack

## OHCHR response to request from BankTrack for advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector

NATIONS UNIES  
HAUT COMMISSARIAT AUX DROITS DE L'HOMME



UNITED NATIONS  
HIGH COMMISSIONER FOR HUMAN RIGHTS

### OHCHR response to request from BankTrack for advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector

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- Question 1: Which factors would influence whether a bank is (a) causing or contributing to an impact and (b) having a direct link to an adverse impact via a business relationship, in the context of the banking sector?
- Question 2: Where a bank has contributed to an adverse impact through its finance, what are the differentiated responsibilities of the bank and the company or vehicle leading the project to provide for or cooperate in remediation under Guiding Principle 22?
- Question 3: How should the responsibilities of banks to "establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted by their operations" under Guiding Principle 29 be interpreted with regard to adverse impacts that a bank may cause or contribute, or those to which the bank may have a direct link through its finance? In particular, in the context of impacts that a bank has not caused through its own activities, what would be the differentiated responsibilities of the bank and the company which has directly caused an impact to establish a grievance mechanism, and how should the term "operational level" be interpreted in this regard?

# Federal websites

**Federal website for business & human rights**

<https://www.nap-bhr.admin.ch>

from the 1<sup>st</sup> of August 2018

**Federal website for CSR**

[www.csr.admin.ch](http://www.csr.admin.ch)