Integrating Human Rights into Crisis Planning

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The United Nations Global Compact is a call to companies everywhere to voluntarily align their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption, and to take action in support of UN goals and issues. In June 2006, the Global Compact Board established a Human Rights Working Group. In light of the growing recognition that labour rights are human rights and in order to ensure a coherent approach, the Chairs and members of the Human Rights Working Group and Labour Working Group merged to create the Human Rights and Labour Working Group in 2013. The goal of the Working Group is to provide strategic input to the Global Compact's human rights and labour work. The following is one of an ongoing series of notes on good business practices on human rights endorsed by the Working Group. Rather than highlighting specific practices of individual companies, Good Practice Notes seek to identify general approaches that have been recognized by a number of companies and stakeholders as being good for business and good for human rights. The inclusion of company names does not constitute an endorsement of the individual companies by the UN Global Compact Office or the Human Rights and Labour Working Group.

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I. Executive Summary

The corporate responsibility to respect human rights requires business enterprises to avoid infringing on the human rights of others and to address adverse human rights impacts connected to their operations. Companies are meeting this responsibility by integrating human rights considerations into existing corporate practices.

Integrating human rights considerations and corporate crisis management is one way that companies can seek to identify, prevent and address adverse human rights impacts. Some companies are broadening their crisis management policies and procedures to explicitly address adverse human rights impacts, consistent with the UN Global Compact Principles and the UN Guiding Principles on Business and Human Rights.

This Good Practice Note identifies five good practices for integrating human rights considerations into crisis planning, the first phase of effective crisis management. Human rights considerations during the subsequent phases of crisis response and recovery are beyond the scope of this Note.

II. Introduction and Methodology

UN Global Compact participant companies commit to ensure that they are not complicit in human rights abuses, and to respect and support the protection of internationally proclaimed human rights.[2] The UN Guiding Principles on Business and Human Rights (Guiding Principles),[3] endorsed unanimously by the UN Human Rights Council,[4] affirm a corporate responsibility to respect human rights as the global minimum standard for all business enterprises. The corporate responsibility to respect human rights requires business enterprises to avoid causing or contributing to adverse human rights impacts and to address adverse impacts that occur.[5] Companies must also seek to prevent or mitigate adverse human rights impacts directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.[6] To meet their responsibility to respect human rights, business enterprises should conduct human rights due-diligence to identify, prevent, mitigate and account for how they address their impacts on human rights.[7]

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[2] Principles 1 and 2, UN Global Compact, "The Ten Principles" (available at http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html).
[3] "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework," Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, UN doc. A/HRC/17/31 (21 March 2011) (hereinafter "UN Guiding Principles").
[4] Resolution adopted by the United Nations Human Rights Council, "Human rights and transnational corporations and other business enterprises," 6 July 2011 (UN doc. A/HRC/RES/17/4).
[5] UN Guiding Principles, Principle 13(a).
[6] UN Guiding Principles, Principle 13(b).
[7] UN Guiding Principles, Principle 15(b). Business enterprises should also have in place a policy commitment to meet their responsibility to respect human rights (Principle 15(a)) and processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute. (Principle 15(c)).

Companies committed to aligning their operations with the UN Guiding Principles and Global Compact Principles are finding ways to integrate human rights considerations into existing practices. It is often much easier for a company to integrate human rights into existing management systems than to create new stand-alone systems for human rights management.[8] Integrating human rights and corporate crisis management can help companies to "know and show" that the enterprise respects human rights.[9]

Integrating human rights and corporate crisis management is one way that companies can seek to identify, prevent and address adverse human rights impacts. While most enterprises have yet to fully integrate human rights into their existing crisis policies, some companies are developing more robust procedures that consider human rights impacts as part of corporate crisis management, consistent with the UN Global Compact Principles and the UN Guiding Principles on Business and Human Rights.

This Good Practice Note draws on publicly available materials and interviews with representatives of multinational companies, including members of the UN Global Compact Human Rights and Labour Working Group. The Note also reflects the author's experience working with business enterprises - in multiple industry sectors - to establish and strengthen crisis management programs.

III. Good Practice: Integrate Human Rights into Crisis Planning

A. Corporate Crisis Management

Crises are commonly defined by business enterprises as events or issues with the potential to negatively affect the company's operations, employees, finances or reputation among stakeholders. Events that fit this definition vary according to the nature of a company and its operations. Typical crises include natural disasters affecting company facilities, data breaches exposing customer information, and allegations of corporate mismanagement or misconduct. Crises can be acute – a sudden, unexpected event – or chronic – an issue that builds over time. Relevant company stakeholders include employees, subcontractors, shareholders (public companies), customers, business partners, policymakers, regulators and the communities where the company operates.

When managers consider "crisis management" for the first time, they often think of corporate responses to widely publicized catastrophic events, like oil spills, plane crashes, and natural disasters; or to scandals that affect corporate reputation, such as criminal investigations or executive misconduct. Crisis management includes company responses to these kinds of low probability, high impact events, but crisis management is a much broader discipline at most multinational companies.

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[8] *See, e.g.,* Global Business Initiative on Human Rights and Institute for Human Rights and Business, "Executive Summary," State of Play: The Corporate Responsibility to Respect Human Rights in Business Relationships (2012), p. 5.
[9] *See* UN Guiding Principles, Commentary, Principle 21.

Crisis management is a dynamic, ongoing process that begins with crisis planning and extends through crisis response and recovery.[10] Sophisticated large companies typically face crises – accidents, workplace violence, executive incapacity, lawsuits, hostile takeovers, product recalls – with policies and procedures in place to guide the company's response. (Small and medium-sized enterprises (SMEs), on the other hand, may have no formal crisis management procedures.)[11] Corporate crisis management encompasses business efforts to prepare for, prevent, manage and recover from the full range of negative events, from the predictable to the unlikely, and from those with minimal to substantial potential impact on the company and its stakeholders.

Corporate policies and procedures govern each phase of crisis management. Critical procedures for effective crisis management include: 1) early warning mechanisms for gathering information from across the enterprise so that key individuals learn of actual or potential crises in a timely fashion; 2) a process to assess relevant information and escalate events that may require a corporate response; and 3) policies to guide the crisis response itself. Responsibility for crisis management resides in different corporate functions depending on the company, but often relies on cross-functional teams. Represented functions on a crisis management team may include security, operations, legal, human resources, and public affairs. Procedures will involve senior corporate leadership if a crisis is sufficiently severe in magnitude, constitutes a "material event"[12] for investors, or may trigger Board oversight.

Crisis management as a discipline has evolved in response to well-publicized corporate crises such as the deaths attributed to cyanide-laced Tylenol capsules sold by Johnson & Johnson (1982), Union Carbide's release of toxic gas at its pesticide plant in Bhopal, India (1984), the Exxon Valdez Alaskan oil spill (1989), the collapse of firms like Enron (2001) due to corporate misconduct and Lehman Brothers (2008) triggering the global financial crisis, and BP's Deepwater Horizon oil well disaster in the Gulf of Mexico (2010). Lessons from these cases include the need for crisis planning to be based on accurate risk assessments; the importance of having clear policies and procedures in place before a crisis hits; the value of designating a crisis management team with defined roles and responsibilities; and the benefits of involving executive leadership in crisis planning with independent Board oversight.

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[10] *See, e.g.,* Steven Fink, Crisis Management (1986), pp. 18-19 ("[A]ny measure that plans in advance for a crisis . . . is a form of crisis management.")

[11] While this Note focuses on good practice at large companies, SMEs may use the same principles to guide less formal approaches to crisis management.

[12] Under U.S. securities laws, public companies must disclose material information. *See, e.g.,* Regulation S-K, 17 C.F.R. § 229 (2012). A fact is material if "there is a substantial likelihood that a reasonable investor would consider it important." TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976) *cited in* The International Corporate Accountability Roundtable, Knowing and Showing: Using the U.S. Securities Laws to Compel Human Rights Disclosure (2013), at 14.

Crisis Management and Related Disciplines

Discipline	*Function(s)**	*Role*
Risk Management	Board, Risk, Finance	GOVERNANCE
Compliance	Legal	
Issue Management	Cross-Functional, Public Affairs	
Crisis Management	Cross-Functional, Communication	
Business Continuity	Operations, Security	OPERATIONS

** Representative – Responsible functions vary depending on the company*

Related corporate disciplines that overlap with crisis management are risk management, compliance, issue management, and business continuity. *Risk management,* a core component of corporate governance, seeks to identify, prioritize and mitigate business risks.[13] In the United States, the Sarbanes-Oxley Act and Securities and Exchange Commission (SEC) rules require public companies to implement internal control systems, conduct risk assessments and disclose the Board's role in managing enterprise-wide risks.[14] Enterprise risk management (ERM) identifies risks related to a company's business objectives, assesses them in terms of likelihood and magnitude of impact, and develops corresponding risk management action plans.[15] An ERM process, reporting to the Board, may trigger more detailed crisis planning for the highest priority risk scenarios. *Compliance*, typically managed by the legal department, seeks to ensure corporate compliance with laws and regulations wherever the company operates, as well as adherence to company codes of conduct, policies and procedures. Compliance reporting, audits and hotlines can serve as information sources for effective crisis management. *Issue management* identifies, tracks and monitors challenges in the business environment before they become crises.[16] Finally, *business continuity* seeks to restore operations after events that affect a company's ability to operate, such as supply chain disruptions or factory outages. Effective crisis management feeds into business continuity efforts by allowing a company to restore operations as quickly as possible, with minimal financial, operational, or reputational impact.

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[13] *See, .e.g.*, ISO 3100: Risk management — Principles and guidelines (First edition, 2009-11-15). ISO 3100 defines risk as the "effect of uncertainty on objectives."

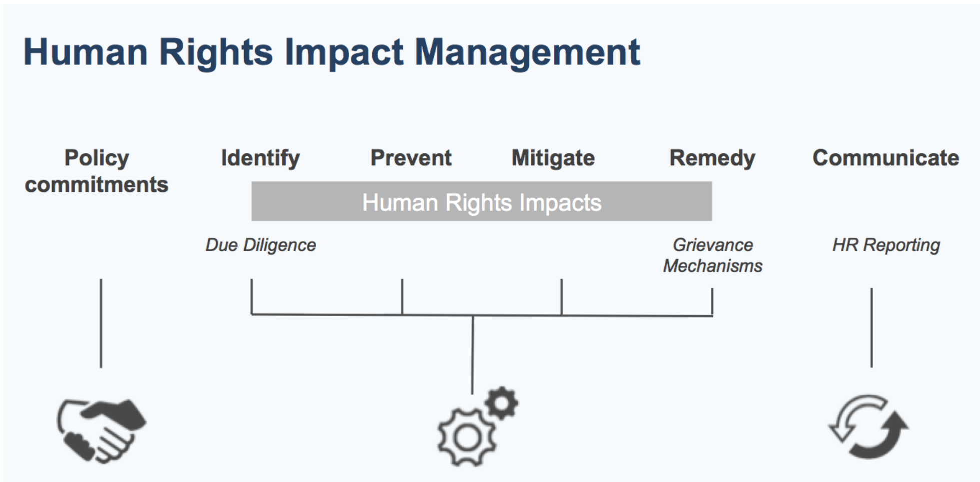
[14] H.R. 3763--107th Congress: Sarbanes-Oxley Act of 2002; SEC Rule 33-9089 (eff. Feb. 28, 2010).

[15] ERM frameworks include the COSO Enterprise Risk Management – Integrated Framework (2004) and ISO 31000 (2009), an international standard for risk management.

[16] *See, e.g.*, "Issue Management," in John Doorley and Helio Fred Garcia, Reputation Management (3d ed, 2015), p. 270.

B. Human Rights Impact Management

Human rights impact management is an emerging discipline that encompasses corporate policy commitments to respect human rights and corporate efforts to identify and address a company's human rights impacts, negative or positive. These include conducting human rights due diligence; acting to prevent, mitigate and/or remedy adverse human rights impacts; and communicating how impacts are addressed.



Integrating human rights considerations into each of the corporate disciplines related to crisis management can help companies identify, prevent and address adverse human rights impacts. A company with a comprehensive approach to human rights impact management, for example, would simultaneously consider the risk of adverse human rights impacts as part of its ERM with corresponding Human Rights Impact Management Action Plans;[17] seek full compliance with policies and procedures consistent with the corporate responsibility to respect human rights; monitor human rights impacts as part of its issue management function; and consider human rights impacts as part of its business continuity planning and implementation.

For some companies, crisis management may be the best entry point for considering human rights impacts. If, for example, risk managers undervalue human rights risks or the compliance function is removed from operational decision-making. Crisis management and human rights impact management share key characteristics. Both disciplines are dynamic, ongoing processes that extend through multiple phases of corporate activity; are concerned with both actual and potential issues;[18] and require the enterprise to look outside the company to consider the perspectives of external stakeholders. In practice, companies are just beginning to integrate

[17] A Human Rights Impact Management Action Plan (HRIMAP) translates the results of human rights due diligence into corporate actions, such as adopting or modifying policies, procedures and processes; and changing business practices or relationships.

[18] Human rights due diligence should assess both actual and potential human rights impacts. UN Guiding Principles, Principle 17. Enterprises must respect all internationally recognized human rights. UN Guiding Principles, Commentary, Principle 12. Internationally-recognized human rights are understood, at a minimum, as those expressed in the International Bill of Human Rights and the International Labour Organization's Declaration of Fundamental Principles and Rights at Work. UN Guiding Principles, Principle 12.

human rights considerations into core functions. Furthermore, distinct corporate functions may not share information or coordinate their efforts across an enterprise.

Leading companies make the corporate responsibility to respect human rights part of their framework for managing crises. In prominent early examples of adverse corporate human rights impacts,[19] companies viewed the events, and the ensuing stakeholder criticism, as crises to be managed, but not as corporate failures to respect human rights. By integrating human rights impact management with existing crisis management policies and procedures, companies are better positioned to quickly identify, prevent and address adverse human rights impacts when they occur. If a company's crisis management efforts are incomplete or inadequate, however, integrating human rights with crisis management risks reinforcing an overly narrow or reactive approach to human rights impact management.

C. Crisis Planning

Effective crisis planning requires companies to: 1) define events or issues that qualify as crises; 2) identify and prioritize crisis scenarios; and 3) establish clear crisis roles and responsibilities for crisis management. Companies can integrate human rights considerations into each of these crisis planning steps.

i. Defining a Crisis

<u>1. Define corporate crises to include averse human rights impacts</u>

> "The greatest challenge in most organizations is not figuring out how to fix a problem, but recognizing there is a problem that needs to be fixed."[20]

The first step in effective crisis planning is to define events that qualify as crises. Unless a company describes the kinds of events that may rise to the level of a "crisis," the organization will often fail to identify a crisis event in a timely fashion, leaving it unprepared when a crisis occurs and magnifying any resulting damage. Similarly, if a company fails to define crises in a way that adequately captures causing or contributing to adverse human rights impacts,[21] it will likely fail to identify human rights impacts connected to the company when they occur; miss the opportunity to prevent or mitigate them;[22] and potentially exacerbate the human rights impact on affected individuals.

Companies typically define crises as events or issues with the potential to negatively affect the company's operations, employees, finances or reputation among stakeholders. This definition is

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[19] Examples include Union Carbide's response to the thousands of deaths and injuries caused by a gas leak from its pesticide plant in Bhopal, India (1984), Nike's failure to address labor standards at suppliers' factories in the early 1990s, and Shell's initial reluctance to intervene with the Nigerian authorities concerning the arrest and execution of the writer Ken Saro-Wiwa and eight other leaders of the Ogoni tribe (1995).
[20] Robert E. Mittelstaedt, Jr., <u>Will Your Next Mistake be Fatal?</u> (2005), p. 261.
[21] For the purposes of this Note, contributing to adverse human rights impacts includes "complicity in human rights abuses." Principle 1, UN Global Compact.
[22] Or miss the opportunity to exercise leverage in a business relationship to prevent or mitigate adverse human rights impacts. UN Guiding Principles, Commentary, Principle 19.

likely to capture some, but not all, adverse human rights impacts connected to business enterprises. If a company's operations cause or contribute to adverse human rights impacts, or if a company is linked to adverse human rights impacts by its business relationships, the human rights impact may negatively affect the company's operations (e.g., a supplier is shut down for labor rights violations), employees (e.g., a company's local employees are arrested for political activity), finances (e.g., project delays caused by community opposition affect financial results), or reputation (a company's close relationship with an abusive regime leads to consumer boycotts and investor resolutions). In each of these scenarios, adverse human rights impacts may trigger existing crisis management procedures.

Relying on the nexus with traditional crisis definition elements, however, is insufficient to ensure that a company will identify all adverse human rights impacts connected to its operations. Many events with a potential adverse human rights impact do not have a clear or immediate affect on a company's operations, employees, finances, or reputation. Government forces commit abuses in communities where a company is operating, but not against company employees, for example; or a company receives a government demand to turn over information about perceived political opponents.

To capture all adverse human rights impacts, companies need to expand their definition of crisis to take into account events that affect external stakeholders - individuals who may not be directly connected to the enterprise.

> *Crisis - An event or issue with the potential to negatively affect the company's operations, employees, finances or reputation among stakeholders;* ***or to result in an adverse human rights impact connected to the company's operations, products, services or relationships****.*

This augmented crisis definition explicitly captures both human rights impacts caused or contributed to by the company itself, as well as human rights impacts linked to company by its business relationships. Potential adverse human rights impacts neither caused nor contributed to by the company, but linked to a company's operations, products or services as a result of business relationships with third parties may require further elaboration of the crisis definition to ensure that a company considers potential human rights crises in all of its business relationships, including with suppliers, direct customers, joint venture partners, franchisees and transactional partners.[23]

While some companies have found using human rights language in corporate policies to be problematic, or to require further explanation, explicitly identifying "adverse human rights impacts"[24] in the definition of a corporate crisis advances effective integration of human rights considerations in existing functions and processes.

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[23] *See, e.g.,* Global Business Initiative on Human Rights and Institute for Human Rights and Business, State of Play: The Corporate Responsibility to Respect Human Rights in Business Relationships (2012).

[24] An adverse human rights impact is an "action that removes or reduces the ability of an individual to enjoy his or her human rights." OHCHR, The Corporate Responsibility to Respect Human Rights: An Interpretive Guide (November 2011).

The act of crisis planning itself raises awareness among managers of the kinds of events that they will need to identify, escalate and manage as crises. Integrating human rights into crisis planning is one way to introduce and define the corporate responsibility to respect human rights within a company.

Implementing this good practice requires redefining "crises" in corporate policies, such as crisis management plans; and in corporate procedures, such as internal mechanisms for gathering and transmitting information about actual or potential crises. These may include crisis or compliance "hotlines," crisis communication plans, and corporate crisis notification and escalation protocols.

2. Ensure that enterprise risk management includes adverse human rights impacts

> "Social risks are neither well-understood, nor do effective circuits exist within most companies for managing them."[25]

Crisis planning within a company often flows from enterprise risk management (ERM). ERM assesses key business risks on an ongoing basis and develops corresponding risk management action plans. To meet their responsibility to respect human rights, companies should ensure that ERM initiatives include human rights impacts connected to the company's operations, products, services or relationships.[26]

The most direct way to integrate human rights considerations is to consider human rights risk[27] as a stand-alone enterprise-wide risk factor.

- A major consumer goods multinational reviews forty-nine distinct human rights risks on an annual basis across its business activities as part of the company's overall enterprise risk management. Human rights risk indicators include: complicity, employees' contracts, and child labor. Each risk factor is evaluated at five levels: company-owned facilities, tier-1 suppliers, upstream suppliers, local communities and country operations.[28]

- An African financial institution describes human rights risks explicitly under "social and environmental risks" in its ERM framework.[29]

Companies may also integrate human rights with the ERM process by considering human rights impacts together with other risk categories, such as operational, financial, technological, legal and strategic risks.

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[25] Beth Kytle and John Ruggie, "Corporate Social Responsibility as Risk Management: A Model for Multinationals," Corporate Social Responsibility Initiative Working Paper No. 10, John F. Kennedy School of Government, Harvard University (March 2005), p. 6.
[26] An objective of the UN Guiding Principles is "to prescribe practical ways of integrating human rights concerns within enterprise risk-management systems." John Gerard Ruggie, Just Business: Multinational Corporations and Human Rights (2013), p. 189.
[27] A company's human rights risks include "any risks that its operations may lead to one or more adverse human rights impacts." OHCHR, The Corporate Responsibility to Respect Human Rights: An Interpretive Guide (November 2011).
[28] Nestlé, Nestlé in Society: Creating Shared Value and Meeting Our Commitments (2012), p. 218.
[29] Interview.

Potentially material human rights risks in any of these categories may be disclosed in financial reporting by public companies. A number of companies are beginning to address human rights risks as material information for investors. Most companies that have disclosed human rights risks in financial reports have done so by linking human rights issues to reputational risk with a potential financial impact.

- A leading global soft drink company addresses human rights as a potentially material risk factor related to corporate reputation. The company views campaigns by activists attempting to connect the company or its business partners with "human and workplace rights issues" as having a potentially adverse impact on its corporate image and reputation. The company asserts that "[a]llegations, even if untrue, that we are not respecting one or more of the 30 human rights found in the United Nations Universal Declaration of Human Rights; actual or perceived failure by our suppliers or other business partners to comply with applicable labor and workplace rights laws, including child labor laws, or their actual or perceived abuse or misuse of migrant workers; and adverse publicity surrounding obesity and health concerns related to our products, water usage, environmental impact, labor relations or the like could negatively affect our Company's overall reputation and brand image, which in turn could have a negative impact on our products' acceptance by consumers."[30]

- A South African mining company considers the "failure to acquire or loss of [its] 'social license to operate'" as a top group risk.[31]

- A Canadian mining company operating in Latin America has described potential operational delays caused by community opposition or by imposition by national governments or by the Inter-American Commission on Human Rights of "additional requirements to protect human rights in the community" where it operates, as having a potentially material adverse effect on the company's "reputation, operations or profitability."[32] It also cites as a potential risk opposition to company projects based on international laws protecting the rights of indigenous peoples, including the requirement to obtain the free, prior, and informed consent of indigenous peoples affected by the granting of mining concessions or approval of mining permits.[33]

A weakness of making human rights risk contingent on links to other risk categories in financial reporting or in the ERM process is that by doing so, the company shifts attention away from the human rights impact on individuals. To meet the human rights due diligence standard under the Guiding Principles, human rights risk should be defined as risk to the rights holders themselves.[34] One mining company interviewed for this Note, for example, is working internally with its risk management professionals to incorporate risks to rights-holders in their risk

[30] The Coca-Cola Company, Form 10-K, Annual Report, FY 2014, p. 18.
[31] AngloGold Ashanti, Integrated Report 2014, p. 31.
[32] Goldcorp, Annual Information Form for the Financial Year Ended December 31, 2011 (Mar. 28, 2012), pp. 95-96.
[33] Relevant standards include ILO Convention 169, the United Nations Declaration of the Rights of Indigenous People, and the International Finance Corporation's revised Performance Standard 7. Goldcorp, *supra*, p 101.
[34] "Human rights due diligence can be included within broader enterprise risk management systems, provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders." UN Guiding Principles, Commentary, Principle 17, para. 3.

analyses. More work by companies is needed to expand ERM to explicitly cover risks to rights holders.

Human rights considerations can also be integrated with other risk management processes, such as environmental and social impact assessments, political risk assessments and legal due diligence.

- The International Council on Mining and Metals (ICMM) has compiled best practices for integrating human rights due diligence into corporate risk management processes, such as baseline studies, in the extractive sector.[35]

- A U.S. financial services firm has developed a non-traditional Environmental and Social Risk Management Policy that evaluates financial transactions above certain amounts with human rights-related impacts, such as the rights of indigenous peoples and involuntary resettlement; and prohibits transactions directly or indirectly involving forced labor or "harmful" child labor.[36]

Ensuring that ERM includes adverse human rights impacts requires Board oversight, and periodic review and revisions to corporate risk management policies that may expand the scope of enterprise risk maps, risk management action plans, risk reporting and disclosure.

ii. Identifying and Prioritizing Crisis Scenarios

3. Make human rights due diligence the benchmark for identifying and prioritizing human rights issues

> "Human rights due diligence provides authoritative guidance for how to manage the risks of adverse human rights impacts."[37]

Once a company defines crises and risk management to include adverse human rights impacts, effective corporate crisis planning involves identifying and prioritizing potential crisis scenarios. Companies adopt procedures to gather information across the enterprise so that actual or potential crises can be identified in a timely fashion. When events or issues that meet crisis criteria are identified, companies must assess relevant information and escalate events that may require the company to act to appropriate functions within the enterprise.

Human rights due diligence should become the basis for identifying and escalating human rights issues as crises.[38] Human rights due diligence is intended to identify both actual and potential impacts, with special attention to the risk of complicity with other actors, and to prevent and

[35] ICCM suggests "applying a human rights lens" to existing processes. International Council on Mining & Metals, Human rights in the mining and metals industry: Integrating human rights due diligence into corporate risk management processes (March 2012), pp. 16-17.
[36] Citigroup, Global Citizenship Report (2011), pp. 43-46.
[37] John Gerard Ruggie, Just Business: Multinational Corporations and Human Rights (2013), p. 189.
[38] The Guiding Principles call for enterprises to integrate the findings from human rights due diligence across relevant internal functions and processes, and take appropriate action. UN Guiding Principles, Principle 19.

mitigate any human rights risks.[39] Companies should assess all operations, products, services and relationships, and the full range of human rights. The scope of human rights due diligence will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations.[40]

Human rights due diligence can feed into company efforts to identify potential crises. Companies are using tools like human rights impact assessments to identify human rights risks connected to a company and its operations.[41]

- A South African bank feeds information from its human rights due diligence into its formal enterprise risk management process.[42]

- A multinational food company integrates the findings of human rights impact assessments into the company's Human Rights Risk Assessments as part of the corporate Enterprise Risk Management system.[43]

- A multinational mining company includes human rights audits in combined assurance processes to identify potential human rights risks.[44]

- A global food and beverage company plans to incorporate human rights due diligence questions in its Global Risk Tool to be answered at the country level.[45]

Operational-level grievance mechanisms are another means to identify adverse human rights impacts and systemic problems.[46]

By adding human rights considerations to crisis policies and notification tools, companies can make human rights impact management an ongoing, routine practice, not simply a snapshot of human rights risk at one moment in time.

Once relevant issues are identified, companies prioritize potential crisis scenarios for action – efforts to address, prevent or plan for a potential crisis. Traditional issue assessment prioritizes crisis scenarios with the greatest likelihood and potential impact, typically including some measurement of the magnitude of the impact on the enterprise.

- One multinational food company evaluates the likelihood and potential impact (high, medium, low) of identified human rights risks.[47]

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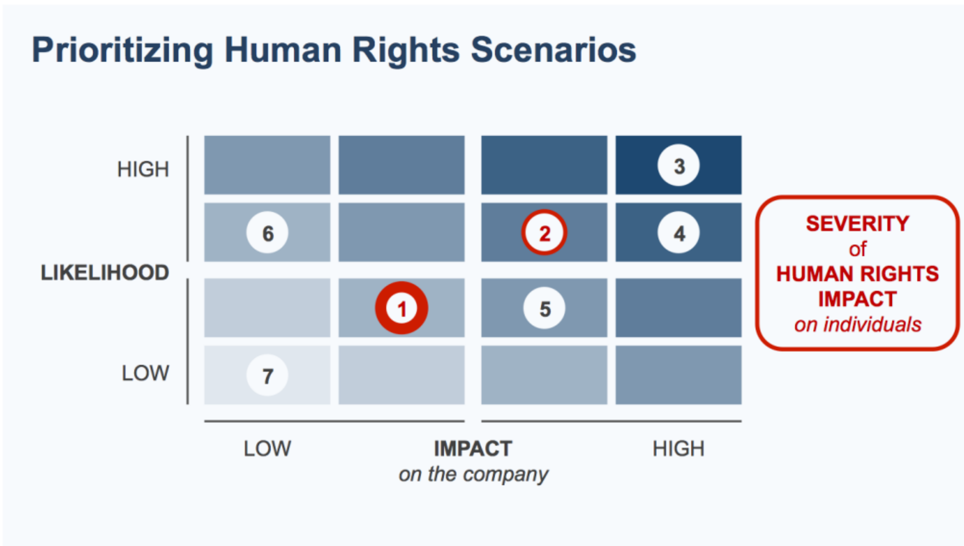
[39] UN Guiding Principles, Principle 17.
[40] UN Guiding Principles, Principle 17 (b).
[41] *See, e.g.*, Business for Social Responsibility, Conducting an Effective Human Rights Impact Assessment (March 2013) (available at: http://www.bsr.org/reports/BSR_Human_Rights_Impact_Assessments.pdf).
[42] Interview.
[43] The Danish Institute for Human Rights and Nestle, Talking the Human Rights Walk: Nestle's Experience Assessing Human Rights Impacts in its Business Activities (2013), p. 9.
[44] AngloGold Ashanti, Integrated Report 2014, p. 83.
[45] Pepsico, 2013 GRI Report, p. 95.
[46] UN Guiding Principles, Principle 29, "Commentary."
[47] Nestlé, Nestlé in Society: Creating Shared Value and Meeting Our Commitments (2012), p. 218.

Balancing these factors appropriately, however, presents a challenge for integrating human rights into crisis management. While likelihood may be balanced against impact *on the company* before triggering a corporate response to other kinds of crises without human rights impacts, "severity" of the impact *on individuals* is the most important factor for triggering a corporate response to an adverse human rights impact.[48] Severity under the Guiding Principles is to be judged by the impact's "scale, scope and irremediable character."[49]



Materiality analysis is one tool companies use to prioritize potential risks. A standard materiality, or matrix, analysis, for example, will highlight the most likely, high impact scenarios. To prioritize human rights scenarios, materiality analysis should be supplemented with an additional dimension measuring the severity of impact to individuals. Adapted to include human rights impacts, less likely but potentially severe adverse human rights impact scenarios should receive priority attention.[50] The UN Guiding Principles Reporting Framework, for example, uses "salient human rights issues" to define the focus of corporate human rights reporting.[51]

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[48] For human rights issues, "likelihood must take a back seat to severity in determining the priority of a company's response." John Sherman, "Integrating Human Rights Impact Assessments into Enterprise Risk Management Systems," Presentation, Engaging Business: Implementing Respect for Human Rights, Coca-Cola, Atlanta, GA, (April 28-29, 2011) (on file with author).

[49] UN Guiding Principles, Commentary, Principle 14. *See also* OHCHR, The Corporate Responsibility to Respect Human Rights: An Interpretive Guide (November 2011), at 19 ("This means that the gravity of the impact (its scale) and the number of individuals that are or will be affected (its scope) will both be relevant. 'Irremediability" . . . mean[s] any limits on the ability to restore those affected to a situation at least the same as . . . their situation before the adverse impact.")

[50] This approach is consistent with the process recommended by the authors of "A Structured Process to Prioritize Supply Chain Human Rights Risks," A Good Practice Note prepared by Yousef Aftab and Audrey Mocle, Enodo Rights, for the UN Global Compact Human Rights and Labour Working Group (23 June 2015 DRAFT), who emphasize that companies should "prioritize response based on severity of rights impact" and "resist the urge to conflate risk to the business with risk to rights holders." *Id*. at 4, 21.

[51] "A company's salient human rights issues are those human rights that are at risk of the most severe negative impact through its activities or business relationships." Shift and Mazars, UN Guiding Principles Reporting Framework with Implementation Guidance (2015), at 22.

- One company uses measures of "likelihood" and "consequence" to prioritize identified human rights risks. "Likelihood" captures, among other factors, the degree to which the company has procedures in place to identify and prevent specific issues, like child labor. "Consequence" includes an assessment of the severity of the risk to affected individuals if it occurs.[52]

Making human rights due diligence the benchmark for prioritizing human rights issues involves connecting human rights due diligence tools with crisis planning processes. Steps may include feeding the results of human rights impact assessments into crisis planning, developing particular human rights expertise on crisis management teams, and making operational-level grievance mechanisms part of crisis management information gathering procedures.

4. Add adverse human rights impacts to corporate scenario planning

> "To minimize [litigation] exposure, it is important to identify red flag conditions and have a defined plan in place."[53]

Corporate scenario planning helps companies to prepare for potential crises before they occur. By anticipating the highest priority crisis scenarios, companies can develop stand-by action plans that allow the enterprise to respond faster and more effectively in the event of an actual crisis. By anticipating potential human rights scenarios, companies can minimize not just risk to the company, but most importantly, risks to individual rights-holders.

Human rights risks connected to the enterprise may be missed unless the company develops explicit human rights scenarios. Alongside events like executive incapacity and product recalls, prudent companies will add the most severe and relevant potential human rights impacts to corporate scenario planning. Companies are developing crisis scenarios on human rights issues such as human rights abuses by security forces, widespread government abuses in a particular market, and labor violations in supply chains.

- A Swiss mining company incorporated human rights considerations into its planning for the temporary suspension of production at its mine in the Caribbean. Prior to suspending production, the company conducted a security assessment that included a baseline understanding of human rights-related issues, engaged key stakeholders, and worked through hypothetical scenarios to prepare for handling difficult situations.[54]

Based on the information generated by human rights due diligence, and the prioritization of human rights risks, companies can add the highest priority human rights risks facing the enterprise to corporate scenario planning. Developing a scenario, typically involving a cross-functional team, also serves to educate and train managers on human rights issues. Scenario

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[52] Interview.
[53] Jonathan Drimmer, "Five Tips to Avoid the Human Rights Litigation Trap," Corporate Counsel, Mar. 26, 2009.
[54] ICMM, *supra* note 36, p. 36.

development may also require benchmarking similar human rights impact scenarios in the company's sector, or elsewhere.

Implementing this practice may require the elaboration of hypothetical scenarios connecting adverse human rights impacts to the company, the preparation of scenario-specific materials, and building the organization's capacity to respond through human rights training, exercises or simulations. Using human rights scenarios in corporate capacity-building efforts is also an effective tool to reinforce a company's cultural commitment to respect human rights.

iii. Assigning Crisis Roles and Responsibilities

5. Establish clear roles and responsibilities for managing adverse human rights impacts as crises

> "[C]ompanies need to institute fully linked-up chains of responsibility across appropriate levels and functions within the business" to integrate and manage human rights due diligence.[55]

Effective crisis management requires clear internal roles and responsibilities so that the enterprise can respond when crises occur. Integrating human rights with crisis management means assigning roles and responsibilities for managing adverse human rights impacts as crises.

Companies need procedures for integrating human rights impact assessment findings across relevant internal functions and processes, and to assign human rights roles and responsibilities to the appropriate level and function, budget and oversight.[56] Legal compliance, for example, should be responsible for addressing the risk of causing or contributing to gross human rights abuses.[57]

- A multinational extractive company has included "serious local community events" including "a human rights violation" or with "potential international implications or serious human rights violation" as criteria in its crisis management guidelines that trigger incident escalation to a company subject matter expert or to the corporate Crisis Management Team.[58]

Companies are using different models to organize the human rights function internally.[59]

- At one multinational food company, a Human Rights Working Group – drawing members from human resources, public affairs, legal, security, compliance, procurement, safety, health and environment and risk management functions – conducts the company's annual human rights risk assessment.[60]

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[55] Ruggie, *supra* note 38, p. 190.
[56] UN Guiding Principles, Principle 19.
[57] UN Guiding Principles, Principle 23.
[58] Interview.
[59] *See* "Organizing the Human Rights Function within a Company," A Good Practice Note prepared by Rachel Davis and David Kovick, Shift, for the UN Global Compact Human Rights and Labour Working Group (2014).
[60] Nestlé, Nestlé in Society: Creating Shared Value and Meeting Our Commitments (2012), p. 218.

- A global food and beverage company has created a Human Rights Operating Council that comprises representatives from corporate and regional functions, including global procurement, operations, global risk and global compliance and ethics.[61]

- At a Swiss financial services firm, an "internal specialist group," Sustainability Affairs, assesses potential risks relating to the environment or human rights in certain transactions.[62]

Implementing this practice may require adding individuals with human rights expertise to cross-functional crisis management teams, seeking outside advisors with human rights expertise, or training employees to know when human rights expertise is needed; adding human rights elements to crisis management plans, including existing tools such as scenario-specific checklists, contact lists and communication plans and templates; and training corporate crisis teams on human rights scenarios.

- An African bank has adopted a "Strategy for the Integration of Human Rights in Business" that includes developing the capacity to respond to dilemmas at the business level.[63]

IV. Conclusion

By integrating human rights considerations into crisis planning, companies are better prepared to meet their responsibility to respect human rights, consistent with the UN Global Compact principles and the UN Guiding Principles on Business and Human Rights. Most companies have yet to include adverse human rights impacts in their crisis management policies and procedures. Companies that do so will be better equipped to identify and manage human rights impacts. Ultimately, human rights impact management should become fully integrated into all phases of corporate crisis management and related disciplines, from crisis planning through crisis response and recovery.

[61] Pepsico, 2013 GRI Report, pp. 94-95.
[62] Credit Suisse, Corporate Responsibility Report (2012), p. 15.
[63] Interview.