



June 2016

## DOING BUSINESS RIGHT

# FIVE YEARS OF UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

## *EXPERIENCES FROM EARLY ADOPTING COMPANIES*

WWS Series 5





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**DOING BUSINESS RIGHT**

**Five Years of**

**United Nations Guiding Principles on Business and Human Rights**

*Experiences from Early Adopting Companies*

*June 2016*

Ulrike Hoessle

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## INTRODUCTION

Five years ago, on June 16, 2011, the Human Rights Council approved the UN Guiding Principles on Business and Human Rights. This approval was a major step towards a paradigm shift that regards human rights as a responsibility of companies. It only came after decade-long United Nations' negotiations regarding transnational corporations and their responsibilities. These Guiding Principles with their *Protect, Respect and Remedy* framework assign specific duties, responsibilities and rights to governments, businesses and the victims of human rights abuses. This paper outlines the long path toward an international (non-binding) agreement and describes the content of the Guiding Principles. It shows what additional initiatives followed the approval and how governments started to create and implement the first action plans. It describes exemplarily, how five companies from five different sectors began to put these principles into action with different initiatives, challenges and lessons learned.

## **THE UNITED NATIONS AND THE RESPONSIBILITY OF BUSINESS FOR HUMAN RIGHTS**

After the end of the Second World War, the United Nations was founded to maintain peace and security, and to promote and encourage “respect for human rights and for fundamental freedom for all without distinction as to race, sex language, or religion”<sup>1</sup>. Already in 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights: this declaration is legally a non-binding document; however, it represents an internationally recognized standard, and was the base of two binding treaties:

- The International Covenant on Civil and Political Rights (1966) and
- The International Covenant on Economic, Social and Cultural Rights (1966).

Although, the United Nations relies on its member states to protect human rights, it plays an important role in putting human rights issues on the international agenda. The United Nations General Assembly has adopted further human rights declarations and conventions related to children, women, minorities, indigenous people, migrant workers, domestic workers and disabled persons.

Early on, the United Nations started to discuss issues related to transnational corporations and their business conduct. In the sixties through the UN Resolution 1761, the UN General Assembly called upon the Member States to boycott trade with the apartheid state of South Africa. The United Nations Conference on Trade and Development (UNCTAD) III (1972) in Santiago de Chile during the presidency of Salvador Allende focused on a New International Economic Order that included the regulation of transnational corporations (TNCs). This UNCTAD conference was the beginning of a series of discussions within the United Nations on the role of transnational

companies, which led in 1974 to the founding of the United Nations Centre on Transnational Corporations (UNCTC). One of UNCTC's tasks was to develop a binding Code of Conduct on Transnational Corporations ('the Code'). The UNCTC published numerous research papers that analyzed the impact of transnational businesses in different areas such as tourism, agriculture, nuclear industry, environment, climate change, women in factories etc. These papers raised important questions regarding the influence of TNCs in developing countries. In the Code's draft, companies were required to respect human rights, socio-cultural values and to observe regulations regarding environmental protection.

However, the Code was never adopted because the wide range of topics and different governmental interests created a stalemate about whether and how to regulate transnational business activities. Some Western countries pursued neoliberal economic policies with little or no regulation. Southern countries hoped for clear rules regarding corporate influence on their internal affairs and the Eastern bloc countries with their state-owned TNCs argued in favour of regulating only privately owned companies<sup>2</sup>. The Vice Chairman of the Commission on Transnational Corporations, Ahmed Rhazaoui, remembers the difficult discussions:

“[...] the discussion of the Code, definition of TNCs and bilateral agreements took on a decidedly political character. Underlying the discussions were tensions resulting from years of slow, inconclusive and at times acrimonious negotiations marred by lingering suspicions. Through it all, it was always difficult to draw the line between legitimate concerns over the interest of particular constituencies represented by the delegates and tensions created by misunderstandings, lack of trust or even personal animosities [...] Where mutual understanding evolved, communication became easier, as did chances for compromise. However, the business of negotiating in the name of nation-states is a difficult one; sometimes, the goals of the states call for particular negotiating tactics that require a delicate balance between duty and credibility.”<sup>3</sup>

After the end of the Cold War and with rising poverty due to the debt crisis, the United Nations, under then Secretary-General Boutros Boutros-Ghali, changed its attitude towards the global economic system: the global economy could be part of the solution rather than part of the problem, if it has social regulations to decrease social inequality. With this change, the United Nations transformed its relationship concerning transnational companies. The United Nations Con-

ference on Environment and Development (UNCED) in Rio de Janeiro (1992) marked the turning point: before that, the United Nations had accredited only non-governmental organizations to participate and advise at UN conferences and negotiations. For the first time, the Rio Summit also included private sector actors - businesses and business associations - such as the Business Council for Sustainable Development and the International Chamber of Commerce (ICC), and transnational companies financed a part of the conference budget. For example, companies such as ARCO, ICI and Asahi Glass received franchise rights for the Earth Summit logo. For this summit, the UNCTC had drafted a number of recommendations that proposed binding regulations for transnational corporations in the area of sustainable development. The final summit declaration did not include these recommendations; rather, it incorporated the proposals of the Business Council for Sustainable Development with a focus on business' voluntary self-regulation. One year after the Rio Summit, the UNCTC in New York was disbanded and some of the staff integrated in the UNCTAD (Department: Investment and Enterprise).

In 1997 for the first time in the United Nations' history, a Secretary-General with a degree in economics and in management took office. That Secretary-General, Kofi Annan, continued the course of his predecessor and promoted the further inclusion of the private sector. Various initiatives and statements reveal the new concept of partnership between the United Nations and the private sector:

- Resolutions and declarations: Under the chapter "Strengthening the United Nations," the Millennium Declaration announces "to give greater opportunities to the private sector, non-governmental organizations and civil society, in general, to contribute to the realization of the Organizations' goals and programmes"<sup>4</sup>. In 2000, under the title Towards Global Partnerships, the General Assembly adopted a resolution that defines the partnership concept with the private sector and this resolution is reviewed and updated every other year.

- Partnerships with business: Various UN agencies and organizations started partnerships with companies to finance their projects. The Secretary-General's *Guidelines on Cooperation Between the United Nations and the Business Sector* explicitly states that companies are excluded from activities with the United Nations if they are involved in human rights violations (incl. forced labor and child labor) as well as in the production of landmines<sup>5</sup>.

- Dialogue forums between the United Nations and the private sector: The United Nations offers opportunities for private actors to advance the UN agenda, exchange ideas on various topics and commit to UN values. These are the Global Compact, the Business Linkages Programme (UNCTAD), the Subcontracting and Partnership Exchange (UNIDO), the Business Call to Action (UNDP) and the UNEP Finance Initiative<sup>6</sup>.

Some international law experts, non-profits, academia and even UN agencies criticized these partnerships, because of the businesses' increasing influence on the United Nations, which might be detrimental for less powerful actors<sup>7</sup>.



# THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

The unease with Kofi Annan's partnership concept might have been one reason why the Working Group on Business and Human Rights of the United Nations Sub-Commission on Promotion and Protection of Human Rights (‘the Sub-Commission’) developed a set of mandatory norms for transnational corporations. In 2003, the Sub-Commission agreed on the *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regards to Human Rights* (‘the norms’) and presented them to the United Nations Commission of Human Rights, which took note but did not approve it. To solve this controversy Kofi Annan appointed the Harvard Professor John Ruggie as the Special Representative of the Secretary-General on Human Rights and Transnational Corporations and other Business Enterprises. John Ruggie had previously advised Kofi Annan as United Nations Assistant Secretary-General for Strategic Planning on the reform of the United Nations, as well as on the Millennium Development Goals and the Global Compact<sup>8</sup>. In 2008, after a worldwide, inclusive, transparent consultation process, Ruggie presented *Protect, Respect and Remedy: a Framework for Business and Human Rights*. This report assigned different rights and obligations to the different stakeholders: the obligation of the State to protect human rights, the responsibility of companies to respect these rights, and the possibility of remedy for victims of human rights abuses.

In June 2011, the United Nations Human Rights Council (‘the Council’) adopted the Guiding Principles on Business and Human Rights (‘the Guiding Principles’). Due to the inclusive consultation process, they found broad acceptance and recognition as the first international standard on business and human rights<sup>9</sup>. Immediately governments, business associations, companies, as well as labor unions, non-profits and academia started to work toward its implementation. With the same resolution, the Council established the United Nations Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises (‘the Working Group’)

with the mandate to promote the effective and comprehensive implementation of the Guiding Principles. Since then, the Working Group undertook five country visits (to Ghana, Mongolia, Azerbaijan, the USA and Brazil) to explore the status of the Guiding Principles' implementation. For example, the country visit to the USA included recommendations regarding the situation of farm workers, the challenges facing communities in the mining region of West Virginia, business impact on Native Americans, child labor in the supply chain, the consequences of the financial crisis regarding adequate housing and food security, information technology and its effects on privacy and freedom of expression, and the right of representation for both supervisors and public employees<sup>10</sup>.

In June 2014, the Council adopted two resolutions that addressed the urgent need for remedy for victims of corporate related human rights abuses. The first resolution, drafted by South Africa and Ecuador requests a working group with a mandate to develop an “internationally binding legal instrument on transnational corporations and other business enterprises with respect to human rights”<sup>11</sup>. The second resolution, drafted by Norway, calls for a consultation process to explore measures to improve the access to remedy including the benefits and limitations of legally binding instruments. As requested by this resolution, the Office of the High Commissioner for Human Rights (OHCHR) launched the Accountability and Remedy Project with the aim to provide guidance to governments regarding a fair and consistent access to remedy<sup>12</sup>. In July of 2015, the Open-Ended Intergovernmental Working Group met for the first time to discuss a binding treaty on business and human rights <sup>13</sup>.

## **THE DUTY OF THE STATE TO PROTECT: THE NATIONAL ACTIONS PLANS OF DIFFERENT COUNTRIES**

According to the Guiding Principles (1-2), the State is responsible to protect human rights: to take appropriate steps to prevent, investigate, punish and redress abuse. The State should not only enforce laws, but also provide effective guidance for the implementation of human rights in business operations worldwide. In addition, the Council appealed to the governments to develop a National Action Plan (NAP) regarding the Guiding Principles' implementation in the specific national context. These NAPs should be elaborated in a multi-stakeholder process, regularly reviewed and updated, and they should address the country's specific corporate human rights impact.

As of this writing, ten governments have launched a National Action Plan and nearly 20 governments started multi stakeholder consultations.<sup>14</sup>

On a regional level, several initiatives emerged in support of the Guiding Principles: Already in October 2011, the European Commission adopted a Communication, which references the Guiding Principles and demonstrates a paradigm shift from the previously voluntary CSR approach towards complementary mandatory regulations to create a more conducive environment for corporate responsibility. It further invited each of its 28 member states to organize a consultation process culminating into a National Action Plan on Business and Human Rights<sup>15</sup>. It also published guidance based on the Guiding Principles for small and medium enterprises and for three sectors: oil and gas, information and communication technology, and employment and recruitment agencies<sup>16</sup>. On the second anniversary of the collapse of the Rana Plaza Building, the members of the European parliament adopted a motion calling for a resolution for mandatory human rights due diligence for corporations. This motion was inspired by a national French draft adopted for corporate human right due diligence. The Group of Seven (G7) declaration in 2015 confirmed their support for the Guiding Principles, and their commitment to improve working conditions by

strengthening the grievance mechanism, by providing better access to remedy and by ensuring the effective performance of the National Contact Points of the OECD<sup>17</sup>.

The Organisation for Economic Co-Operation and Development (OECD) adapted its Guidelines for Multinational Enterprises to the Guiding Principles and published as a new guidance *Due Diligence for Responsible Supply Chains of Minerals from Conflict Affected and High-risk Areas*<sup>18</sup>. The ASEAN Intergovernmental Commission on Human Rights reviewed in its study on CSR and Human Rights measures with reference to the Guiding Principles<sup>19</sup>. On a national level, some states started specific initiatives in the area of business and human rights. In China, for example, the first human rights trainings were performed and several standards developed: for instance, the *Guidance on Social Responsibility for Chinese Electronic and Information Industry* mentions the Guiding Principles and the China Chamber of Commerce of Metals, Minerals & Chemicals requires its members to conduct human rights due diligence surveys<sup>20</sup>.

Although the NAP's consultation processes are positive in creating awareness of the business' responsibility, a study found that none of the published NAPs includes a base line assessment to identify existing protection gaps, and some of the plans miss pointing out specifically how to monitor the implementation<sup>21</sup>. In terms of content, these NAPs neglect the access to remedy and the outline of future activities. Instead, most of them focus on past actions and awareness raising actions instead of regulator mechanisms<sup>22</sup>. Regarding the grievance mechanisms, OECD countries aim to strengthen the National Contact Point (NCP) that are already established to support and promote the OECD Guidelines for Multinational Enterprises and address issues that arise from non-observance<sup>23</sup>.

Some countries made first steps towards binding regulations regarding the most severe human rights abuses in the supply chain. For example in 2015, the British government passed into law the Modern Slavery Act (2015) demanding British companies to publish evidence that

their operation does not rely on slavery. After the financial crises of 2008, the Dodd-Frank Wall Street Reform And Consumer Protection Act mandated the United States Securities and Exchange Commission to create rules that address potential conflict minerals from the Democratic Republic of the Congo and to gather information regarding mine safety. The Californian Transparency in Supply Chains Act (2010) requires companies doing business in California with revenues over US\$ 100 Million to disclose their efforts, such as auditing, verification processes and trainings in eradicating human trafficking or slave labor practices from its direct supply chain. A recent initiative to prevent human rights abuses is the Stop Blood Tomatoes Act, a bill sponsored by Rep. Juan Vargas (D-San Diego). Under this proposal, U.S. companies would have to certify independently their suppliers to guarantee that they do not use child or forced labor<sup>24</sup>. In 2015, President Obama's Executive Order 13627 mandated that all federal contractors take action to combat human trafficking and slavery in their supply chain<sup>25</sup>. This year, President Obama closed a loophole of the Tariff Act of 1930 that allowed goods made with slave labor entering the country because of "consumptive demand" — when goods are in short supply in the USA. Now, this "prohibition on the importation of goods made with convict labor, forced labor, or indentured labor" is embedded into a broader trade enforcement bill that prevents 136 goods from 74 countries to be imported, including garments produced by child or slave labor in Argentina; seafood from Thailand, cotton and gold from Burkina Faso; electronics, toys and bricks from China; coffee from the Ivory Coast and textiles from Ethiopia<sup>26</sup>.

## **THE RESPONSIBILITY OF THE BUSINESSES TO RESPECT HUMAN RIGHTS**

The Guiding Principles clarified that respect for human rights is a social norm that exists even in the absence of laws or law enforcement. This respect includes both the direct operation and the indirect impact through business relations, such as business partners, value chains, state and non-state entities. It is relevant for all businesses, from small and medium-sized enterprises to large transnational corporations. Each company has to identify the specific impact of its business activity on human rights, depending on its size, sector and countries of business operation. As a company faces multiple human rights challenges, it is necessary to prioritize the most severe human rights abuses or those in which a late response would make the adverse impact irremediable. The challenges for an agribusiness that plants cotton with a high input of pesticides and herbicides as well as a high water use has a different impact on workers and communities, as a bank that might be challenged to offer equal access to credit for men and women or for different ethnic or social groups. Although, there is no "one size fits all" approach, the policies and processes a company establishes must include three elements:

- A policy commitment that outlines the expectation, is approved by senior management, informed by internal and external expertise, communicated internally and externally, and reflected in operational policies.
- An on-going human rights due-diligence process to address and track the impact on human rights, that includes all relevant stakeholders, draws on internal as well as external expertise, has clear defined indicators, integrates its findings into the operational policies, and communicates them to all parties.
- A legitimate remediation process in case of adverse human rights impact through impartial, clear and known procedures.<sup>27</sup>

## THE ACCESS TO REMEDY

According to the Guiding Principles (25 – 31), the States' duty to protect human rights includes access to a judicial or non-judicial remedy for corporate related human rights violations. States should also ensure that there are no barriers impeding the access to remedy. At the same time, businesses and business initiatives for human rights related standards should guarantee that effective grievance mechanisms are in place. Effectiveness criteria include that these non-judicial grievance mechanisms are legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning, based on engagement and dialogue.

The access to remedy is crucial for victims of human rights abuses; however, it is the most challenging element for governments and for businesses to implement.

There are established institutions or procedures that already serve to remediate negative effects of business operations: for example, the National Contact Points established after the OECD Guidelines for Multinational Enterprises provide a mediation and conciliation platform for resolving conflictive issues. However, these NCPs are often inefficient due to lack of resources and expertise and might face a conflict of interest, as most of them are integrated into the economy or foreign investment governmental agencies.<sup>28</sup>

In other cases, companies were held accountable for human rights violations in their foreign operations based on the U.S. Alien Tort Claims Act (ATCA) from 1789. However, the *Esther Kiobel v Royal Dutch Petroleum* decision of the U.S. Supreme Court in 2013 limited further lawsuits, as it denies an extraterritorial application.

Although, as crucial as the remedy mechanisms are, negative business impacts on human rights are not addressed adequately, especially in non-OECD-countries. Most of the victims of corporate human right abuses do not receive remedy.<sup>29</sup>

## METHODOLOGY

The following description shows how five selected companies from the chemical, automobile, information technology, retail, and consumer goods sectors implemented the policies and processes regarding commitment, due diligence and remediation processes with its challenges and its solutions. These five companies were among the first to commit to the Guiding Principles, and two of them, HP and Unilever, are using the newly developed *UN Guiding Principles Reporting Framework*<sup>30</sup>. As multinationals, those five companies share many similarities. However, as they are from different sectors, they also face specific issues and challenges. The following paragraph describes each company's history, specific challenges, and recent problematic issues discussed by media and civil society. A checklist was used based on the earlier mentioned three elements – commitment, human rights due-diligence process, and remediation – to assess how the company implemented the Guiding Principles. In addition, the companies were contacted directly to obtain more information about the remediation process. Analyzing the information the companies post on their own and on the Business and Human Rights Resource Centre (BHRRC) website, as well as validating the information through reports from non-profits, academia or media, provides an overview on best practices and challenges.



# **BEST PRACTICES AND CHALLENGES IN DIFFERENT SECTORS**

A business' activity might have a direct or an indirect impact on human rights. Although it is easier for a company to mitigate its direct effects, the company is also responsible for its indirect impact: complicity is the act of helping to commit a crime. Therefore, if a company engages with business partners that commit human rights abuses, the company is responsible. However, even if no law is broken (as in the case of Apple pushing Foxconn to fulfil more orders in a shorter time), it is a social benchmark and can cost the company its reputation. Within a company, the different departments might deal with different human right issues and have to ask different questions to address these issues. These questions can be addressed within risk management or quality management systems that many have been implemented already to monitor the companies' conduct in the areas of the environment and anti-discrimination or to prevent employees from criminal misconduct. If a company works with overseas suppliers, it has to check out potential risk factors from economic and political situations to differences in accounting practices or environmental standards. The same thorough due diligence applies for human rights and involves human rights impact assessments within all departments<sup>31</sup>.

Multinational companies with stores, offices or manufacturing plants in dozens of countries and thousands of suppliers share many similarities. In general, they might face the tension between holding up high ethical standards and offering competitive products. The main human rights issues regarding their employees consist in offering wages, working hours, periodic paid holidays and benefits that guarantee a decent livelihood, and in providing healthy and safe workspaces without discrimination and harassment. It includes the right of collective bargaining and the right to form and join trade unions. Regarding the clients and consumers, the responsibility of the business is to offer safe and healthy products and services. Businesses are also responsible to produce and recycle their goods in a way that is not damaging to the environment and communities. The same good business

conduct applies to the whole supply chain with tier  $n$  suppliers. In some cases, the variable  $n$  might represent up to ten sub-suppliers. To implement, monitor, assess, readjust human rights policies and offer remedy for abuses in the supply chain is a daunting task: the company has to deal with different national legislations, with different corporate cultures, with legal and illegal loopholes designed to circumvent human rights standards.

## BASF SE

The chemical company BASF, founded in 1865 and headquartered in Ludwigshafen (Germany), played a pioneering role in acknowledging its responsibility for human rights and served as a role model for other German transnational corporations. With its 113,000 employees in more than 80 countries and a supply chain that encompasses thousands of companies, BASF's biggest challenges are the safety of its products at every stage of production, the use and recycling of its products, and security procedures at the production facilities. Recent claims and lawsuits held BASF responsible for human rights violations in its supply chain such as the massacre of 34 workers in the South African platinum Marikana mine or the unsafe working conditions in a Brazilian supplier facility that exposed workers to toxic farm chemicals<sup>32</sup>.

BASF was the first German company to publish an environment report and an early-adopter of human rights policies and procedures. It created the position of a human rights compliance officer and developed a Social Compliance Impact Assessment. BASF took part in the aforementioned United Nations consultation on business and human rights, and joined the Global Business Initiative on Human Rights (GBI) to advance human rights issues in business operations worldwide<sup>33</sup>. It is listed on the Dow Jones Sustainability Indices also for its human rights and labor standard commitment, and ranks 11 on the SustainAbility list of the most sustainable companies worldwide. BASF signed up for *Responsible Care*, a voluntary initiative of the chemical industry to improve health, safety, security and environment performance.

BASF's policy commitment *Our Responsibility to Respect Human Rights* uses the Guiding Principles as its main reference point: Its human rights policies and procedures are organized according to the three elements, commitment, human rights due diligence and complaints mechanism. The commitment refers to the United Nations Covenants, the International Labor Organisation's (ILO) *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*, the ILO Core Labor Standards, and the OECD *Guidelines for Multinational Enterprises*. In 2013, BASF Chairman Kurt Bock signed new policies that updated its global code of conduct with a commitment to human rights, labor and social standards<sup>34</sup>.

The BASF's human rights due-diligence process includes its main stakeholders. The company also adopted global rules, guidelines and procedures, which observe human rights standards regarding security, such as the appropriate use of measures during security assignments. BASF aims to harmonize the social and labor standards in its worldwide operation by committing to voluntary standards, inspecting working conditions and talking to worker representatives. In countries with rules or laws deviating from international standards, BASF seeks the dialogue with relevant stakeholders to find alternative communication channels. The suppliers are screened through the *Together for Sustainability* (TfS) initiative of leading chemical companies. The matrix of TfS helps to identify high-risk suppliers, plan improvement, or, in egregious cases, terminate the business relationship. Supplier training plays a crucial part in improving labor standards. For example, in cooperation with the Pakistani Employers' Federation and the ILO, BASF organized trainings of 400 managers in all major cities of Pakistan<sup>35</sup>. To evaluate the adherence to the policies, BASF established a three –pronged monitoring system with the following instruments:

- external multilingual compliance hotlines to report grievances on labor and social standards,
- annual survey of all the BASF companies,
- dialogue with employee representatives and international organization<sup>36</sup>.

For the labor standards, BASF has established clear indicators, such as minimum age or access to unionization and publishes the results of its audits. For example, the 2014 audit revealed that excessive working hours, failed overtime pay, and salaries below minimum wage were the main problems, especially in China<sup>37</sup>.

Regarding a remediation process, internal experts investigate every employee's or worker's complaint made to the anonymous hotlines and guarantee a resolution within a certain timeframe. For the surrounding communities of the larger manufacturing plants, BASF set up *Community Advisory Panels* (CAP) as a dialogue forum between plant management and local residents where, complaints are processed (anonymously, if necessary)<sup>38</sup>. BASF developed internal minimum standards for these CAPs based on the Guiding Principles. However, there is not enough information to verify whether the remediation process meets the criteria of the Guiding Principles.

## Ford Motor Company

The Ford Motor Company, founded in 1903 and headquartered in Dearborn (Michigan), is the first automobile company to pursue a comprehensive human rights strategy. Ford faces a variety of challenges from working conditions of the over 180,000 employees and workers in its own factories within the U.S. and abroad, as well as in the supply chain. Other issues involve the extraction, collection or creation of the raw materials for automobile production, questions regarding vehicle safety, as well as the environmental footprint of its manufacturing and recycling processes, and the use of the automobiles. In recent months, Ford faced a lawsuit alleging sexual harassment, discrimination and retaliation in its Chicago assembly plant<sup>39</sup>. Another recent litigation against Ford involves the forced disappearance of former workers at Molinos Rio de La Plata during the Argentinean military dictatorship<sup>40</sup>.

As early as 2003, Ford introduced the *Code of Basic Working Conditions* in its own factories. One year later, the contract terms on working conditions for the tier 1 supplier followed, as well as factory training and assessment in 22 target countries. In 2012, Ford updated its commitment to human rights in its *Code of Human Rights, Basic Work Conditions and Corporate Responsibility* citing the Guiding Principles, the most important international covenants and the *Global Sullivan Principles*. This code addresses a wide range of issues in Ford's own factories as well as in its supply chain. The fact that the code is signed by then CEO Alan Mulally shows its high relevance<sup>41</sup>.

Ford participates in various industry and cross-industry forums including: the UN Global Compact Advisory Group on Supply Chain Sustainability, the CSR Europe Automotive Working Group on Supply Chain Sustainability, Automotive Industry Action Group (AIAG) and the Electronics Industry Citizenship Coalition (EICC). As many suppliers are shared across the car manufacturing sectors, early on Ford initiated a working group within the Automotive Industry Action Group to improve working conditions throughout the automotive supply chain. The working

group created a set of statements that includes core elements of the individual company's policies, industry codes and international standards. Core elements address child labor, forced labor, freedom of association, discrimination and harassment, health and safety, benefits and working hours. In addition, starting in 2010, business ethics and environment protection were added<sup>42</sup>. In 2014, the Automotive Industry Guiding Principles to Enhance Sustainability Performance in the Supply Chain was aligned between the AIAG and CSR Europe Automotive Working Group and supported by 14 Original Equipment Manufacturers (OEMs). Ford's own code of human rights goes even further and refers to community engagement, indigenous populations and its supply chain.

Each year, through either the AIAG or CSR Europe Automotive Working Group member companies agree on priority location for joint trainings, which include in-classroom trainings as well as e-learning. After the trainings, the suppliers are expected to cascade the training materials to their management, their workers and to their supply chain regarding expectations of working conditions.

To assess working conditions in supplier facilities, Ford has developed specific risk indicators, and audits its suppliers on a regular basis. In 2006, Ford discovered that charcoal used for pig iron produced with slave labor in the Brazilian Amazon region was found in its supply chain. Ford immediately cancelled sourcing from this site and helped its supplier to set up a management system to prevent forced labor products entering the supply chain<sup>43</sup>. Ford has conducted subsequent reviews of the steel and casting supply chain and has not found any evidence of forced labor associated with pig iron.

The summarized 2015 audit results indicate that in some cases facilities did not conform to the outlined policies and lists corrective actions to ensure future compliance. Prevalent issues identified were:

- health and safety issues, such as insufficient lighting and emergency exits, evacuation maps posted only in English, no visible fire alarm in high noise area,

- no appropriate timekeeping systems resulting in a failure to ensure working hours and rest time limits are followed,
- the lack of child labor avoidance policies,
- the lack of assessments regarding the status of labor and ethics management systems to identify improvement opportunities<sup>44</sup>.

Ford acknowledges that there may be hidden issues difficult to identify during the audit process. In addition, Ford states that some suppliers lack developed management systems and improvement processes to guarantee compliance. To address the issues raised in the audit, the suppliers are required to prepare action plans, with clear indicators, responsibilities and timelines. Ford reviews and approves these plans and re-audits the facility in question within six to 12 months.

Even more complex is the tracking of raw materials that pass through six to ten suppliers before reaching Ford. Due to a provision in the aforementioned Dodd-Frank Act, Ford focuses especially on the conflict minerals from the Democratic Republic of Congo and its nine neighboring countries. These minerals, tantalum, tin, tungsten and gold are used in automotive applications, such as onboard electronics, trim components, metal alloys, lubricity and hot-dip coatings. For the conflict mineral due diligence process, Ford uses a multilateral approach that includes the OECD five-step framework<sup>45</sup>, the installation of a cross-functional corporate management system and the upgrading of an existing automotive database (*International Material Database System*) with data regarding product material content. At the same time, Ford leads the conflict minerals work group at the AIAG, participates at the *Public-Private Alliance For Responsible Minerals Trade*, and represents the AIAG at the *Conflict-Free Smelter Program*.

Another challenge are the 17 elements labeled as Rare Earth Elements (REE) that are increasingly used in electric vehicles as those are frequently extracted under unsustainable mining practices. To avoid being complicit in human rights abuses, Ford focuses on the development of new hybrid batteries that uses less or none of these elements<sup>46</sup>.

Although Ford acknowledges and lists various challenges in its vast supply chain, little is said about how Ford provides a remediation process for human rights abuses linked to its business activities. Statements are very general and show that Ford has addressed some violations and demanded improvements; however, it is not clear whether these procedures meet the criteria of an effective grievance and remedy mechanism.



## H&M Hennes & Mauritz

H&M Hennes & Mauritz AB, founded in 1947 and based in Stockholm (Sweden), was one of the first retailers to tackle social standards in its supply chain. H&M faces challenges regarding data privacy and advertising, discrimination and harassment in its 3.600 worldwide stores in 58 countries with 132.000 employees, the use of child labor in the cotton fields, the labor standards in the 900 supplier factories with 1.6 million workers as well as the use and recycling of its products. General criticism focuses on the H&M business model offering inexpensive clothing (fast fashion) that relies on cheap raw materials and cheap labor<sup>47</sup>. A recent Human Rights Watch report brought the poor working conditions in Cambodia to the public attention. It presents a case study of a direct H&M supplier, which outsourced to a not-authorized subcontractor where the workers had to produce for H&M on Sundays without overtime pay<sup>48</sup>.

As early as 1997, H&M developed a code of conduct based on the ILO's *Fundamental Principles and Rights at Work* to make its supply chain more sustainable by improving work conditions and environmental practices. One year later, H&M inspected the first factories and put its monitoring program into practice. In 2002, the first sustainability report was published and today, the sustainability team consists of 200 people who work in 21 locally based production offices<sup>49</sup>.

In 2012, H&M adopted the Guiding Principles in its human rights statement. This statement refers to the UN Human Rights Covenants, the *UN Convention on the Rights of the Child* and the *UN Convention on the Elimination of Discrimination Against Women* (CEDAW). It further mentions its adherence to the Global Compact and the *Children's Rights and Business Principles* among others. The CEO and grandson of the company founder, Karl-Johan Persson signed the H&M sustainability report *Conscious Action* (2016) demonstrating the relevance of human rights for the company. In this report, H&M states that more than 20 per cent of the cotton is certified, recycled or

grown under the Better Cotton Initiative. The goal is 100 per cent in 2020. In contrast to the usual standards in this sector, where there is a gender discrepancy between managers and general staff, at H&M both the staff and the managers are 78 per cent female. Based on the Guiding Principles, H&M established trainings for its employees in relevant function and a complaint procedure for all employees to ensure remediation.

Concerning its supply chain, H&M cooperates with the ILO to strengthen fair negotiations in the supplier factories, and created transparency by publishing the names of its fabric and yarn suppliers. H&M collaborates with the *Sustainable Apparel Coalition* and applies the Higg Index with its clear indicators to assess sustainability throughout the apparel and footwear products' entire life cycle. The company refers to its successful collaboration with the Ethical Trading Initiative in the spinning mills in Tamil where under aged girls had been routinely employed<sup>50</sup>, and asks its direct suppliers to sign a commitment to avoid cotton from Uzbekistan and Turkmenistan where child labor and forced labor on cotton fields are endemic<sup>51</sup>. H&M does not allow sandblasting to get the used-look for its products, which causes severe health issues such as the lung disease silicosis (= black lung disease). In its supply chain, H&M identifies strategic partners for their sustainability goals, to whom H&M gives more and bigger orders. H&M has outlined a Roadmap For a Living Wage that establishes clear goals, indicators and milestones: By 2018, H&M strategic suppliers have to pay a fair living wage, which would affect 850,000 workers. At present, according to H&M, 90 per cent of the suppliers' workers in Bangladesh and Cambodia earn the national minimum wage or more. However, a minimum wage is not enough to meet the needs of a worker, which can be different within a country. The *Roadmap for a Living Wage* provides workers with tools to negotiate a wage that allows a decent living. The Fair Wage Strategy verifies the outcomes and includes assessment, training, remediation, implementation and later impact assessment in cooperation with management, workers and their representatives. To estab-

lish this strategy, H&M consulted with various stakeholders such as the International Organisation of Employers, IndustriALL Global Union, Swedish Trade Union IF Metal, Clean Clothes Campaign, Workers Right's Consortium, International Labor Rights Forum, Asian Floor Wage, Fair Trade International, and the Cotton & Textiles at the Solidaridad Network<sup>52</sup>.

Regarding grievance mechanisms, H&M has established a direct hotline to the local production offices, and its sustainability teams reach out to various stakeholders regarding human rights concerns. The company has set up an online tool to collect human rights related information, to systematize these learning experiences and to avoid further violations. Before entering a business relation with H&M, a supplier must meet H&M's minimum requirements, such as zero tolerance for forced or child labor and payment of minimum wage. A team of 70 auditors regularly visits the suppliers and based on the outcome creates a correction plan that is monitored during the follow-up visits. The Fair Labor Association<sup>53</sup> undertook external audits and trainings of the suppliers. In cooperation with the non-profit SHIFT, H&M created a Human Rights Remedy Guide, based on the Guiding Principles, which assists in identifying, managing and remediating human rights violations in the supply chain. In November 2015, H&M signed a global framework agreement with the IndustriALL Global Union that serves to protect the labor rights of 1.6 million workers in its supply chain. Based on that agreement, a Burmese factory in H&M supply chain reinstated dismissed workers and recognized the workers' union. Although H&M had no business relations with the Rana Plaza factories, it contributed through its foundation to the Rana Plaza Donors Trust Fund managed by the ILO<sup>54</sup>.

## HP Inc (former Hewlett-Packard)

The information technology company HP, founded in 1939 and based in Palo Alto (California), has the largest supply chain in its industry with 400,000 workers in 400 factories in more than 45 countries. Its major challenges are to provide an inclusive and diverse company culture for its over 300,000 employees and to guarantee a decent livelihood for the workers in its supply chain. Further challenges are the use of its surveillance technology by oppressive regimes, the avoidance of conflict minerals in its production and the recycling of the manufactured goods.

HP's commitment to human rights references the Universal Human Rights Declaration, the Guiding Principles and the Global Compact. HP has 70 different policies; however, the most significant is the standards of business conduct signed by CEO Dion Weisler<sup>55</sup>. The Supply Chain Responsibility Program includes the hundreds of production suppliers that provide materials or manufacture for HP as well as tens of thousands of non-production suppliers that provide goods and services such as staffing, telecommunication and travel.

HP offers its own employees a discrimination and harassment free work environment, learning or volunteer opportunities and various wellness benefits. Regarding the workers in the supply chain, HP's human rights strategy was significantly influenced by the Global Compact, which includes human rights as well as labor standards. For the *UN Global Compact Learning Forum* in 2003, HP organized an evaluation of the company's internal human rights policy. Based on the recommendations of this study, the position of a human rights manager was created, and consistent global human rights policies were developed to respond to the inadequate human rights legislations in some countries where HP's suppliers are located. Furthermore, the study

recommended including the impact of supplier factories on local communities as well as the demeanor of the security forces in the supplier's code of conduct. In the following years, in cooperation with the Global Compact, HP developed a starter tool kit on human rights and was one of the few companies that supported the United Nation's *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regards to Human Rights*. In its reports, HP explained in detail the problems with the supply chain factories, such as the dismissal of pregnant women, a working week of up to 84 hours or other issues regarding the suppliers of the suppliers. To solve problems in the factories, HP cooperated with non-profits, such as the Dutch organization SOMO or the Hong Kong-based SACOM. SACOM educated more than 4,500 workers in China about their rights and maintains an anonymous complaint hotline.<sup>56</sup>

HP is active in the BSR Human Rights Group and in the Electronic Industry Citizenship Coalition, especially in its working group on the Guiding Principles. The company partnered with the non-profit Social Accountability International (SAI) to develop initiatives such as the TenSquared Program that aims to achieve workers' safety in less than 100 days<sup>57</sup>. Within the BSR's *Health Enables Return* (HER) project, HP promoted health awareness in supplier factories in China, Malaysia, Mexico and Thailand. HP uses different ways to address the challenges of migrant workers in China. In one case, HP relocated a factory from Shanghai to Chongqing in Central China, so that workers do not need to migrate and leave their families behind<sup>58</sup>. Further, HP developed the *Supply Chain Foreign Migrant Worker Standards* that is the first code in the industry to address issues associated with migrant workers, such as retention of passports or other documentation and worker-paid recruitment fees. HP collaborated with the Chinese non-profit Inno to pilot a training program on parenting for migrant workers. The participants reported overall satisfaction with the program, which addressed issues of improving work-life balance, coping with family-related stress, and strengthening the communication with children<sup>59</sup>.

Regarding conflict minerals, HP cooperates with *Solutions for Hope*, a program that supports companies, non-profits and governments to responsibly source minerals from conflict-

prone regions. HP reports that 76 per cent of the smelters are compliant (or are in the process of becoming compliant) with the criteria of the conflict-free smelter program.

In 2014, HP conducted 200 audits and plans to expand its audit program at all high-risk suppliers annually. It also audits non-production suppliers, such as call centres and temporary labor agencies to tackle issues such as excessive work hours and the treatment of migrant labor. It summarizes the findings and lists its challenges<sup>60</sup>; however, it is not clear whether remediation of these challenges is addressed effectively. HP's Supplier Code of Conduct asks its supplier to set up a management system that allows workers' feedback, participation and a corrective action process for remediation. Regarding grievance mechanisms, HP provides several channels; the two main ones are:

- A confidential compliance 24-hour toll free hotline with translators available to report anonymously grievances is available to people inside and outside the company. In 2014, over 1,000 complaints were reported.
- Through the Standard of Business Conduct mailbox, complaints can be send via e-mail to the Ethics and Compliance Office.

The Ethics and Compliance Office and the Audit Committee review the formal grievances at least quarterly. If the grievances and allegations result in new insights, programs such as the Supply Chain Responsibility Program and the Human Rights Program are adjusted accordingly. HP uses third party auditors such as Environmental Resources Management (ERM) and Verité to validate the supplier audits, especially if these suppliers are linked to allegations in non-profit reports.

In addition, HP tracks and investigates potential human rights allegations made by other stakeholders and media. For example, in 2013, HP received 22 human rights-related allegations, including grievances concerning the suppliers. Five of these allegations remain unsolved.<sup>61</sup>

## Unilever

Unilever, a British-Dutch company, founded in 1929 and based in Rotterdam and London, serves as a model company for its overall sustainability practices and for its open stakeholder discussion on human rights in the supply chain. As a consumer goods transnational corporation with 172,000 employees, 10,000 suppliers for raw materials, packaging and goods for resale, and over 1 million non-production suppliers, it faces numerous challenges, such as employees' diversity and non-discrimination, topics linked to agriculture (the application of chemicals, deforestations, land grabbing) as well as the use of its products, the waste and recycling. In particular, its palm oil production is in the focus of activist campaigns because of the resulting destruction of native forests<sup>62</sup>.

As early as 1995, Unilever started the *Sustainable Agriculture Initiative*, and one year later published its first environmental report. In 2010, Unilever launched the *Sustainable Living Plan*, a blueprint for sustainable business. Since that time, for the fifth year in a row, a survey by the think tank SustainAbility and the consultancy GlobeScan voted Unilever the most sustainable company<sup>63</sup>.

In 2013, Unilever appointed a global vice president for social impact to lead Unilever's human rights activities, and, one year later, devised a five-year strategy on human rights. The company has a framework of 24 code policies that addresses a multitude of ethical business conduct issues such as employees' diversity, human rights in the supply chain, fair business practices, lobbying, anti-bribery, and environmental protection. The commitment to human rights, to the Guiding Principles and other relevant declarations, as well as to the OECD Guidelines for Multinational Companies is expressed in Unilever's Human Rights Policy Statement (2014) and translated into 12 languages. The responsibility in this area lies with the highest level, the Unilever's CEO Paul Polman, supported by the Unilever Leadership Executive.

In relation to the use of security forces, Unilever refers to the *Voluntary Principles on Security and Human Rights*. The company also endorsed the *Women's Empowerment Principles* and supported the Global Compact's *Business for Peace Platform*. Unilever cooperates with the International Union of Food Workers and reports that more than 80 per cent of the manufacturing employees are unionized. The dialogue with the union started after four complaints concerning violations of labor union rights were submitted to the UK National Contact Point of the OECD<sup>64</sup>.

In order to review its economic and social impact in its supply chain, Unilever, in cooperation with non-profits such as Oxfam, conducted studies in Indonesia, Vietnam and South Africa<sup>65</sup>. In Vietnam, for example, Unilever agreed to open its operation to the Oxfam research team to investigate the labor conditions. The findings highlighted that although there is a union, workers cannot raise their concerns collectively and have no access to collective bargaining. Although Unilever's suppliers pay a higher salary, more than the national minimum wage, it is still not enough to cover the basic needs. Especially precarious is the situation of subcontract workers with even lower wages and excessive overtime. In response to Oxfam's recommendations, Unilever committed to implement changes that Oxfam will review after two years<sup>66</sup>.

Unilever globally designed and implemented locally different formats for training. In 2013, a global *Winning With Integrity* week, included a survey on human rights, followed by the *Speaking Up* campaign in 2014. In 2013, on the day of the Universal Declaration of Human Rights, Unilever celebrated its first Human Rights Day and launched a Social Impact Hub where employees can learn how to create a positive social impact. The hub offers access to information on human and labor rights including guidance and best practices. Since 2015, Unilever established mandatory all-employee compliance training focusing on its Code of Business Principles<sup>67</sup>.

Unilever is a founding member of the Roundtable of Sustainable Palm Oil and signed a memorandum of understanding with its biggest palm oil supplier, Wilmar, to guarantee that the



production process does not involve deforestation and/or human rights abuses<sup>68</sup>. It also uses other certification schemes such as Fairtrade, Bonsucro, the Roundtable for Responsible Soy, and the Rainforest Alliance<sup>69</sup>.

In 2015, Unilever used for the first time the newly developed framework to report explicitly on the Guiding Principles. In this report, it identifies the eight most salient topics: working hours, discrimination, fair wages, forced labor, land rights, health and safety, harassment, freedom of association.

Regarding remedy, the Unilever operates a prevent-detect-respond framework. It offers internal and external communication channels for raising concerns, anonymously if desired. Since 2012, a web-based reporting system is available. In 2014, Unilever found that from the 1,100 reported incidents, 43 per cent were substantiated and led to some sort of sanctions, ranging from verbal warnings to the dismissal of 278 employees or legal actions. The confidential Code Support Line can be used also by suppliers or their employees. Unilever evaluates its suppliers with a country-based risk matrix to determine the need for an audit. The frequency of a re-audit is based on the supplier's score of the initial audit. The more non-compliance detected initially, the sooner a re-audit is done. Suppliers unwilling or unable to comply are delisted<sup>70</sup>. The company also promotes grievance mechanisms for the suppliers' workers. However, the Oxfam report stated that the suppliers' grievance mechanisms in Vietnam are ineffective as the workers lack confidence to use them<sup>61</sup>. At the end of 2014, Unilever started to identify best practices of individual grievance mechanism that could be incorporate in its own business operations.

## CONCLUSION AND SUMMARY

With the Universal Declaration of Human Rights in 1948, several UN-led initiatives attempted to define the social responsibilities for transnational corporations. While none of these initiatives reached a consensus, they started important discussions and contributed to a paradigm shift regarding business' responsibility for human rights in the absence of laws or law enforcement. The unanimous approval of the non-binding United Nations Guiding Principles on Business and Human Rights in 2011 provided a framework about duties, responsibilities and rights of the different stakeholders. Recent human rights legal initiatives in different countries indicate that some of these non-binding soft laws might be transformed in a binding rules or regulations. More than 30 governments began to create a National Action Plan on Business and Human Rights and several of the largest companies, especially those with direct consumer contact, which are more exposed to negative media and civil society attention, started to address human rights issues.

The presentation of five early adopting companies from different sectors showed that the implementation of human rights is a vast task that encompasses hundreds of thousands of employees and even more workers and employees at the tier n suppliers. All five companies integrated into their business operation the three elements that the Guiding Principles require: commitment, human rights due-diligence process, and remediation.

The CEOs of all five companies have signed the commitment to human rights that outlines the expectation to respect human rights in all business operations. All commitments refer to various international covenants and standards and are transformed into multiple policies and codes on conduct addressing various stakeholders and issues. The commitment and the deriving policies are communicated externally and internally by posting on the websites and translating them into different languages. Further, all companies mention that the training of employees and suppliers was crucial in implementing the new policies.

All five companies perform on-going human rights due-diligence processes to track their impact on human rights. They started to assess human rights issues regarding their employees and tier 1 suppliers, and continued to assess more suppliers with the aim to track the whole supply chain. They have clear defined indi-

cators that allow them to identify areas of improvement and they integrate the results and recommendations of the assessment in the new policies. For example, HP started to address the situation of migrant workers in China by addressing the challenges of family members left behind in the home villages and H&M initiated the Roadmap for a Living Wage as in many countries the minimum salary does not guarantee a dignified livelihood. All companies started stakeholder dialogues and/or invited external experts such as Unilever working with Oxfam, Ford working with the Interfaith Center on Corporate Responsibility or H&M working with the Fair Labor Association. All five companies joined working groups of industry-wide associations, the United Nations or other multi-stakeholder forums to exchange ideas and learn about best practices. All companies have a dedicated team that in some cases encompasses several hundred people.

The most difficult element to establish is a legitimate remediation process in case of adverse human rights impact. For the companies' employees, compliance channels are in place that address complaints, anonymously, if required. Some companies have hotlines also for workers in the supply chain and search the dialogue with non-profits or media to learn about negative human rights impacts. However, for the employees and workers at the supply chain or communities living near the supplier factory, a consistent remediation process is more difficult to implement, as some suppliers establish sophisticated procedures to circumvent monitoring or as workers lack the confidence to use the grievance mechanisms. Some companies mention their challenges and their resolutions; others give an overview about their mechanism and do not point out their practical challenges. Unilever provides the most details regarding its attempt for an effective remediation process that tackles human rights abuses in its supply chain. In all cases, the information provided by the companies is not sufficient to verify how efficient the compliance mechanisms are. On one hand, this is due to the need to handle complaints with confidentiality, at the other hand an effective remediation process is very complex and difficult to implement. As many suppliers are situated in states with weak law enforcement, access to remedy is still elusive for the victims of human rights abuses.

This presentation shows many promising changes regarding the businesses' responsibility to respect human rights. These are first steps in a long journey toward an inclusive and fair global economy that provides a just chance for everybody and respects the rights of all: the customers, the employees in the headquarters, the workers in the supply chain, and the communities living next to the factories, fields, or mines.

## LIST OF ABBREVIATIONS

BHRRRC	Business and Human Rights Resource Center
BSR	Business for Social Responsibility
ECCJ	European Coalition for Corporate Justice
ICAR	International Corporate Accountability Roundtable
ILO	International Labor Organisation
NAP	National Action Plan on Business and Human Rights
NCP	National Contact Point
OECD	Organisation for Economic Co-Operation and Development
OHCHR	Office of the High Commissioner for Human Rights
TNC	Transnational Corporation
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNCTC	United Nations Centre on Transnational Corporations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization

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Hoessle, Ulrike (2016): Doing Business Right. Five Years of United Nations Guiding Principles on Business and Human Rights. Experiences from Early Adopting Companies (WWS Series 5). Seattle: WWS Worldwide.

Editing: Sheri Garzelli; layout: Hillary Cachet.

Cover Illustration by the Seattle artist Kristy Yawman ([taurinidesigns.com](http://taurinidesigns.com))

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**The author:** Ulrike Hoessle is a researcher, writer and consultant on business and human rights with WWS Worldwide in Seattle, USA. She worked for nearly 20 years in Europe, Africa and Latin America with nongovernmental organizations and the United Nations, where she managed programs in the area of human rights and environmental issues. With her doctoral research on the United Nations Global Compact, she shifted her focus to businesses and the implementation of human rights, social and environmental standards. She has a Masters Degree in Cultural Anthropology and a Ph.D. in Political Science.



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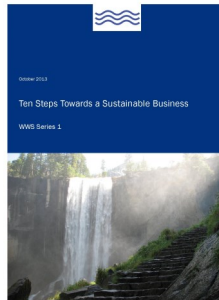
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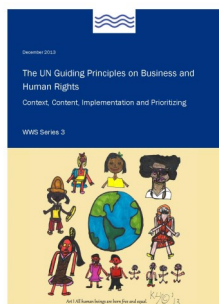
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