Investors, ESG, Human Rights

Robert McCorquodale

UN Working Group on Business and Human Rights

hrc-wg-business@un.org

UNITED NATIONS
HUMAN RIGHTS
SPECIAL PROCEDURES
SPECIAL RAPPORTEURS, INDEPENDENT EXPERTS & WORKING GROUPS

The Working Group
in figures
(2011-2023)

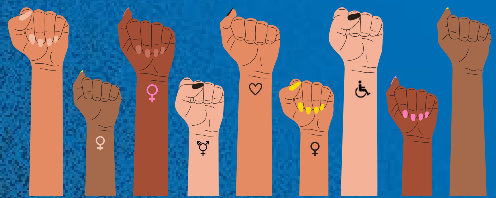
18
COUNTRY VISITS

1100+
COMMUNICATIONS

30
THEMATIC REPORTS

12
ANNUAL FORUMS

Find more information
here:



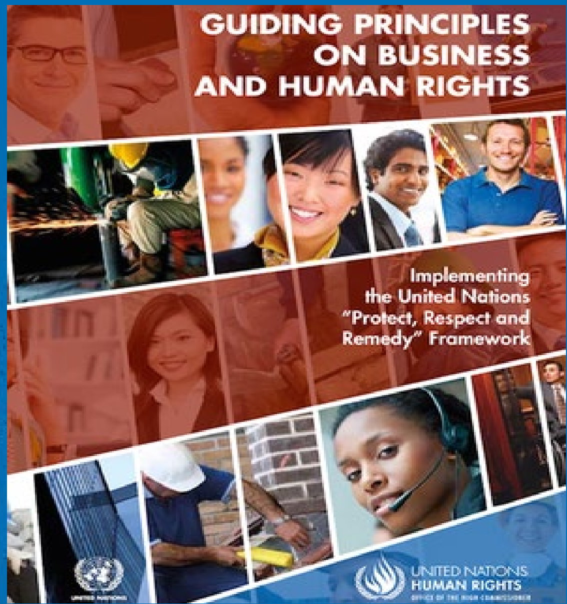
CONTACT US

hrc-wg-business@un.org
@WGBizHRs

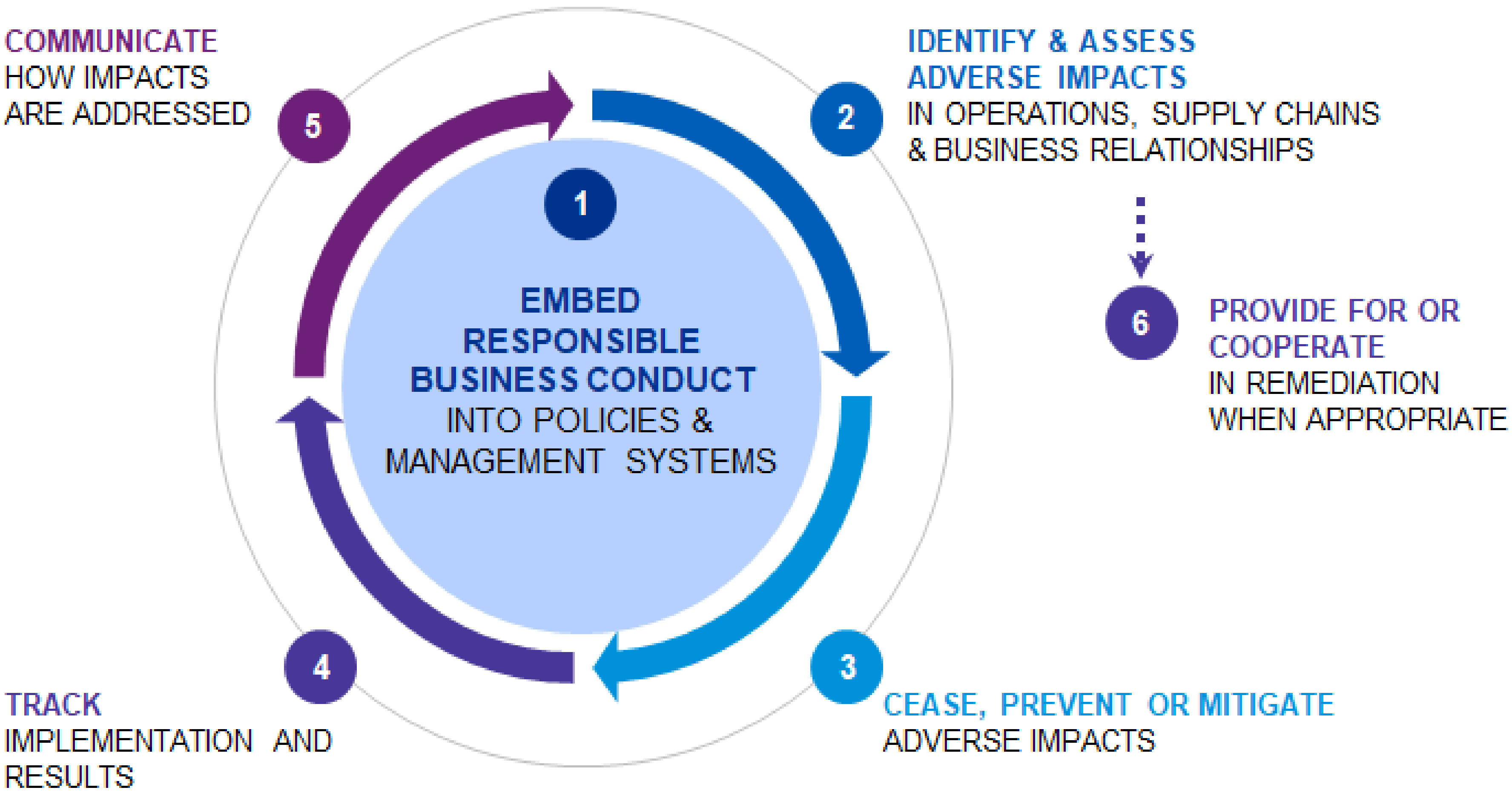
Office of the United Nations
High Commissioner for Human
Rights (OHCHR)
Palais Wilson
52 rue des Pâquis
CH-1201
Geneva, Switzerland

UNITED NATIONS
HUMAN RIGHTS
SPECIAL PROCEDURES
SPECIAL RAPPORTEURS, INDEPENDENT EXPERTS & WORKING GROUPS

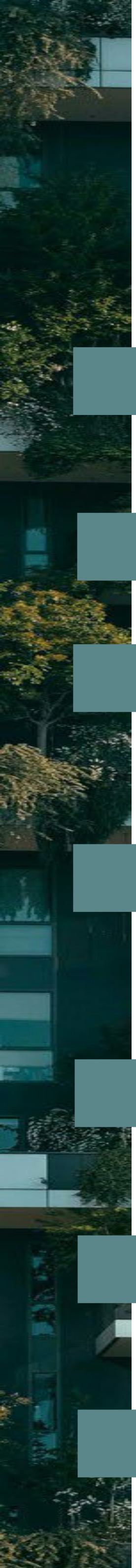
Working Group on Business and Human Rights



Applying Human Rights Due Diligence



- Always include Stakeholder Engagement
- Cause, Contribute to, Directly Linked
- Not Business Due Diligence



Investors, ESG and Human Rights: Key Issues

1. Investors have responsibility to respect human rights. They can do so in different ways depending on type of investor, asset class, etc.

2. ESG and sustainability approaches vary widely.

3. Lack of consistent standards do not help to bridge silos between E, S and G criteria or recognise human rights across them all.

4. A financial materiality approach alone usually does not ensure that adverse human rights impacts on people are identified, prevented, mitigated and accounted for.

5. Existing ESG rating methodologies lack transparency and consistency.

6. Investors have potential leverage to assist investees to respect human rights.

7. There is a need for a collaborative efforts between investors, investees, States and rightsholders.

Key recommendations to Investors (1)

1. Embed human rights in ESG and sustainability policies and strategies.

2. Identify and assess the actual and potential human rights impacts of own and investee activities.

3. Prioritize meaningful stakeholder engagement.

4. Ensure that heightened human rights due diligence is undertaken for investments in conflict-affected areas and high-risk sectors; and divest responsibly.

5. Use leverage over investees to ensure respect for human rights; and disclose their implementation of their responsibility to respect human rights under the UNGPs.

Key recommendations to Investors (2)

6 A double materiality approach could ensure that adverse human rights impacts on people are identified, prevented, mitigated and accounted for.

7 Promote and enable access to remedy for affected rightsholders.

8 Integrate human rights considerations across E, S and G criteria.

9 Invest in capacity-building and human rights education for investors and investees

10 Press strongly for improved, coherent, and standardized data on human rights by data providers; with methodologies and criteria to ensure alignment with the UNGPs.

Relevant Statements

OHCHR Statement (2017): “In practice, there is a ***continuum between ‘contributing to’ and having a ‘direct link’*** to an adverse human rights impact: a bank’s involvement with an impact may shift over time, depending on its own actions and omissions. For example, if a bank identifies - or is made aware of - an ongoing human rights issue that is directly linked to its operations, products or services through a client relationship, yet ***over time fails to take reasonable steps*** to seek to prevent or mitigate the impact, it could eventually be seen to be ***facilitating the continuance*** of the situation and thus be in a situation of ‘contributing.’”

OECD Guidance (2019): “A bank may have facilitated an adverse impact where all of the following elements occur together:

1. The adverse impact caused or contributed to by a client’s activities or projects was ***foreseeable***;
2. The use of proceeds was known (or likely) to be for those client’s ***high-risk activities or projects***; or almost all the client’s activities were ***high risk of causing or contributing to*** the type of adverse impact being considered; and
3. The provision of the finance or underwriting service occurred **without adequate [human rights due diligence**. In this respect, the due diligence processes the bank had in place, and how they were implemented should be considered.”

Relevant Cases

National Contact Points:

- *Equitable Cambodia IDI v ANZ Bank (Aust 2018) – Cambodian sugar*
- *Milieudefensie v ING (Neth 2023) – Indonesian palm oil*
- *BankTrack v UBS, Swiss National Bank, Barclays, HSBC (Swiss/UK, 2024) – US forced labour*
- *Inclusive Development v MSCI, FTSE, S&P (US, UK, Neth 2024) – Myanmar human rights*

UN Working Group on BHR:

- SaudiAramco – climate change