



UNITED NATIONS

*Mandate of the Special Representative of the Secretary-General
on Human Rights and Transnational Corporations and other Business Enterprises*

**THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN
RIGHTS IN SUPPLY CHAINS
10TH OECD ROUNDTABLE ON CORPORATE RESPONSIBILITY
DISCUSSION PAPER**

30 JUNE 2010

1. The corporate responsibility to respect human rights means to avoid infringing on the rights of others and addressing adverse impacts that may occur. This responsibility applies across an enterprise's activities and through its relationships with other parties, such as business partners, entities in its value chain, other non-state actors and state agents.¹
2. Suppliers have the same responsibility to respect human rights as any other business entity. However, this note focuses on enterprises that purchase goods and services from suppliers. It outlines a decision logic for them to manage adverse human rights impacts in their supply chains and meet their responsibility to respect human rights.
3. For the purposes of this note:
 - the term '**adverse impact**' refers to any human rights abuse (e.g., violation of labor standards, non-discrimination norms, threats to the physical security of persons) linked to the product or services being provided to the enterprise. It excludes human rights abuses occurring in a supply chain entity that are unrelated to those products or services.
 - the term '**relationship**' is used to indicate an on-going association with a supply chain entity.
4. The appropriate response by an enterprise to the risk of contributing to human rights abuse through its supply chain is for it to conduct due diligence on its supply chain relationships to identify risks of actual and potential adverse impacts, and to prevent or mitigate both risks and impacts where they arise.²

¹ This is independent of the State duty to protect against corporate-related human rights abuse by taking appropriate steps to prevent, investigate, punish and redress such abuse.

² For the SRSG's most recent discussion of the components of ongoing human rights due diligence, see UN document A/HRC/14/27 (9 April 2010), paragraphs 79-86; available at <http://198.170.85.29/Ruggie-report-2010.pdf>.

5. Where human rights abuses in the supply chain are identified, the enterprise should assess:

- (a) whether the enterprise is implicated in the abuse *solely* by the link to the goods or services it procures (e.g., without contribution from the enterprise, the product is produced by bonded or child labor; or where an enterprise's external security provider commits human rights violations in protecting company facilities);
- (b) whether the enterprise is *also* contributing to the abuse by its own actions and omissions (e.g., where the buyer demands significant last-minute changes in product specifications without adjusting price or delivery dates, leading to labor standard violations by a supplier in a low-margin business);

6. In the event that the enterprise is contributing to the abuse by its own actions or omissions, the responsibility to respect requires that the enterprise take appropriate steps to address those contributions.

7. The remainder of this paper discusses the action the enterprise should take in the event that it is not contributing by its own actions or omissions, but is implicated by its link to the abuse through the product or services it procures.

8. The most common approaches to date have largely been to rely on clauses in contracts, or to set thresholds on the level of trade below which an enterprise's responsibilities would end. But both these responses have limitations.

(a) Enterprises should indeed have in place measures, such as contract provisions, to require and/or incentivize supply chain entities to respect human rights. This can be a useful step towards preventing or mitigating adverse impacts in the supply chain. However, it is not sufficient to meet the enterprises' responsibilities, absent reasonable evidence that the supply chain entities are both willing and capable of meeting the requirements. Moreover, enforcing contractual requirements beyond the first tier of suppliers can pose additional challenges (see paragraph 17).

(b) The suggestion that numerical thresholds can be used to determine when an enterprise's indirect responsibility for human rights harm should require it to take action – such that a company sourcing less than 'x' % of its materials from a supplier or representing less than 'y' % of the enterprise's business need not do anything with regard to identified abuse by the supply chain entity – has two major pitfalls:

- (i) Such thresholds are necessarily arbitrary when applied across very different business sectors and sizes, and unlikely to be appropriate in all circumstances;
- (ii) Such thresholds risk encouraging enterprises to game the system and remain below the threshold that would require them to take responsibility.

9. In sum, reliance on contract clauses is insufficient, while reliance on thresholds is fundamentally problematic.

10. Where an enterprise is implicated in human rights abuses solely by the link to products or services it receives, it should take appropriate action to address any impacts identified. What action will be appropriate, in turn, depends on two key variables:

- (i) whether the enterprise considers the supply chain entity **crucial** to its business; and
- (ii) whether the enterprise has **leverage** over the supply chain entity.

11. The supply chain relationship could be deemed ‘crucial’ to an enterprise if it provides a product or service that is essential to the enterprise’s business, and for which no reasonable alternative source exists.

12. Leverage is considered to exist where the enterprise has the ability to affect change in the wrongful practices of the supply chain entity. Leverage may reflect one or more of a number of factors, such as:

- (a) whether there is a degree of direct control between the enterprise and the supply chain entity;
- (b) the terms of contract between the enterprise and supply chain entity;
- (c) the proportion of business the enterprise represents for the supply chain entity;
- (d) the ability of the enterprise to incentivize the supply chain entity for improved human rights performance in terms of future business, reputational advantage, capacity-building assistance etc.;
- (e) the reputational benefits for the supply chain entity of working with the enterprise, and the reputational harm of that relationship being withdrawn;
- (f) the ability of the enterprise to engage other enterprises that work with the supply chain entity in incentivizing improved human rights performance;
- (g) the ability of the enterprise to engage local or central government in requiring improved human rights performance by the supply chain entity through implementation of regulations, monitoring, sanctions, etc.

13. Based on the definitions above, the enterprise should assess whether the relationship is crucial and whether it possesses leverage. The combination of these variables will yield different conclusions as to what action should be taken.

Situation A: Where the supply chain entity is crucial and the enterprise possesses leverage, the priority must be to use that leverage to mitigate the abuse. If concerted efforts at mitigation prove unsuccessful, the logical conclusion is that the leverage is in fact not what was imagined, and the consequences for decision-making would move to situation (b) below.

Situation B: Where the supply chain entity is crucial to the enterprise but it lacks leverage to mitigate the abuse, its priority should be to seek ways to increase its leverage to enable mitigation. This could take a number of forms, for example:

- (i) offering capacity-building support to the entity to help it address the problems;
- (ii) working collaboratively with other enterprises that have relationships with the entity to incentivise improvements;
- (iii) working with other enterprises on a broader regional or sectoral basis to incentivise improvements;
- (iv) working with local or central government to the same ends.

If these efforts prove unsuccessful, the enterprise will either need to take steps to end the relationship, or it will need to be able to demonstrate that it has done everything reasonably possible to mitigate the abuses, and it also needs to be prepared to face any consequences for its decision to maintain the relationship.

Situation C: Where the supply chain entity is not crucial to the enterprise but the enterprise does have leverage, the enterprise's involvement would require it first to try to use its leverage to mitigate the abuse. If that proves unsuccessful, it can reasonably be expected to take steps toward ending the relationship.

Situation D: Where a supply chain entity is abusing human rights and is neither crucial to the enterprise nor subject to its leverage, the logical conclusion would be for the enterprise to take steps to end the relationship in order to meet its own responsibility to respect human rights.

14. In complex or contentious situations, enterprises and supply chain entities would be well-advised to seek the insights, advice and even validation of key external stakeholders regarding their options and ultimate choice of action.

15. The decision logic described above can be illustrated in a simple four-cell matrix:

	Have Leverage	Lack Leverage
Crucial source/partner	<p>A.</p> <ul style="list-style-type: none"> ➤ Mitigate the abuse. ➤ If unsuccessful 	<p>B.</p> <ul style="list-style-type: none"> ➤ Seek to increase leverage. ➤ If successful, mitigate abuse. ➤ If unsuccessful, take steps to end the relationship; or be able to demonstrate efforts made to mitigate abuse, recognising possible consequences of remaining.
Non-crucial source/partner	<p>C.</p> <ul style="list-style-type: none"> ➤ Try to mitigate the abuse. ➤ If unsuccessful, take steps to end the relationship 	<p>D.</p> <ul style="list-style-type: none"> ➤ Take steps to end the relationship

16. The logic described in the decision matrix can be applied to *existing* supply chain relationships. As for the decision whether to enter into a *new* supply chain relationship with an entity where there is evidence of existing human rights abuses, an enterprise should first assess whether it is likely to be able to mitigate those abuses through its relationship:

- (a) If it assesses that it can, it may enter the relationship if it then pursues options for mitigating the abuses, as illustrated by situations A or B in the matrix;
- (b) If it assesses that it cannot mitigate abuses identified in that entity it should not enter the relationship.

17. An enterprise necessarily knows all of the entities in the first tier of its supply chain. If any of those entities is found to be responsible for human rights abuses, whether directly or indirectly (for instance, in the case of an agent or licensee), the enterprise can apply the logic illustrated by the decision matrix.

18. Beyond the first tier, it can become more difficult for an enterprise to know all the entities in its supply chain and whether any are abusing human rights. With regard to those additional tiers, not knowing about abuses is not a sufficient response *by itself* to allegations of either legal or non-legal complicity if the enterprise should reasonably have known about them through due diligence. Therefore, enterprises should:

- (a) use due diligence to identify **general** areas of risk of serious human rights abuse in their supply chain relationships, drawing on appropriate government,

expert and/or stakeholder advice. General risks may be associated with a particular locale or region, or particular products or materials and their known sources;

(b) take action to mitigate any such risks, including by seeking to ensure that intermediary entities in the supply chain are themselves practicing due diligence and maintaining appropriate standards;

(c) wherever they identify *specific* supply chain entities that are abusing human rights, in line with the decision matrix above, take appropriate efforts to mitigate the abuse (directly or through intermediaries in the relationship chain); and if mitigation is impossible, either take steps to end the relationship (whether directly or via intermediaries) or be able to demonstrate efforts made to mitigate the abuse, recognising the possible consequences of maintaining the relationship.

19. The logic of this process for deciding on appropriate action in relation to an enterprise's direct and indirect adverse impacts is represented in the decision tree below:

