

# WHITEPAPER



## 7 SUCCESS FACTORS FOR HUMAN RIGHTS DUE DILIGENCE

Practical guideline for a successful  
implementation



## RESPECTING HUMAN RIGHTS IS A CORE COMPONENT OF CORPORATE RESPONSIBILITY

Many reports on the subject of business and human rights start with individual cases from the globalized business world – the dam catastrophe in Brazil, child labor in India and starvation wages in Bangladesh. These illustrative examples have two flip sides: on the one hand, they allow for the reaction "How does this concern me?" and on the other hand, they narrow the subject down to outrageous niches.

In 2020 the corona pandemic demonstrated to us the complexity and interdependence of the globalised economy. We face a similar complexity when dealing with human rights risks in a widely ramified global economy. After all, we have seen that **prioritizing, assessing and compromising** is what is needed when a pandemic needs to be brought under control. Decisions have been made that are not positive from an economic perspective. Companies may have to do the same in regards to respecting human rights : identify the key risks, set priorities and protect human rights – even if it is financially costly.

The essential requirements for corporate respect for human rights are set out in the universally accepted **United Nations' guiding principles on business and human rights** ("UN guiding principles"). For German companies, they were concretized in the German government's **National Action Plan on Business and Human Rights** (Nationaler Aktionsplan für Wirtschaft und Menschenrechte, "NAP").

The UN Guiding Principles and the German NAP essentially describe **five core elements** (see Figure 1) that companies must address when implementing human rights due diligence.

Figure 1: The five core elements of human rights due diligence according to the German NAP



The process for implementing human rights due diligence in companies is neither uniformly defined nor clearly prescribed. Each of these core elements come for companies with **their own challenges**. There are no minimum criteria to be met. There is therefore a degree of uncertainty as to the "correct" implementation. **But let's look at it positively**: Companies are given room for manoeuvre in which the implementation can be individually designed.

Based on our consulting practice and experience we have **identified 7 success factors that are decisive for a successful implementation of human rights due diligence**.

# 7

## SUCCESS FACTORS FOR A SUCCESSFUL IMPLEMENTATION OF HUMAN RIGHTS DUE DILIGENCE

1

### **Develop a clear corporate position on human rights**

with the participation of the company's major departments from the very beginning

2

### **Use the risk analysis to first take a look at the entire business activity**

only then prioritise and focus appropriately

3

### **Prioritize risks according to "severity of impact" and "link to the company"**

this allows risks to be differentiated pragmatically

4

### **Actively approach measures for improvement and focus on cooperation**

do not merely consider codes of conduct, guidelines and audits when identifying & implementing measures

5

### **Use existing structures for the integration into company processes**

do not reinvent everything, but use and systematically improve the existing

6

### **Gain valuable insights through targeted dialogue with experts and potentially affected parties**

so that human rights management is more effective and acknowledged

7

### **Understand and implement human rights diligence as a development process**

do not waste time with the "perfect" policy statement

# 1 | DEVELOP A CLEAR POSITION ON HUMAN RIGHTS



NAP core element

"Establishing a basis & formulating a policy statement"

The implementation of a human rights due diligence affects all business areas and requires internal information and resources. It is important to ensure a broad willingness to cooperate at an early stage. When defining measures or adapting existing processes to better take human rights into account, conflicts with other corporate objectives sometimes arise that are not easy to resolve. For this reason alone it is essential that the company management is involved at an early stage and that it provides resources and actively supports the implementation of the human rights due diligence.

## ➤ INVOLVE COMPANY MANAGEMENT AT AN EARLY STAGE

For the development of a policy statement a clear vision has to be defined together with the management. The vision should include the objectives and underlying motivation regarding human rights. In order to ensure active and long-term support of the management, the advantages and disadvantages of a human rights due diligence process as well as the need for financial, human and technical resources should be communicated and discussed transparently and as early as possible.

## ➤ INTEGRATE RELEVANT COMPANY DIVISIONS INTO THE DEVELOPMENT PROCESS FROM THE VERY BEGINNING

It is essential for the effective implementation of human rights due diligence that affected business areas are informed about the relevance of the topic and can also contribute existing knowledge and experience to the development of the company's human rights position. This leads to willingness to devote the necessary attention and resources to the issue. Early involvement of the relevant corporate departments makes it possible to establish a uniform and fundamental conviction throughout the company. This ultimately favors the definition of processes that take into account the central requirements of the various departments.

### Selection of departments to be involved:

The relevant business areas include

- Personnel / Human Resources
- Law
- Communication
- Compliance / Risk Management

For companies with relevant supply chains, the following are also relevant actors:

- Purchasing / Sourcing
- Product management
- Marketing / Sales

For companies with their own production facilities, the focus is certainly on

- Health & safety at work
- Site management, but also
- Warehouse and transport logistics.

As a kick-off to the development of a policy statement we recommend an interactive exchange with selected managers in the relevant departments in order to provide information on the topic of human rights in a corporate context, discuss areas of risk from a corporate perspective and develop a clear positioning and future orientation on the topic of human rights responsibility.



### WE CAN SUPPORT YOU IN FOLLOWING:

- ✓ Creation of a **common understanding** of content and scope of due diligence
- ✓ Development of a **clear commitment** of the company and the management
- ✓ Preparation of a **roadmap** for the implementation of human rights diligence

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## 2 | USE THE RISK ANALYSIS TO FIRST TAKE A LOOK AT THE ENTIRE BUSINESS ACTIVITY

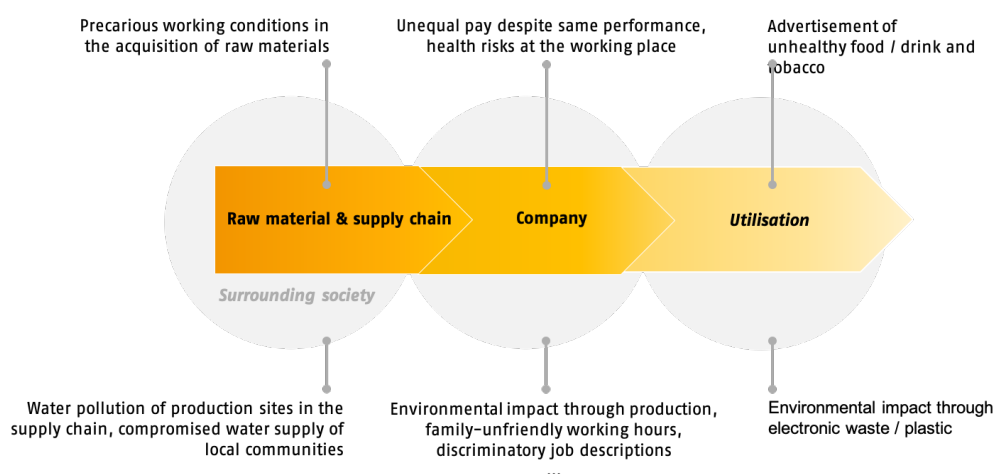


NAP core element  
"Identifying risks & negative impacts"

Often the focus of a company's human rights-related activities is on the supply chain, as this is where the most serious human rights violations are suspected. The company's own business processes with impacts on e.g. surrounding communities at its own sites or downstream business partners are often neglected in the risk analysis. Potential or actual negative effects for which a company is directly responsible are excluded from a pure consideration of supply chain risks. A focus on the supply chain is a pragmatic approach currently chosen by many companies. However, this should be just the starting point, since human rights can also be seriously and directly affected in their own branches and through their own production facilities.

We recommend to consider the entire value chain and all risk areas in the risk analysis. After all, human rights issues can exist anywhere, as Figure 2 clearly demonstrates.

*Figure 2: Systematization of human rights issues according to value chain stages – possible dimensions for corporate responsibility*





However, the process of human rights due diligence should be realized in a long-term and realistic way taking into account the given resources and the complexity of the company. As a first step, all possible risk areas should be considered in an aggregated form. Based on this rough but complete risk analysis, an iterative process of focusing and prioritization follows for the next steps.

A clear roadmap for the implementation of human rights due diligence can be derived from the results of the prioritisation process. In pursuit of continuous improvement, human rights due diligence is gradually being extended to the less seriously affected business areas and risks.

## SYSTEMATIZE YOUR OWN BUSINESS MODEL

For the beginning of the risk analysis we recommend to structure your own business model. The following questions will help:



From what does the company create its value – which business areas, products or services characterize the company?



Where are the company's own locations, subsidiaries and majority shareholdings located?



What are critical supply chain stages and resources? From which regions are main preliminary products or raw materials sourced?



Where are important markets and what happens to the products & services beyond the direct customer?



What types of business relationships characterize the company?



In which industries or sectors is the company active and with which is it associated?

The insights into the business model must then be linked to risk information.






## TAKE COUNTRY INFORMATION AND INDUSTRY RISKS INTO ACCOUNT

Country risks offer a good starting point for identifying general human rights risks. Country data and information help to better understand the general human rights situation, for example in countries where own sites and the supply chain are located. In this way, particularly urgent issues can already be identified and, if necessary, an initial focus on areas of higher risk can be achieved.

In addition to country risks, sector and company-specific conditions should also be considered. Often, information on sector risks is already available internally, for example in the legal department or risk management. External sources can also provide further insights into industry risks.

A good starting point for country and industry risks is the "CSR Risk Check" by MVO Nederland.<sup>1</sup> The tool provides information on sector and country-specific human rights issues and risks and also provides references to further information and sources.

It is important that all risk information is placed in the corporate context. The following questions will help:

-  Is the industry risk potentially applicable to my value chain?
-  Where are these industry risks located in my value chain?
-  In what relation does my company stand to these risks; is there a direct or rather indirect connection?

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<sup>1</sup> <https://www.mvorisicochecker.nl/de>



## WE CAN SUPPORT YOU IN FOLLOWING:

**Gain transparency in your supply chain** with our extended input-output model **estell**. Our quantitative risk analysis uncovers human rights-related risks of a company, differentiating between value chain stages, countries and products.

### 1 | INPUT

Company data on turnover or purchasing volume

- Turnover per country & sector(s) of company
- Or purchasing value per product group, ideally: incl. country of origin

### 2 | MODELING

with  **estell**

Multi-regional Input-Output-Model and international statistics

7 human rights risk indicators (Child labour, forced labour, working hours, pay, health & security, discrimination, social dialogue)

### 3 | OUTPUT

- ✓ Global effects along the whole supply chain
- ✓ Risks per country & sector: Working hours realised and risk per working hour



Further information (in German) is available here:

<https://www.systain.com/leistungen/risikoanalyse-menschenrechte/>

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## 3 | PRIORITISE RISKS



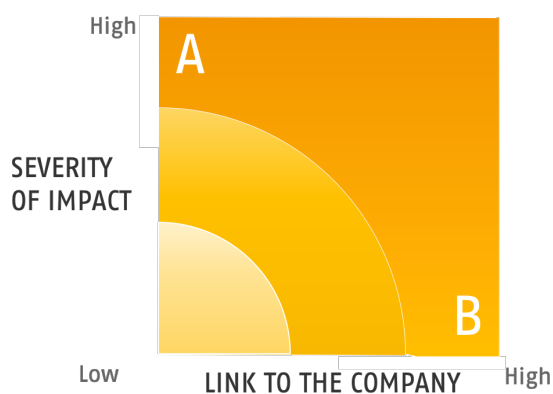
NAP core element  
"Identifying risks & negative impacts"

### IDENTIFY SERIOUS RISKS

Every company is called upon to take measures for ideally avoiding or at the least reducing potential negative impacts on human rights. In order to allocate resources to the most urgent challenges, a company must and can prioritize risks and put serious human rights issues before others.

A coherent approach to prioritisation distinguishes two dimensions: The severity of the (potential) impact and the link to the company (Figure 3).

Figure 3: Two dimensions for assessing human rights risks<sup>2</sup>



This type of prioritisation makes it clear that risks with particularly severe negative impacts must always be prioritised (Area A). It also shows that a company should also include supposedly "low-risk" locations and countries in the risk analysis if there is

<sup>2</sup> Based on: "The Arc of Human Rights Priorities" (Danish Institute for Human Rights; Global Compact, 2009)

a direct relation. Even if the risk for these locations and countries is low or the negative impact is not particularly serious, a company has an obligation to act (Area B) because of the direct link to a violation.

## ASSESS THE SEVERITY OF THE IMPACT AND LINK WITH THE COMPANY

In determining the severity of the impact, the requirements of the UN Guidelines and the NAP are clear. The following questions will help:



How serious is the potential negative impact?



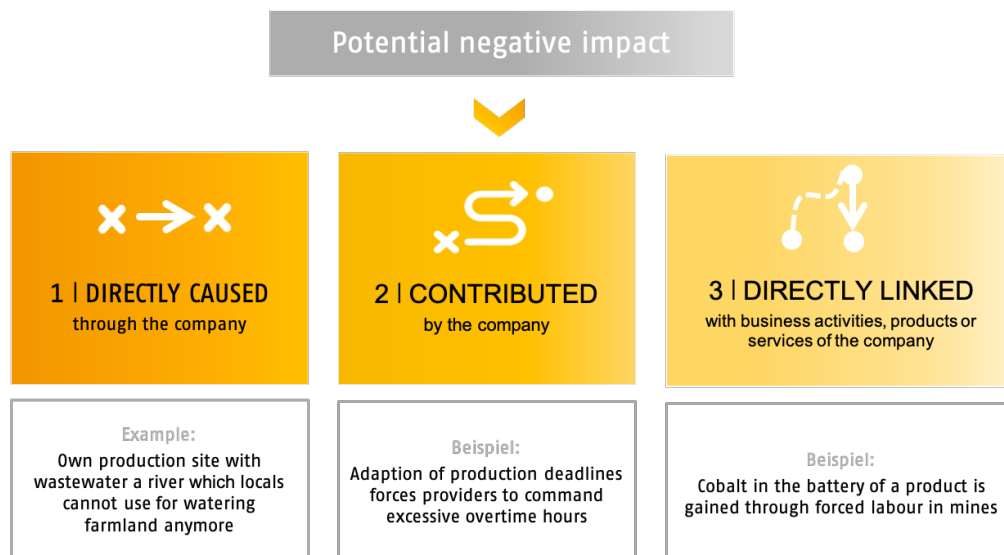
How many people are potentially affected by negative impact?



How irreversible is the potentially negative impact?

There are three different types of links between the negative effects and the company, as illustrated in Figure 4.

Figure 4: Three types of potential negative impact






**1 |** A company "causes" a negative effect if the activities (actions and omissions) of the company alone are sufficient to cause the negative effect.

**2 |** A company "contributes" to a negative effect if the activities of the company lead to, favour or create incentives for another party to cause the negative effect.

3 | A company is "directly linked" when there is a relationship with a negative impact of products, services or business activities of one company through another company (i.e. a business relationship). In this case it is important to note that the "direct link" is not defined by any direct contractual relationship, but by the indirect connection of the negative effect with e.g. the product/service of the company.



#### WE CAN SUPPORT YOU IN FOLLOWING:

-  Creation of a **structured analysis** of all potential topics along the value chain
-  Identification of risks with **quantitative and qualitative risk assessments**
-  **Involvement of stakeholders** in the risk analysis

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## 4 | ACTIVELY APPROACH MEASURES FOR IMPROVEMENT AND FOCUS ON COOPERATION



NAP core element  
"Establishing measures & controlling impact"

The UN Guidelines make it unmistakably clear: If a company is actually or potentially contributing to a negative impact on human rights, it must take the necessary measures to ideally end its contribution or at least mitigate it. Furthermore, the company should encourage other involved stakeholders to positive change.

When deriving and implementing measures, companies often focus on company-specific measures. A widespread element is the formulation of requirements in a code of conduct which defines essential expectations towards business partners regarding human rights compliance. The code of conduct forms the basis for evaluating business partners by means of self-assessments or on-site inspections. As sole measures however they do not go far enough, as the formulation of requirements and the verification of compliance by business partners generally does not prevent negative effects in the long term. In order to achieve a long-term improvement, we can speak from experience that it is necessary to collaborate more intensively with selected partners. Establishing awareness of the relevance and added value of managing working conditions amongst business partners can be realized through assistance and long-term training programs for example.

### ➤ QUESTION INTERNAL PROCESSES

In addition to implementing measures with business partners, one's own processes must also be questioned. Despite established audit programs, there are often conflicts with other company goals or purchasing quality indicators, such as "procurement of preliminary products at the lowest possible cost" or "reliable delivery even with short-term adjustments to the order". These indicators contradict a partnership-based cooperation with business partners. In the course of establishing human rights due diligence, a company should also develop solutions for these conflicting objectives that are consistent with the company's positioning in the policy statement.

## MAKE USE OF COOPERATIONS TO TACKLE PROFOUND CHALLENGES

Furthermore, it is evident in business practice that some human rights issues – especially in the deeper supply chain – cannot be solved by a single company. Respect for human rights in supply chains requires companies to participate in appropriate industry or issue-specific initiatives or industry associations. Often, initiatives with collective and collaborative approaches such as government negotiations, cross-company programs or lobbying can be more effective in achieving improvements than measures of individual companies. Getting involved as a company can be a useful and effective long-term measure. In the case of systemic and profound problems, the individual company can often only achieve positive change in cooperation with others.



# 5 | USE EXISTING STRUCTURES FOR THE INTEGRATION INTO COMPANY PROCESSES



NAP core element  
"Establishing measures & controlling impact"

When setting up a human rights due diligence process in a company, the existing management systems and processes should be used as a basis. If the human rights due diligence process is designed as an additional management system isolated from other systems, the process will not be "brought to life". It will be perceived as an additional and formal burden. It is usually more impactful to integrate human rights due diligence into existing systems and processes, for example in supply chain management, purchasing and compliance management.



## ALIGNMENT WITH EXISTING MEASURES

Companies should evaluate the results of the risk analysis and identify appropriate measures using a multi-layered process. For example, based on a long list of possible measures, the most promising ones from an entrepreneurial point of view can be identified in order to create a "shortlist" of suitable measures. These measures should then be compared with existing activities from an organizational and process perspective. The following questions will help:



Which activities are already established that can be adapted?



In which existing structures or areas a measure can be effectively integrated?

Companies should see the adaptation of existing processes as an opportunity to give structurally more weight to the issue of human rights. It is important that the adjustments are not only formulated as guidelines, but that they are defined as binding and that non-compliance will lead to consequences. If integrated and implemented consistently, human rights diligence then creates identity and increases employee loyalty.

For the effective implementation of the measures and the successful integration of human rights topics into existing processes, it is essential to strike a balance in line with the UN Guiding Principles. A key success factor is to prioritise appropriately and to avoid an undifferentiated approach. When designing and implementing measures it is therefore also important to analyse and evaluate the appropriateness and, above all, the effectiveness of the measure – and to do so regularly. Like any other change management process, a systematic and long-term integration of respect for human rights into company procedures requires time and continuous improvement.



#### WE CAN SUPPORT YOU IN FOLLOWING:

- ✓ A better understanding of the efficiency of your measures through a gap analysis
- ✓ **Optimization** of your existing measures and redefinition of the processes
- ✓ **Training and support** of your employees & business partners for a successful implementation

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## 6 | GAIN VALUABLE INSIGHTS THROUGH TARGETED DIALOGUE WITH EXPERTS AND POTENTIALLY AFFECTED PARTIES



Across all core elements of the NAP

Some companies carry out the risk or impact analysis solely through their own employees. Employees however act according to predetermined patterns of action and thinking, which poses a risk of blind spots. In addition, the issue of human rights and the integration of human rights due diligence into existing management processes is complex and cannot be comprehensively represented by a few employees. Even the UN Guiding Principles demand that companies seek advice from external experts.

### ➤ RELY ON EXTERNAL INPUT FROM EXPERTS

For a successful human rights due diligence process, companies should rely on external input. This can be done through exchanges in industry initiatives or by consulting human rights experts. For comprehensive assessments and analyses an independent and external opinion is beneficial. This is especially true for country- and culture-specific characteristics.

## 7 | UNDERSTAND AND IMPLEMENT HUMAN RIGHTS DUE DILIGENCE AS A DEVELOPMENT PROCESS



Across all core elements of the NAP

The topic of human rights due diligence should be understood and lived as a continuous development process. It makes no sense to work intensively on the topic only once in order to understand and address findings as "established facts". On the one hand, the environment of human rights risks changes over time and, on the other hand, simultaneously prioritising and addressing all human rights challenges would overstrain every company. As an iterative process the human rights strategy should be constantly reviewed, improved and expanded. This means at the same time that a perfect declaration of principles, risk analysis or complete derivation of measures is almost impossible at the beginning. A successful implementation is only possible through the continuous process, during which the acquired insights and identified opportunities for improvement are constantly integrated. Only when the human rights perspective has been incorporated into routines relevant to the company and anchored in the mindset of the employees can we speak of an integration into the core processes of the company.

### ➤ REVIEW RISK ANALYSIS AND MEASURES REGULARLY

Changes in the business activities of a company make it necessary to (re)initiate human rights due diligence processes. If a new business model for example is launched, a new risk analysis should be carried out. Measures to avoid negative impacts must be regularly checked for their effectiveness in order to ensure the desired success. The statement of principles should be renewed if changed risks or stakeholder expectations need to be taken into account.



## SYSTAIN: YOUR EXPERTS FOR HUMAN RIGHTS DUE DILIGENCE

Systain Consulting is a trustworthy partner that can draw on many years of experience in the industry on an international scale. The experience ranges from risk modelling of business units to on-site human rights assessments at company locations and suppliers.



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