

# The Human Rights and Business Tool kit for Syria

## The Syrian Legal Development Programme

A tool kit to help human rights defenders working on Syria to identify, document, engage and advocate on human rights issues linked to business activity in Syria, and to hold perpetrators of business-related human rights abuses to account.



By:

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## The Syrian Legal Development Programme

### Human Rights and Business Unit

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# TABLE OF CONTENTS

|  |           |
|--|-----------|
| <b>Introduction</b>  | <b>6</b>  |
| How is it structured?  | 7         |
| <b>1 Part Identifying and Documenting</b>  | <b>8</b>  |
| <b>Chapter 1 - Documentation Standards</b>   | <b>8</b>  |
| <b>1.1 Basic Investigative Principles</b>  | <b>9</b>  |
| <b>1.2 How should you collect, handle and preserve information/evidence?</b>                     | <b>11</b> |
| Collecting and handling physical information   | 11        |
| Collecting and handling documentary information  | 13        |
| Collecting and handling testimonial information  | 13        |
| <b>Chapter 2 Identifying and Documenting Human Rights Abuses Related to Business Activity</b>    | <b>17</b> |
| <b>2.1 Identifying and documenting business-related human rights abuses</b>                      | <b>18</b> |
| Risk for businesses operating in Syria   | 18        |
| How to identify and document business involvement in human rights abuses                         | 19        |
| <b>2.2 Identifying and documenting state involvement in business-related human rights abuses</b> | <b>29</b> |
| Is the Syrian government protecting against abuse by business?                                   | 29        |
| Is domestic legislation causing or allowing business-related abuse?                              | 32        |
| Are foreign states contributing to business abuses in Syria?                                     | 34        |

|                  |   |           |
|------------------|---|-----------|
| <b>2.3</b>       | <b>Identifying and documenting the involvement of multilateral organizations and non-traditional businesses, including charities/ NGOs, in business-related human rights abuses</b> | <b>36</b> |
|                  | Are the organisations involved in human rights abuse?   | 36        |
|                  | How to document procurement processes   | 37        |
| <b>Chapter 3</b> | <b>Documenting Compliance with the Businesses' Responsibility to Prevent and Address Human Rights Abuses</b>  | <b>39</b> |
| <b>3.1</b>       | <b>Setting the Scene</b>  | <b>40</b> |
| <b>3.2</b>       | <b>Human Rights Policy</b>  | <b>41</b> |
|                  | Toolbox 1 – Does the business comply with the requirement to implement a human rights policy and to embed it in its operations?   | 43        |
| <b>3.3</b>       | <b>Human Rights Due Diligence</b>   | <b>46</b> |
|                  | Identifying and assessing potential or ongoing human rights impacts<br>– Human Rights Impact Assessment   | 47        |
|                  | Integrating and acting on the findings of the HRIA  | 48        |
|                  | Tracking the effectiveness of the actions taken   |           |
|                  | Communicating externally how potential or on-going human rights impacts have been addressed   | 50        |
|                  | Toolbox 2 - Does the business have an effective human rights due diligence process?   | 52        |
| <b>3.4</b>       | <b>Remediation</b>  | <b>54</b> |
|                  | Toolbox 3 – Does the business comply with the requirement to provide for the remediation of adverse human rights impacts?   | 58        |

## **2 Part Advocating**

**Chapter 4 - Advocating** **60**

**4.1 When should you start your advocacy efforts?** **61**

**4.2 How should you conduct your advocacy?** **61**

Advocacy Strategy **61**

Negotiation Strategy **65**

**4.3 Whom should you engage?** **69**

The entity involved in human rights abuses is a company **69**

The entity involved in human rights abuses is a non-profit organisation **72**

The entity involved in human rights abuses is a multilateral organisation **74**

## **3 Part Holding to Account**

**Chapter 5 - Holding to Account** **75**

**5.1 Judicial Remedies: Bringing judicial proceedings against a business** **77**

What is the offending conduct? **78**

Who is/are the perpetrators? **79**

Who is/are the victims? **80**

Is there a Court with jurisdiction over the matter? **80**

What type of evidence would be needed to bring a successful claim? **93**

How to choose a lawyer and who can you get in contact with? **96**

**5.2 Non-Judicial Remedies** **99**

National Human Rights Institutions **101**

The Organisation for Economic Co-operation and Development (OECD)'s National Contact Points **105**

Sanctions mechanism **108**

World Bank's complaint mechanisms **111**

# 1 ANNEX

116

Guidance on where to find the information needed to establish whether a business is complying with the UNGPs

# 2 ANNEX

118

Guidance on how to identify the corporate structure of a company

# INTRODUCTION



## Background:

The Syrian conflict saw countless international crimes and human rights abuses, including: the use of chemical weapons, torture, forced displacement, indiscriminate and targeted attacks on civilians, and abuse of property rights.<sup>1</sup> In the same way as states, armed groups and individuals can commit or become involved in human rights abuses, businesses operating in Syria may become involved and be considered complicit in these abuses. Even when business activity is legitimate, the proceeds of a business may contribute to human rights abuses.

## Who is this toolkit for?

The Human Rights and Business Unit at the Syrian Legal Development Programme has designed this toolkit tailored to the Syrian conflict. This tool kit is for Syrian civil society organisations (CSOs) and individual human rights defenders concerned about the impact businesses have on the human rights situation in Syria.



## What does it help users achieve?

Focusing on the human rights impacts that are most relevant to the Syrian conflict and to its immediate aftermath, this tool kit provides CSOs and activists with the tools to:

- 1** Monitor and document the impact of business activity on human rights in Syria;
- 2** Monitor and document state compliance with the international obligations concerning business activity;
- 3** Engage and advocate for business compliance with human rights;
- 4** Identify how/whether businesses involved in human rights abuses in Syria can be held to account.



## What does this toolkit not cover?

This tool kit does not address every possible impact businesses may have on the human rights of Syrians. It does not address “internal” human rights impacts: the adverse impacts businesses have on the human rights of their own workers or labour issues. Rather, it addresses the “external” human rights impacts: the adverse impacts businesses have on the individuals and communities affected by business activities.

This toolkit does not focus on the compliance of businesses with Syrian law, or breaches of Syrian law. Rather it focuses on standards set by international law. Where reference to Syrian law is made, it is in the context of whether any incompatibility with Syria’s international legal obligations might be documented and addressed.



## How do we define “business”?

This tool kit adopts a broad definition of business. It focuses on the type of activity carried out rather than on the legal qualification of the entity that carries out the activity. Unless specifically stated otherwise, the term “business” does not only refer to private and state-owned companies, but includes non-for profit organisations and multilateral organisations, such as the United Nations.

<sup>1</sup> See e.g., Syrian Legal Development Programme ‘International Law and Reconstruction in Syria: A Cautionary Note for Businesses,’ (2018), 2.

# How is it structured?

The toolkit is divided in three parts.



**Part I** provides the tools to identify and document the impacts on human rights of business activity in Syria.

**Chapter 1** provides guidance, tips, and standards concerning the documentation of abuses linked to businesses. It includes investigative principles that are essential to any documentation process, as well as specific guidance for collecting physical, documentary, and testimonial evidence.

**Chapter 2** explains how to identify and document human rights abuses related to business activity. It also explains how to identify and document state compliance with international obligations concerning business activity.

**Chapter 3** complements **Chapter 2** and addresses what businesses must do when doing business in Syria if they are to respect human rights and avoid harm and how to document compliance with these obligations.



**Part 2** provides the tools to advocate for business compliance with human rights.

**Chapter 4** builds on **Chapters 2 and 3** and explains how to advocate using the information gathered whilst documenting abuses and businesses' compliance with international standards. It identifies when advocacy should start, how it should be structured and whom to engage with. **Chapter 4** also includes a section on negotiation strategies in case advocacy is successful and the business agrees to engage in a dialogue.



**Part 3** provides the tools to identify how and whether businesses involved in human rights abuses can be held to account.

**Chapter 5** explores what to do if advocacy fails to prevent businesses from becoming involved in human rights abuses or if human rights abuses have already occurred and you want to hold a business to account.

Depending on whether your aim is to document business-related human rights abuses, engage with businesses and advocate for business compliance with human rights, or to seek to hold businesses to account, you may decide to focus on the Part of the tool kit that is more directly relevant to your work. However, it is advisable that you always read **Part I** since it provides the basic substantive information required for effective advocacy and pursuit of remedies as outlined in **Part II** and **Part III**.



Remember, safety comes first. This toolkit should not encourage you to put yourself or anyone else in danger. It is aimed to assist you once you have decided it is safe to take on the challenge.

## PART 1

# Identifying And Documenting

## Chapter 1

### Documentation Standards

#### What is documentation?

**Documentation:** the process of collecting information relevant to identifying any potential or actual abuse of international law by businesses in Syria, and the subsequent collection and preservation of information/evidence related to that abuse. This may include an array of documenting techniques including:



1 interviewing or collecting statements from victims or witnesses,



2 capturing photographic or video evidence,



3 documenting a crime scene,



4 collecting physical or documentary evidence.



#### Why is documentation important?

The documentation of business-related abuses in the Syrian conflict is vital to:

##### further efforts to change the behaviour of businesses:

documentation efforts may serve as the foundation for engagement and advocacy campaigns (see Chapter 4); and

##### hold those responsible to account:

proper documentation ensures that evidence that could play a vital role in national or international accountability mechanisms is not lost, damaged, destroyed, or rendered inadmissible. (For more information on holding business to account see Chapter 5).

1.1

# Basic Investigative Principles

When conducting any documentation activity related to business related human rights abuses in Syria, you should ask yourself the following:



1

## Will the activity cause HARM?

At all times, you should ensure that your documentation activities do no harm. At a minimum, the principle of do no harm involves being aware of the security, privacy, health, or other similar concerns of yourself, your colleagues, victims, and witnesses and other affected persons, as well as taking measures to prevent and mitigate any potential harm that may occur.

Importantly, if you cannot guarantee that no harm will be done to a victim or a witness by a particular activity when documenting business-related abuse, you should not attempt to undertake that activity until the risk of harm has been removed or managed. If harm arises during the course of an investigative activity, you must cease that activity immediately and seek to remediate the harm done.



2

## Have I maintained MINIMUM STANDARDS?

Always ensure you and your colleagues adhere to a set of (internally agreed) minimum standards throughout the documentation of business-related abuses. This means exercising care and consideration during any task.



3

## Am I being IMPARTIAL and OBJECTIVE?

Your role is not to take sides in the conflict, but to document reliable information that might indicate business-related abuses. You should collect all relevant information/evidence, including information that may implicate or acquit the business or its personnel.



4

## Am I confident of my own COMPETENCE before undertaking a task?

This requires you to be confident that you have the requisite knowledge, skills, and expertise to undertake the specific documentation activity. If you believe you do not have the competence to undertake the task, you should refrain and then seek advice from appropriately qualified personnel.



# 5

## Am I focusing on the INFORMATION, not law or opinion?

Documentation should be fact-led. This means that you should separate your opinion from where the information leads you. It is important to bear in mind that any future action to prevent or remedy abuse will depend on the careful, impartial, and comprehensive collection of credible and relevant information, not your opinion.



# 6

## Have I RECORDED, COLLECTED and PRESERVED ALL information/evidence?

You should never disregard or discard any information/evidence that appears even loosely relevant. The preservation of all information requires documenters to ensure that available information is not damaged, does not deteriorate, or become contaminated and is secured for use for future consideration, including accountability mechanisms (see [Chapter 5](#)).



# 7

## Have I implemented an ORGANISED SYSTEM TO RECORD the documentation steps and results?

Although there is no fixed or formulaic approach to documenting business-related violations of international law, any information storage system needs to be designed to work in a careful, transparent, and verifiable manner. There are three principal components to any reliable system: a documentation folder (a system for collecting and handling information); a documentation plan (outlining the scope and planned activities of the investigation); and two documentation notebooks (one, outlining the chronological steps taken and the second, recording personal observations).



# 8

## Can I ensure INFORMED CONSENT, CONFIDENTIALITY, and PROTECTION of witnesses and sources?

This requires you to always:

- 1** seek consent of victims and witnesses prior to any documentation activity. Consent should be informed, voluntary and explicit and given prior to the documentation process;
- 2** ensure the confidentiality of information gathered, including the identity of victims and witnesses. Nonetheless, there are limits to confidentiality (for example, disclosure of information to international investigators or courts) that should be clearly explained to victims or witnesses, and their informed consent to continue with the process should be obtained<sup>2</sup>; and
- 3** protect the safety and security of victims and witnesses, including referring individuals to appropriate medical, legal, psychological, or security assistance prior to documenting evidence.



# 9

## Have I implemented a CHAIN OF CUSTODY?

It is vital that the moment information is disturbed or removed from its original place (from the business or crime scene or the witness who handled the information), there is a record of every person who had control or possession of it, when, where, and why. At a minimum, this involves ensuring a proper description of the source of the evidence, the correct labelling of the information, and a record of its removal from its original place, its storage and removal from storage until it is handed over to the relevant authorities.

<sup>2</sup> Public International Law & Policy Group 'Handbook on Civil Society Documentation of Serious Human Rights Violations,' (2016) 8-9.

## 1.2

# How should you collect, handle and preserve information/evidence?

## What types of information can be collected?

In general, there are three main types of information that may be relevant to document abuses by business in the context of Syria, these are:

### Physical information:

for example, parts of a system (containing details of manufacture) of electronic surveillance used to monitor individuals or bullet casings used by an armed group (supplied by a business enterprise);

### Documentary and digital information:

for example, deeds to a house proving the victim owned a house prior to its demolition by a construction company or photographic evidence of the destruction of the premises; and

### Testimonial information:

for example, a victim describing detention in a camp and their observations of the security company involved or evidence from a former employee of a business enterprise that supplies the chemicals involved in constructing chemical weapons.

The below sections outline the basic standards for the collection, handling and preservation of information to ensure that it remains robust and fit for the purpose of seeking a remedy, whether through a business' own complaint mechanism (See [Chapter 3](#)) or to be used by criminal investigators (such as the IIIM or national courts) (see [Chapter 5](#)).

## Collecting and Handling Physical Information

### How should you observe and document the crime scene?

A scene related to an abuse by business may include:

- 1** The location where the crime was actually committed. For example, the location of a building site where houses are being demolished for reconstruction contributing to the displacement of civilians.
- 2** The location of the business' involvement. For example, a factory manufacturing weapons used by a party to the conflict to commit crimes.

You should be extremely cautious in intervening in any crime scene. A scene may contain hidden dangers (e.g. unexploded ordnance) or may be easily contaminated in a variety of ways, including: accidental fingerprint mixing, depositing or destruction of DNA or other body fluids, the disturbance of vital information from its original place, and so on.



## What should you do when you arrive at the crime scene?

- 1** Make sure that the site is safe. It is imperative that you do not enter a crime scene until you know it is safe to do so. Second, you should make efforts to secure the crime scene site.
- 2** Document what you can observe at the crime scene in writing, in as much detail as possible – and record this information in the documentation folder (in the activity log) and your notebooks. Your focus should be on documenting how it looked when you arrived and ensuring that any future interference will be able to be established. It is important to also record your own activities in relation to the scene (i.e. what you did when entering the scene and your various vantage points).<sup>3</sup>

Photographs and videos of a crime scene can be highly probative evidence.

## How should you collect and handle physical information?

### Step One:

#### Receiving information: Accurate recording of the information or item

Whenever you observe and/or collect any form of information that you feel is relevant, you should record it in writing. This can be achieved by:

- Maintaining a documentation folder with separate files according to which information can be categorised. It should include:
  - 1** A log to register all documentation activity and a record of all information.
  - 2** Copies of the collected information.
- Maintaining two documentation notebooks to record all investigative steps (that might be admitted into court) and a personal account and observations (that is intended as a confidential and personal record) respectively.

### Step Two:

#### Handling information: Implementing a Chain of Custody

The chain of custody is a vital component of any effective documentation process. The chain of custody is the chronological record of possession of information that includes a description of where the information originates from, the correct labelling of the information and a record of its storage (and removal from storage) until it is handed over to the relevant authorities.

As few people as possible should handle the information. Any handling should be recorded on the chain of custody sheet that is fixed to the storage package or envelope in which the item is secured. For physical information you will need, in addition to the steps above: a storage bag or envelope to store the item with the associated record of the chain of custody (i.e. recording the item's movement and handling commencing with its removal from its original place).

### Step Three:

#### Storing Information: Preservation of the Information or Item

Once you have completed the necessary paperwork, you should store the item or information in a safe and secure place. It should be free from environmental disturbance (extreme heat or cold, water, etc.) and unauthorised access to the item or information.

<sup>3</sup> As adapted from: Bergsmo & Wiley, Manual on Human Rights Monitoring 'Human Rights Professionals and the Criminal Investigation and Prosecution of Core International Crimes' (2011), 14-15.



## Collecting and Handling Documentary Information

Documentary information includes an array of physical documents and digital information, including photocopies of documents, photographic information or information that has been downloaded from the internet. Information may include: photographs of a factory, legislation purporting to regulate business activity, photocopies of sales receipts, videos downloaded from social media sites, or transcripts of intercepted conversations between a business and an armed group.

**When collecting such information, verifying the authenticity of its source and contents is vital. As such, you should:**



**1**

**Implement the rules for the receipt, handling and preservation of information/evidence in accordance with the above standards on physical information/evidence;**



**2**

**Establish the source and authentication of the information. This involves identifying:**

- ① the author of the document;**
- ② the organisation that the author belongs to;**
- ③ when and where the document was produced; and**
- ④ the source of the information relied upon by the author in preparation of the document.**

**You should make every effort to obtain this information. Essentially, you should determine and document in detail when, where, by whom, and for what purpose the document was produced.**



## Collecting and Handling Testimonial Information

Victims or witness may provide information about businesses activities that is vital to understand the role of business in any human rights abuse.

### What steps should you take prior to interviewing a witness?

When interviewing victims or witnesses, non-professional investigators should not take formal witness statements. In these circumstances, the documenter should endeavour to obtain a summary of what the witness knows with a view to ensuring that any future investigator may conduct a full interview or otherwise knows where to find the relevant information.



# Measures to Protect Witnesses

There are six key “Protection” steps to bear in mind when seeking to record witness testimony relevant to business abuses:

1

| The confidentiality of a witness’ personal details and identity should be at the forefront of your mind (as they will be for the witness at some point in the process). You should explain to a witness at the outset of an interview how you intend to ensure confidentiality.

2

| At the end of the interview, the witness should be asked whether he or she consents to disclosure of their evidence to the specific agency/court, e.g., the IIIM or future international or domestic accountability mechanisms. This is called gaining informed consent.<sup>4</sup>

3

| You should take measures to protect the witness. If a witness informs you they are fearful or in need of help for any reason, you should note this in any statement or summary. International investigators and prosecutors can take appropriate measures to protect the safety, physical and psychological wellbeing, dignity and privacy of victims and witnesses with measures to protect the witnesses before trial or measures to help the witness during the trial (protective or special measures) and other schemes.

4

| It is important to implement measures to guard against the wrongful disclosure of a witness’s identifying information. Your organised record keeping system should be capable of ensuring the confidentiality of a witness. At the very minimum, you should remember to give the witness a code name that does not reveal the witness’s true identity.

5

| To ensure compliance with the ‘do no harm’ principle, you should watch for signs of emotional distress or re-traumatisation and stop, pause or postpone the interview as required.<sup>5</sup>

6

| You should take all necessary measures to protect vulnerable witnesses – such as, children, elderly or victims of sexual and gender-based violence (‘SGBV’). You must take appropriate measures to protect their safety, physical and psychological well-being, dignity and privacy.

<sup>4</sup> Public International Law & Policy Group ‘Field Guide for Civil Society Documentation of Serious Human Rights Violations,’ (2016), 9.

<sup>5</sup> Public International Law & Policy Group ‘Field Guide for Civil Society Documentation of Serious Human Rights Violations,’ (2016), 11.

# How should you conduct the interview?

At the outset of an interview, you should outline what will happen and the process. You should emphasise throughout that all you expect from the witness is that they tell the truth. You should explain that you are not there to seek particular evidence or to coach them.

- Never make any promises as to the benefits the witness could receive.<sup>6</sup> You should also be realistic as what the witness can expect from the documentation process. You should make no promises that the documentation will result in accountability or redress for the victim or witness, but explain in realistic terms what the documentation aims to achieve and the various steps ahead.



## Six Key 'LISTEN' rules for Conducting the Interview

**1**

**Let a witness lead you through their story:** avoid asking 'leading' questions. A leading question is a question that suggests an answer – 'Were you beaten by the security guard?' or 'You saw construction being undertaken by that company, did you?'.

**2**

**Identification:** ask the witness to explain all the identifying details of the events, including their own identifying details and role. Ask the witness to elaborate or encourage them to tell you what happened next – 'Why did you do that?', 'What happened next?' "Where did that happen" or 'What did she do after?'. Additionally, you should attempt to obtain a full description of identifying physical characteristics of any person described in the interview.<sup>7</sup>

**3**

**Story:** obtain their story in a chronological fashion.

**4**

**Thoroughness:** explore gaps and inconsistencies, but do not assume that they must be eradicated – they are sometimes indications of reliability and credibility and not the converse. If there are inconsistencies, take the witness back through their story step-by-step. Ask them to clarify or explain why they believe events unfolded in the manner in which they describe and try asking your questions in a different way. If you still cannot reconcile an inconsistency, note it and move on.

**5**

**Ethics:** do not rehearse, practise the interview with the witness beforehand or coach a witness about what they remember and be cognisant of unconscious influence. Does your organisation or anyone else provide the witness or victim with support (for example, free health care, education, expenses beyond the cost of attending for interview) – that may mean that they are likely to provide unreliable evidence.

**6**

**No others:** you should only speak to one witness at a time; other witnesses should be excluded from the room.

<sup>6</sup> Ibid, 24.

<sup>7</sup> Ibid, 25.



# How should you write a witness summary?

Your role will usually be to produce a summary of the information provided during the interview, rather than to compile a formal witness statement. The summary should record the broad 'four corners' of the potential testimony. The below are the seven key rules for writing a witness summary:

**1**

You should summarise the witness' information accurately;

**2**

You should maintain notes and record the statements a witness wishes to make. You should be aware that your notes may later be requested by an international or domestic accountability mechanisms;

**3**

Focus on facts and opinion: whom they saw, where and when they saw it and what happened;

**5**

Always record dates accurately but bear in mind a witness may be genuinely confused. The statement should indicate whether the matters indicated are from: the witness's personal knowledge and observation; or common information or belief (and not first hand). If the latter, the statement should describe clearly the source of the information or belief;

**4**

Exclude obviously irrelevant material;

**6**

You should include 'hearsay' evidence. It can often be used in evidence against an accused at domestic or international courts. Hearsay evidence is a statement from someone other than the witness or victim testifying at the court hearing. An example: a witness statement or summary recording the witnesses account that 'My mother told me that she saw him enter the house through the backyard.'

**7**

You should classify the witness: are they sensitive, i.e., someone who may be in jeopardy if their association were to be known?

# Chapter 2

## Identifying and Documenting Human Rights Abuses Related to Business Activity

This Chapter considers how to take essential steps to identify and document human rights abuses related to business activity. Your identification and documentation activities will be vital steps to engage businesses to prevent and manage risks, and seek remedy for human rights abuses. This Chapter contains the following sections:

### 2.1

#### Identifying and documenting business-related human rights abuses:

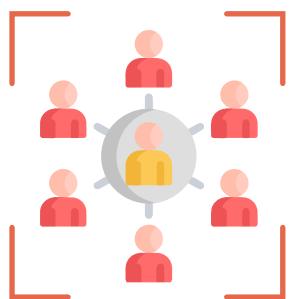
provides a basic understanding of applicable international law standards regulating business activity and how a business can become involved in these abuses.



### 2.2

#### Identifying and documenting state involvement in business-related human rights abuses:

considers the obligations placed on Syria relating to business activity (by state-owned and private businesses), as well as foreign states involved in business in Syria.



### 2.3

#### Identifying and documenting the involvement of multilateral organisations and of non-traditional businesses, including charities/NGOs, in business-related human rights abuses:

identifies what activities a multilateral organisation or non-for profit organisation may be involved in and their obligations according to international law.

# 2.1 Identifying and documenting business-related human rights abuses

**Identifying and documenting business-related human rights abuses** requires that you have a basic understanding of the applicable international law standards regulating business activity and how a business can become involved in violations.

I

L



1

## Risk for businesses operating in Syria

The Syrian conflict saw the commission of countless international crimes and human rights violations, including the use of chemical weapons, torture, forced displacement, indiscriminate and targeted attacks on civilians, and abuse of property rights.<sup>8</sup> In the same way as states, armed groups and individuals can commit or become involved in human rights abuses, businesses operating in Syria may become involved and/or be complicit in these abuses.



### Examples of risk for businesses in Syria



#### Supply of equipment to a party to the conflict

A complaint before the French courts alleged that Qosmos, a French software components company, supplied surveillance equipment to the Syrian government that allowed the government to monitor, target, arrest and torture dissidents and was used to suppress the government's opposition. The complaint alleged that Qosmos was complicit in human rights abuses, including torture, by the Syrian government through its supply of surveillance equipment.<sup>9</sup>



#### Providing financial support to a party to the conflict

On 28 June 2018, Lafarge-Holcim, a French-Swiss company, was indicted by a French court of complicity in crimes against humanity for allegedly paying a considerable amount of money to a party to the conflict (e.g. paying for security) involved in crimes against humanity to keep its Jalabaiya cement plant open during the Syrian conflict.<sup>10</sup>



#### Exporting chemicals to Syria

On 7 February 2019, three Belgian companies (and two of their managing directors) were convicted in relation to the shipping of the chemical substance isopropanol to Syria between 2014 and 2016 without submitting the appropriate export licences. Isopropanol can be used, in addition to other legitimate uses, in the manufacturing of chemical agents such as the nerve agent Sarin. The Organisation for the Prohibition of Chemical Weapons (OPCW) found that the substance was used in the production of sarin gas used during the attack in Khan Shaykhun in 2017. The companies received conditional fines of up to 500,000 euros and conditional prison sentences for the two business managers.<sup>11</sup>

<sup>8</sup> See e.g., Syrian Legal Development Programme 'International Law and Reconstruction in Syria: A Cautionary Note for Businesses,' (2018), 2.

<sup>9</sup> Business and Human Rights Resource Centre, Qosmos investigation (re Syria), <https://www.business-humanrights.org/en/qosmos-investigation-re-syria>.

<sup>10</sup> Business and Human Rights Resource Centre, Lafarge lawsuit (re complicity in crimes against humanity in Syria), <https://www.business-humanrights.org/en/lafarge-lawsuit-re-complicity-in-crimes-against-humanity-in-syria>.

<sup>11</sup> Syrian Archive, 'Antwerp court convicts three Flemish firms for shipping 168 tonnes of isopropanol to Syria,' (Feb 2019), 7.

# 2

## How to identify and document business involvement in human rights abuses

When documenting business activity causing or contributing to human rights abuses, you should ask yourself the following questions:

### Have human rights abuses occurred as a result of business activity?

You should first identify and document what human rights abuses may have occurred.

The obligation to protect from human rights abuses sits first and foremost on states. However, under international law businesses play an equally important role in that, as acknowledged by the **United Nation's Guiding Principles on Business and Human Rights (UNGPs)**,<sup>12</sup> they have a responsibility to respect human rights. The UNGPs are the most authoritative set of international standards outlining the obligations of states and businesses in relation to business-related human rights abuses.

**UNGp 11:** Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

Any business activity that adversely impacts human rights should be documented. Businesses can potentially have an impact on **any human right**; therefore, their responsibility to respect applies to **all rights**.

The UNGPs provide a catalogue of the core human rights instruments containing the rights that should be respected, at a minimum, by businesses, which includes:<sup>13</sup>

- ─ the International Covenant on Civil and Political Rights ('ICCPR'): and
- ─ the International Covenant on Economic, Social and Cultural Rights ('ICESCR').

It is important to note that businesses should respect internationally recognised human rights even where there are no national laws and regulations in place to protect such rights. Where conflict exists between international and national law, businesses should respect the principles of international human rights law to the greatest extent possible in the circumstances.<sup>14</sup>

### Example of business-related violations of human rights

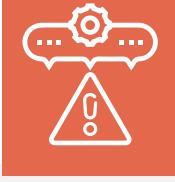
**Right to property:**<sup>15</sup> Individuals' right not to be arbitrarily deprived of their property entails that businesses do not appropriate property belonging to individuals without their consent or knowledge. For example, businesses may violate the right to property if they buy, trade, or sell property that was unlawfully seized during an armed conflict, including natural resources or real property expropriated following the forcible displacement of civilians.

<sup>12</sup> There are a number of other international standards regulating business activity (e.g. the OECD Guidelines for Multinational Enterprises, the ISO 26000 Guidance on Social Responsibility, the UN Global Compact's Ten Principles).

<sup>13</sup> UNGPs, Principle 12.

<sup>14</sup> UNGPs 23, Commentary.

<sup>15</sup> Universal Declaration on Human Rights, Article 17; ICCPR, Article 17.



## How is the business involved in the human rights abuses?



When documenting the involvement of businesses in human rights abuses, you should have a broad understanding of the following three different ways a business can be involved in human rights abuses:<sup>16</sup>

**1**

A business can **cause** human rights abuses directly through its own activities;

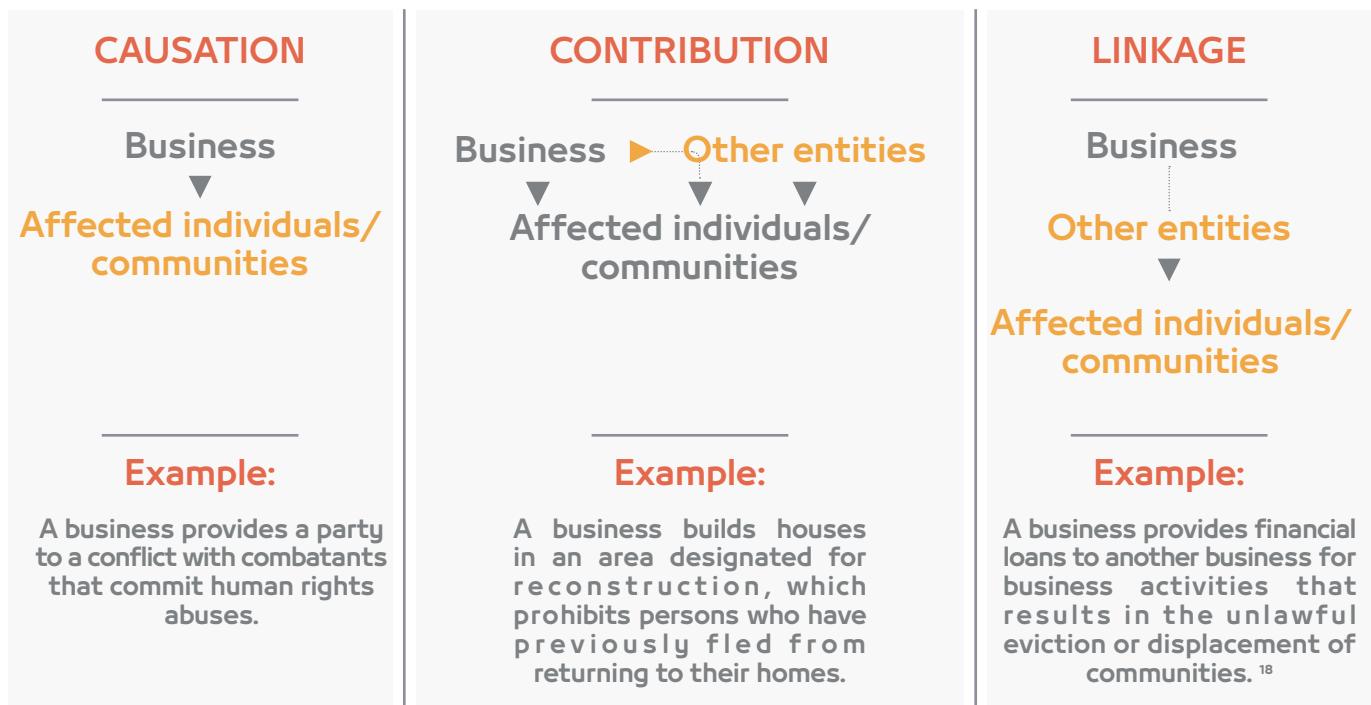
**2**

A business can **contribute** to human rights abuses either through its own activities or through another entity (such as the government, armed group, or other business or organisation);

**3**

A business can be involved in human rights abuses where abuses committed by business partners or by other state or non-state entities are **directly linked** to the business' own operations, products, or services.

The table below summarises the three different ways a business can be involved in human rights abuses.<sup>17</sup>



<sup>16</sup> See UNGPs 17.

<sup>17</sup> The table below is largely drawn from: Shift, Oxfam and Global Compact Network Netherlands, "Doing Business with Respect for Human Rights: A Guidance Tool for Companies", 2016, 64.

<sup>18</sup> SOMO, CEDHA, Cividep India, 'How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy: a guide for civil society organisations', 2012, 44..



## Do the abuses amount to international crimes?



Abuses committed by businesses in Syria may amount to international crimes. International criminal law punishes acts committed by individuals that are defined as crimes by international law, namely genocide, crimes against humanity, war crimes, and the crime of aggression.

To date, international criminal law does not anticipate the criminal responsibility of businesses themselves. Nonetheless, individuals within businesses (for example, the CEO of a company) or individuals whose actions and responsibilities are related to the business (for example, an individual in government responsible for infrastructure), may be held criminally responsible for international crimes related to business activity (see [Chapter 5](#)).

International crimes differ from ordinary crimes in a number of important ways, which affect the ways in which they should be documented. In order to ensure successful collection of relevant and probative information, documenters need to have at least a basic understanding of the following essential building blocks of any international criminal case:

**1**

the ‘crime base,’ namely the contextual elements and individual acts that need to be established to prove an international crime has occurred; and

**2**

the ‘links’ that must be shown between the individual’s actions in the context of business related activity and the crimes. (For more information, see [Chapter 5](#))

**When identifying and documenting international crimes committed or contributed to by business, you should consider the following questions:**

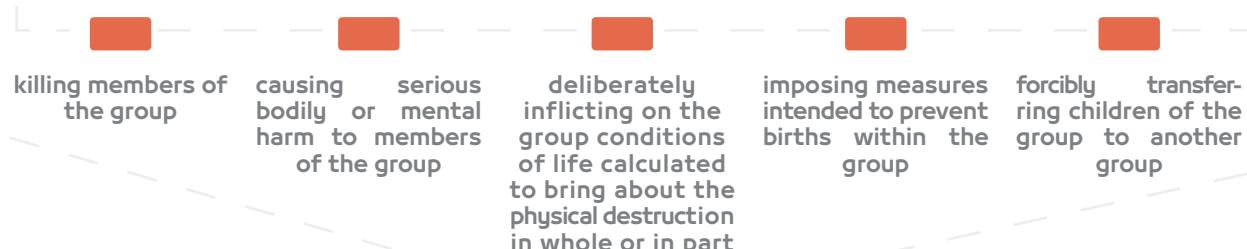
### What international crimes occurred?

First, documenters should identify and gather evidence related to the ‘crime base.’ The crime base is essentially the pattern of crimes composed of the individual acts that make up international crimes (for example, the crime against humanity of murder or the war crime of pillage) and the contextual elements that must be established for each of the three main types of international crime (genocide, crimes against humanity and war crimes).



1 Although Syria is not a State Party to the Rome Statute, the constitutive instrument of the International Criminal Court, the Statute provides a recent and largely accepted description of these international crimes. The crimes contained within the Rome Statute are:<sup>19</sup>

**Genocide**, which prohibits the following acts with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group (Article 6, Rome Statute):



**Crimes against humanity**, which prohibits a number of acts, including (Article 7, Rome Statute):



**War crimes**, which involve grave breaches of the law of war. Examples of individual acts potentially constituting war crimes include (Article 8, Rome Statute):



<sup>19</sup> It should be noted that the crime of aggression has not been included in this list because it requires the use of armed force by a State, and is consequently of little relevance to business-related violations of international criminal law. .



## Examples of business involvement in international crimes in Syria

**1**

### Murder<sup>20</sup>

**involves the perpetrator killing one or more persons.<sup>21</sup>**

A business may be complicit in the war crime or the crime against humanity of murder if it supplies weaponry to an armed group that uses that weaponry to kill civilians.

**2**

### Torture<sup>22</sup>

**involves the infliction of severe physical or mental suffering on a person for purposes such as obtaining information or a confession, punishment, intimidation, or coercion or for any reason based on discrimination.<sup>23</sup>**

A business may be complicit in this crime against humanity or war crime if it supplies surveillance equipment to a party that uses such equipment to identify and subsequently detain and torture civilians.<sup>24</sup>

**3**

### Deportation or forcible transfer

**involves the deportation (to another State) or transfer (within a State) of one or more persons, unless demanded for the security of the civilians involved or imperative military reasons.<sup>25</sup>**

A business may be complicit in the war crime or crime against humanity of displacement of civilian populations in Syria by providing personnel, machinery or supplying goods and services used to demolish homes, public buildings and infrastructure in accordance with plans to reconstruct areas emptied through displacement<sup>26</sup>

**4**

### Attacks against cultural property<sup>27</sup>

**involves the perpetrator directing an attack against buildings dedicated to religion, education, art, science, or charitable purposes, and historic monuments.**

A business may be complicit in the war crime of attacks against cultural property by providing essential military equipment to an armed group such as tanks, missiles, and bombs, used to attack cultural property.

<sup>20</sup> Rome Statute, Articles 7(1)(a).

<sup>21</sup> ICC Elements of Crimes, Article 7(1)(a).

<sup>22</sup> Rome Statute, Articles 7(1)(f), 8(2)(a)(ii) and 8(2)(c)(i). See also Fourth Geneva Convention, Article 147 (prohibition of torture and other inhumane and degrading treatment); Common Article 3 to the Geneva Conventions (cruel treatment and torture); ICRC Customary IHL Study, Rule 90.

<sup>23</sup> ICC Elements of Crimes, Articles 7(1)(f) and 8(2)(a)(ii). See e.g., Business & Human Rights Resource Centre, Qosmos investigation (re Syria).

<sup>24</sup> See e.g., Business & Human Rights Resource Centre, Qosmos investigation (re Syria).

<sup>25</sup> Rome Statute, Article 7(1)(d), 8(2)(b)(viii) and 8(2)(e)(viii). See also, Fourth Geneva Convention, Articles 49 and 147; Additional Protocol II, Article 17; ICRC Customary IHL Study, Rule 129.

<sup>26</sup> Syrian Legal Development Programme 'International Law and Reconstruction in Syria: A Cautionary Note for Businesses,' (2018), 25.

<sup>27</sup> Hague Convention for the Protection of Cultural Property, ICRC Customary IHL Study, Rule 38; Rome Statute, Articles 8(2)(b)(ix) and 8(2)(e)(iv).

## 5 Pillage<sup>28</sup>

involves the appropriation of property such as houses, household items, and money, for personal or private use without the consent of the owner.<sup>29</sup> Personal or private means that objects appropriated for military necessity are not included.<sup>30</sup>

A business may be complicit in the war crime of pillage by knowingly buying, processing, and trading in goods that have been illegally seized by parties to the Syrian conflict. Additionally, a business purchasing property according to reconstruction laws which may have the effect of depriving civilians of their property, without their consent, may also be complicit in pillage.

## 6

### The use of chemical weapons<sup>31</sup>

involves the employing of a gas or other analogous substance or device which causes death or serious damage to health through its asphyxiating or toxic properties.<sup>32</sup>

A business may risk being complicit in the war crime or crime against humanity of use of chemical weapons by entering into contracts with the perpetrators of chemical weapons attacks while they continue to use such weapons.<sup>33</sup>

## 2

### In what context did the crimes occur?

In order to prove that an international crime occurred, in addition to documenting the individual act (see above), documenters must establish that they were committed by the business/individual within the business within the following contexts:

## 1

### Genocide

Requires the act(s) to have taken place in the context of a pattern of similar conduct directed against the targeted national, ethnical, racial, or religious group, or to have been an act(s) that could itself effect destruction of the group or part of it.

## 2

### Crimes against humanity

Requires the act(s) to have been committed as part of a widespread or systematic attack directed against a civilian population i.e., the specific act against the civilian(s) was part of a larger violent attack on the civilian population. The act(s) does not need to take place in the context of or be associated with an armed conflict.

## 3

### War crimes

Requires the act(s) to have taken place in the context of and to have been associated with an armed conflict.

<sup>28</sup> Fourth Geneva Convention, Article 33; Additional Protocol II; Article 4(2)(g); ICRC Customary IHL Study, Rule 52; Rome Statute, Articles 8(2)(b)(xvi) and 8(2)(e)(v).

<sup>29</sup> See e.g., ICC Elements of Crimes, Article 8(2)(b)(xvi). <sup>30</sup> ICC Elements of Crimes, Article 8(2)(b)(xvi), footnote 47.

<sup>31</sup> Chemical Weapons Conventions, Article 1; ICRC Customary IHL Study, Rule 74; Rome Statute, Article 8(2)(b)(xviii). <sup>32</sup> See e.g., ICC Elements of Crimes, Article 8(2)(b)(xviii).

<sup>33</sup> Syrian Legal Development Programme 'International Law and Reconstruction in Syria: A Cautionary Note for Businesses,' (2018), 28.

# 3

## Who committed the crimes?

Although it may be difficult, you should aim to identify and document the links between individuals (involved in the business activities), the business, and the crimes committed.

These include, but are not limited to:

**Committing the crime:** for example, a company director may be responsible for committing a crime if s/he or those within his employment directly took part in torture. Consider:

1

How did the crime occur?

2

Who physically committed the crime?

3

Who were the victims of the crime?

**Perpetration with others sharing a common plan:** for example, if a company director takes part in a joint operation with the leader of a local armed group to attack and destroy a civilian village, s/he may be responsible for his contribution to the crimes, even if s/he was not present at the scene of the crime. Consider:

1

Whether the crime was the result of action by two or more persons?

2

Whether those involved, including the business personnel, worked to a common plan that involved the pursuit of the crime?

3

Did those persons use an organisation (e.g. the business, the military, etc.) to commit the crime?

4

Did the business personnel provide an essential contribution to the plan that resulted in the commission of the crime?

**Aiding and abetting the commission of the crime:** for example, a company director may be responsible for aiding and abetting a crime if s/he used company logistics or services to facilitate the commission of a war crime. Consider:

1

Whether anyone in the business assist, encourage, or lend moral support to those directly committing the crime?

2

Did the perpetrator intend to support the crime?

3

Did the assistance, encouragement, or moral support have an effect upon the commission of the crime?

### Example

A Dutch timber dealer provided weapons, men and logistical help through his companies to former Liberian leader Charles Taylor and his regime. The businessman was found guilty by a Dutch court of aiding and abetting the war crimes committed by Taylor's forces from 2000 to 2003 on the basis of that involvement and because of his assumed knowledge of the nature of the conflict and of the probability that war crimes and/or crimes against humanity would be committed.

## Who committed the crimes?

**Ordering:** for example, a company director used his authority to pass orders to employees to commit the crime. Consider:

**1**

Whether anyone in the business was in a position of authority over those involved in the crime?

**2**

Did the business personnel instruct another person to commit the crime?

**Superior responsibility:** for example, the director of a security company who was aware that their subordinates were mistreating persons detained on the business premises but who failed to prevent the actions of their subordinates by reprimanding or dismissing them. Consider:

**1**

Whether the director had the ability to control the person who committed the crime?

**2**

Whether the director failed to take reasonable and necessary measures to control their subordinates or hold them to account for their crimes?



## What information is available to prove the human rights abuses?

When identifying or documenting human rights abuses, you should think about what information can be used to prove the abuse occurred and prove the business' involvement in that abuse. This involves identifying:

**1**

where and when the abuse occurred;

**2**

what happened;

**3**

what caused the abuse;

**4**

who the victims are;

**5**

who was involved in the commission of the abuse; and

**6**

how the business caused or contributed to the abuse.



**Your documentation activities may include:** interviewing victims and witnesses, collecting physical evidence or observing crime scenes, collecting documentary evidence, taking photographs and videos, or collecting documentary evidence (see Chapter 1).



# Example Case Study

## 1

A business is alleged to have supplied weaponry to an armed group with awareness of the group's history of involvement in international crimes. During a peaceful protest by civilians, a party to a conflict used the weaponry to fire into the crowd, killing 20 persons.

### Questions for Investigators:

**1**  
Where and when did the incident occur?

**2**  
What caused the death of the victim(s)?

**3**  
How many victims were killed?  
**4**  
What weapons were used to kill the victim(s)?

**5**  
Is there information showing who caused the death of the victim, i.e. the direct perpetrator?

**6**  
Is there information showing the armed group was known to be involved in crimes more generally?

**7**  
In which circumstances did the business provide the weapons – was the business personnel aware of the party to the conflict's involvement in the crime?

**8**  
Where and when did the business manufacture and supply the weaponry?

**9**  
How did the supply of weapons contribute to the killing of the victims?

### Examples of evidence:

**1**  
Witness testimony describing the killing of persons during a peaceful protest caused by members of a party to a conflict shooting into the crowd.

**2**  
Video evidence documenting the protest and shots fired into the crowd.

**3**  
Bullet casings or other information identifying the origin and type of weaponry used.

**4**  
Photographic evidence of a factory owned by the business where it is alleged the weaponry was stored.

**5**  
Documentary evidence showing the sales and distribution of the weaponry from the business to the armed group.

# Example Case Study

## 2

A business entered into a reconstruction contract to rebuild an area that has been damaged by the armed conflict in Syria. However, the community who lived in the area prior to the conflict were forced to leave due to crimes committed during the conflict and the destruction of their homes. The applicable reconstruction legislation (directly or indirectly) removes the rights of the civilians to return to their property.

### Questions for Investigators:

**1**

Who lived in those houses or locality prior to the war?

**2**

Who is the reconstruction contract made between?

**3**

Who will be able to live in the houses once rebuilt?

**4**

What is the role of the business in the creation of the above circumstances?

**5**

Do the terms of the reconstruction legislation (purporting to respect the rights of the owners) make it difficult, if not impossible, for the owners to return?

**6**

How does the reconstruction contract and applicable legislation impact the ability of the owners to return to their property?

**7**

Which groups or persons benefit from the reconstruction project?

### Examples of evidence:

**1**

Witness testimony of victims who were forced to leave the area and are now unable to return to their houses

**2**

Documentation showing ownership or prior residence e.g. deeds or evidence from neighbours of history of tenancy

**3**

Video footage of the victims' houses being destroyed and replaced

**4**

Photographs of the business involvement in reconstructing houses

**5**

Legislation creating obstacles to, or removing the rights of homeowners to return to their property

## 2 Identifying and documenting state involvement in business-related human rights abuses

In addition to monitoring business complicity in abuses of international law, you should also identify and document the Syrian government's (and other states') involvement in the abuses.

**When identifying and documenting state activity three key questions arise, namely:**

**1**

What steps is the Syrian Government taking to protect against abuse by businesses?

**2**

Is legislation by the Syrian Government causing business-related human rights abuses?

**3**

Are foreign states contributing to business abuses in Syria?

### Is the Syrian government protecting against abuse by business?

States, including the Syrian government, have a duty to protect against human rights abuses within their own territory, which includes the responsibility to protect against abuses by third parties, including businesses (UNGPs, Principle 1).<sup>34</sup> States have additional obligations in relation to state-owned businesses or businesses with which they have a relationship e.g. through contract.

When identifying and documenting abuses by a business in Syria, you should therefore also consider Syria's responsibility in respect of that organisation and document any failure on the part of Syria to act accordingly.

More specifically, when you identify a business-related human rights abuse you should consider whether the Syrian government has taken any of the following steps. The nature of any steps, including any failure, should be documented:

**A**

Did the Syrian government take action prior to the abuse to prevent it?

**B**

In the event that an abuse of human rights by business does occur, did the Syrian government take steps to investigate, punish, and redress the abuse?

<sup>34</sup> UNGPs, Principle 1.



## Has the Syrian government taken the necessary steps to prevent and/or investigate, punish, and redress business-related human rights abuses?



Although the Syrian government has a certain degree of discretion as to which steps it decides to take to prevent, investigate, punish, and redress human rights abuses by business, it should consider the full range of permissible preventative and remedial measures, such as policies, legislation, regulations and adjudication.<sup>35</sup> In particular, the UNGPs (Principles 3 and 7) require States to undertake the following to meet their duty to protect, especially in light of the heightened risk of human rights abuses in times of armed conflict:



Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;



Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;



Provide effective guidance to business enterprises on how to respect human rights throughout their operations;



Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts;



Provide effective judicial and non-judicial forms of remedies to allow victims of abuses to seek redress e.g. in criminal and civil courts (see [Chapter 5](#));



Engage with businesses, as early as possible, to help them identify, prevent, and mitigate human rights related risks;



Deny public support and services for a business enterprise involved in gross human rights abuse; and



Ensure current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuse.

<sup>35</sup> UNGP 1, Commentary, 3.

# “ Examples of State Action to Prevent, Investigate, Punish, and Redress

## Prevent:

The United Kingdom has recently passed the Modern Slavery Act 2015, which, among other provisions, requires any commercial organisation, which supplies goods or services, carries on a business or part of a business in the UK, and whose annual turnover is £36 million or above, to produce a ‘slavery and human trafficking statement’ for each financial year. This statement should detail what companies are doing to ‘ensure that slavery and human trafficking is not taking place in any of its supply chains, and in any part of its own business.’<sup>36</sup>

The introduction of a requirement that large businesses operating in the UK publish an annual statement setting out steps taken to identify, tackle, and prevent modern slavery in their business and supply chains under the Modern Slavery Act 2015 provides an example of how States can proactively prevent human rights abuses by businesses operating in their jurisdiction. Under another provision of the Modern Slavery Act 2015 specified public bodies have a legal duty to notify the government of adult victims of modern slavery, this provision enables preventative measures to be taken and thus minimizes the risk of forced labour, bonded labour, and human slavery occurring in UK businesses.<sup>37</sup>

## Investigate, Punish, and Redress:

In September 2015, the French rail operator SNCF was ordered to pay €150m in damages after being found guilty of discriminating against hundreds of Moroccan workers. The Moroccan workers were denied the status of ‘railway worker’ held by their French and European counterparts, a status which would have entitled them to special benefits in relation to retirement rights, working hours and job security. The industrial court found that SNCF was guilty of discrimination in the ‘execution of work contracts’ and retirement rights for about 8,000 Moroccans, many of whom were hired as private contract workers in the 1970s to build and maintain rail networks.<sup>38</sup>

## “ Has the Syrian government taken the necessary additional measures to protect against abuses by State-owned businesses or businesses with which it has a relationship? ?

Depending on the nature of the State-business relationship, the Syrian government is expected to take the following actions

|   | UNGP   Nature of business relationship  | Responsibility of the Syrian government   |
|---|---|---|
| 4 | Businesses that are owned <sup>39</sup> or controlled <sup>40</sup> by the State, or that receive substantial support and services from State agencies such as export credit agencies, and official investment insurance or guarantee agencies. These State agencies can include development agencies and development finance institutions, export credit agencies, official investment insurance, or guarantee agencies. <sup>41</sup> | The Syrian government should take additional steps to protect against human rights abuses, including where appropriate, by requiring human rights due diligence. A requirement for human rights due diligence is most likely to be appropriate where the nature of business operations or operating contexts pose significant risk to human rights. <sup>42</sup> (For more information on due diligence, see Chapter 3.3)  |
| 5 | Business enterprises for which the State has contracted with, or legislated for, to provide services that may impact upon the enjoyment of human rights.  | The Syrian government should exercise adequate oversight in order to meet its international human rights obligations. The relevant service contracts or enabling legislation should clarify the Syrian government’s expectations that the enterprise respects human rights. <sup>43</sup> Further, the Syrian government should ensure that it can effectively oversee the enterprises’ activities, including through the provision of adequate independent monitoring and accountability mechanisms. <sup>44</sup> |
| 6 | Business enterprises with which the State conducts commercial transactions, for example through procurement activities.   | The Syrian government should promote respect for human rights. In circumstances where there are demonstrable risks of human rights abuses, the Syrian government should make contracts with businesses conditional to the respect of human rights. <sup>45</sup>  |

<sup>36</sup> UK Modern Slavery Act 2015, Section 54(1). <sup>37</sup> 2018 UK Annual Report on Modern Slavery (Oct. 2018). <sup>38</sup> Kim Willsher, ‘SNCF Found Guilty of Discriminating against Moroccan Workers,’ The Guardian, (21 Sept. 2015).

<sup>39</sup> See e.g., Draft Articles on Responsibility of States for Internationally Wrongful Acts, article 4.

<sup>40</sup> Ibid, article 8: “The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of that State in carrying out the conduct.”

<sup>41</sup> UNGP 4, Commentary, 7. <sup>42</sup> UNGP 4, Commentary, 7. <sup>43</sup> UNGPs, Commentary, 8. <sup>44</sup> UNGPs, Commentary, 8. <sup>45</sup> UNGPs, Commentary, 8.

# Is domestic legislation causing or allowing business-related abuse?

The international human rights treaties that Syria has ratified are binding on Syria irrespective of its internal laws.<sup>46</sup> The Syrian government has a duty to ensure that its internal laws are in compliance with its human rights obligations. You can play a vital role in assessing domestic compliance with international law.

## UNGPs 3(a) and (b)

In meeting their duty to protect, States should:

**A**

Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps.

**B**

Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights.

When considering the compliance of a piece of domestic legislation with international law, you should consider the following two questions:



What are Syria's international legal obligations?



Do the provisions of domestic laws cause or allow violations of Syria's obligations?

## 1 What are Syria's international legal obligations?

The scope of international human rights that the Syrian government must secure against abuse by business includes all of the human rights obligations contained in treaties binding on it, as well as customary international law standards.

Syria has ratified the following human rights treaties:<sup>47</sup>

1 International Covenant on Civil and Political Rights, ratified in 1969;

2 International Covenant on Economic, Social and Cultural Rights, ratified in 1969;

3 International Convention on the Elimination of All Forms of Racial Discrimination, ratified in 1969;

4 Convention on the Rights of the Child, ratified in 1993;

5 Convention on the Elimination of All Forms of Discrimination Against Women, ratified in 2003;

6 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified in 2004;

7 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, ratified in 2005; and

8 Convention on the Rights of Persons with Disabilities, ratified in 2009.

<sup>46</sup> Vienna Convention on the Law of Treaties, Articles 26 & 27.

<sup>47</sup> UN OHCHR, Status of Ratification Interactive Dashboard 'Syria', (29 Jan. 2019).

# 1

In addition, during situations of armed conflict, Syria is bound by the provisions of International Humanitarian Law (IHL).<sup>48</sup> In respect to the grave breaches of IHL, Syria is obliged to ‘enact legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches’ and to ‘search for’ and bring before its own courts persons alleged to have committed grave breaches.<sup>49</sup>

Syria is also bound by customary international law, which consists of rules that come from a general practice accepted as law. The precise rules of customary IHL are identified in the ICRC’s Customary IHL Study.

# 2

## Do the provisions of domestic laws cause or facilitate violations of Syria’s obligations?

The domestic laws that may affect business and human rights are numerous, and may include civil, administrative, or criminal legislation and may range from non-discrimination and labour laws to environmental, property, privacy, and anti-bribery laws.<sup>50</sup>

Civil society should consider the provisions of a particular law and compare them to the relevant piece of international law, as well as the interpretation of such law by relevant bodies (including the UN treaty bodies, the International Court of Justice, or the international criminal tribunals). Each individual provision of a piece of domestic legislation or regulation should be assessed according to their compliance with the obligations contained within the relevant international law standards.

Finally, civil society should also seek to document the effect of the domestic legislation in practice. Whilst the provisions of a piece of domestic legislation may not at first seem to be in violation of Syria’s human rights obligation, it may be the case that it is reasonably foreseeable that its practical implementation will facilitate abuse or otherwise lead to violations of international law.

<sup>48</sup> Syria ratified the Four Geneva Conventions in 1953 and Additional Protocol I in 1983.

<sup>49</sup> See e.g., Fourth Geneva Convention, Article 146. See e.g., Fourth Geneva Convention, Article 146. <sup>50</sup> UNGP 3, Commentary, 6.



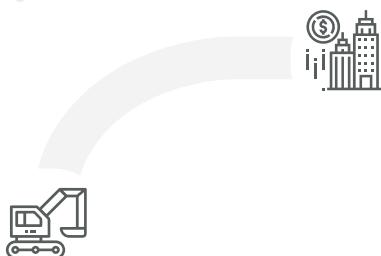
## Are foreign states contributing to business abuses in Syria?

You should not only seek to identify and document the Syrian government's obligations to protect from business-related human rights abuses but should also consider the responsibility of other States. Foreign states have obligations both in relation to the business activity they are directly involved with (e.g if they provide "reconstruction funds" used by Syrian businesses) as well as in relation to the activities of businesses operating in Syria that are incorporated within their own territories.

**Examples of how foreign businesses could affect human rights in Syria.**

1

Foreign banks that fund reconstruction projects may be complicit in human rights abuses if the funding they provide enables the Syrian government to demolish existing properties, the owners of which have been forcibly displaced, thus preventing the return of displaced civilians.<sup>51</sup>



2

Foreign businesses that are engaged by a party to the conflict to reconstruct critical infrastructure such as roads or bridges, or fund such reconstruction projects, may be liable for complicity in human rights abuses if that party uses their access to the infrastructure to commit human rights abuses.<sup>52</sup>



3

Foreign businesses that contract with the Syrian government for the supply of chemical components or manufacturing equipment ostensibly for scientific or medical research while the Syrian government continues to use chemical weapons may risk incurring liability as an accomplice to crimes involving chemical weapon use.<sup>53</sup>



<sup>51</sup> Syrian Legal Development Program, 'International Law And Reconstruction In Syria: A Cautionary Note For Businesses,' (2018) para. 57.

<sup>52</sup> FIDH, 'Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms,' (3rd ed, 2016), 100-101, 312 para. 57.

<sup>53</sup> See for example: Wiwa v. Royal Dutch Petroleum Co., et. al., Case No.96 CIV 8386 (KMW) (S.D.N.Y. 2002); Bowoto, et. al. v. Chevron, et. al. Case No. C99-2506 (N.D. Cal. 2000); The Presbyterian Church of Sudan, et. al. v. Talisman Energy, Inc., Case No. 01CV9882 (S.D.N.Y. 2001); Sinaltrainal, et. al. v. Coca-Cola Co., et. al., Case No. 01-03208 (S.D. Fla. 2001); Estate of Rodriguez, et. al. v. Drummond Company, Inc., et. al. Case No. CV-02-0665-W (N.D. Ala. 2002); Sarei et. al. v. Rio Tinto, et. al. Case No. CV 00-11695 MMM 221 F. Supp.2d 1116 (C.D. Cal. 2002).

<sup>54</sup> Syrian Legal Development Program, 'International Law And Reconstruction In Syria: A Cautionary Note For Businesses,' (2018) para 83.

# 1

## Do businesses causing or contributing to abuses in Syria have links to foreign States?

When documenting human rights violations committed by businesses in Syria, links to foreign States should be monitored and documented where appropriate. Where a business' acts are attributable to a foreign State (i.e., where the business is owned or controlled by the State) then that State may be responsible for any human rights violations.<sup>55</sup> Remember: acts of a State-owned or controlled business are attributable to the State, which is under a legal obligation to respect human rights abroad.<sup>56</sup>

Foreign States should not enter into business in Syria where, during the course of the business activities, they would be unable to comply with their human rights obligations. In addition, they must withdraw their support if during the course of their operations they know or have reason to believe their activities are having a negative impact on human rights.<sup>57</sup>

## You should consider:

Is the State causing or contributing to abuse by businesses in Syria when conducting business in Syria itself, whether that is by investing in reconstruction or procuring services?

Is the foreign State-owned or controlled business involved in human rights abuses?

# 2

## Is a foreign business involved in the abuse in Syria?

### UNGPs, Principle 2

States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

In the situation where a foreign business is involved in abuse of international law in Syria, you should consider the responsibility of the State in which the business is incorporated. (i.e., the home State).

Home States should ensure that their nationals, including businesses, do not violate international law obligations when operating in Syria. Where possible, you should track and document the responses of foreign States, for example measures taken by the home State to prevent, investigate, punish, and redress such abuses.<sup>58</sup>

Many States have adopted measures in this regard, including direct extraterritorial legislation and enforcement.<sup>59</sup> Because 'the risk of gross human rights abuses is heightened in conflict-affected areas,' the UNGPs recommend that States take additional steps to 'ensure that business enterprises operating in those contexts are not involved with such abuses' (See above, UNGPs, Principle 7).<sup>60</sup> Where foreign businesses are involved, their home State therefore has a role to play in assisting both those businesses and the Syrian government to ensure that businesses are not involved with human rights abuse.<sup>61</sup>

**Consequently, you should ensure that the conduct of businesses from foreign States are monitored and documented.**

<sup>55</sup> See, International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts,' (2001), Article 2: "There is an internationally wrongful act of a State when conduct consisting of an action or omission: a) is attributable to the State under international law; and b) constitutes a breach of an international obligation of the State."

<sup>56</sup> FIDH, 'States Obligations to Respect and Protect Human Rights Abroad Joint Statement on John Ruggie's Draft Guiding Principles,' 1; see also, International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts,' (2001), article 8: "The conduct of a person or group of persons shall be considered an acts of a State under international law if the person or group of persons is in fact acting on the instruction of, or under the direction or control of, that State in carrying out the conduct". See also, ICRC Customary IHL Study, Rule 149.

<sup>57</sup> 'Statement of eminent jurists on legal obligations when supporting reconstruction in Syria,' (24 Sept. 2018), 5, available at: [https://www.business-humanrights.org/sites/default/files/documents/Eminent%20Jurists%20Statement\\_Syria%20reconstruction.pdf](https://www.business-humanrights.org/sites/default/files/documents/Eminent%20Jurists%20Statement_Syria%20reconstruction.pdf).

<sup>58</sup> UNGP 2, Commentary, 3-4: Whilst the UNGPs recognise that, 'at present States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction,' such regulation is becoming best practice with strong policy reasons in its favour.

<sup>59</sup> UNGP 2, Commentary. <sup>60</sup> UNGP 7. <sup>61</sup> UNGP 7, Commentary, 9.

## 2.3

# Identifying and documenting the involvement of multilateral organizations and non-traditional businesses, including charities/NGOs, in business-related human rights abuses

## Are the organisations involved in human rights abuse?

The expected budget of humanitarian agencies in Syria according to the Global Humanitarian Overview of 2018 was \$2.18 billion.<sup>62</sup> Despite being present in Syria for humanitarian reasons, multilateral organisations and charities/NGOs risk becoming involved in human rights abuses or international crimes through their activities, including through the procurement of services or goods from businesses involved in such abuses.

**When identifying and documenting their involvement in business-related human rights abuses you should follow the principles outlined in Chapter 1.**

In addition, you should take the following into consideration:

### 1

#### What organisation are you monitoring?

**Multilateral organisations:** are funded by multiple governments and work in a number of sectors. Examples include: The United Nations (UN) (including its various agencies such as the UN Development Programme and the UN Refugee Agency), the World Health Organisation, and the World Bank.

**Charities and NGOs:** are here defined as any non-profit humanitarian organisation.

### 2

#### What abuse has occurred?

All humanitarian organisations should conduct their activities in accordance with the humanitarian principles of humanity, impartiality, neutrality, and independence and to the overarching principle of do no harm.<sup>63</sup> Although lack of compliance with these principles may result in the humanitarian actors' involvement in human rights abuses, this toolkit does not focus on the aforementioned principles.

As with any business activity, you should monitor the compliance of multilateral organisations and charities with the provisions of international law and document any human rights abuses or international crimes related to such activity.

**Multilateral organisations:** should respect and protect human rights in Syria.<sup>64</sup> The UN Charter, for example, provides that the UN shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.<sup>65</sup>

**Charities and NGOs:** should respect human rights in a similar manner as businesses have a corporate responsibility to respect human rights.<sup>66</sup>

### 3

#### What activity of the multilateral organisation or charity contributed to the abuse?

Examples of activities which may result in multilateral organisations or charities becoming complicit in human rights abuses include:

- Where a multilateral organisation or NGO procures services or supplies from an entity that commits international crimes; for example, if the multilateral organisation uses a hotel chain to house its employees in Syria, and the company/individual that owns the hotel has been involved in crimes.
- Where a multilateral organisation or NGO funds a local project, such as a reconstruction project, which is being run by and benefits an organisation involved in human rights abuses, or which itself adversely affects human rights.
- Where a multilateral organisation or NGO sub contracts/partners with a local organisation to deliver humanitarian aid, and that local organisation has been involved in the commission of crimes.

<sup>62</sup> OCHA, Global Humanitarian Overview, (2018). <sup>65</sup> UN OCHA, Humanitarian Principles, (Apr. 2010). <sup>65</sup> UN Charter, Article 55; See also UN Charter

<sup>64</sup> See e.g., Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, 1980 I.C.J. 73, 89-90 (Dec. 20) (holding that “[i]nternational organizations [such as the UN] are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law”); Marten Zwanenburg, ‘Accountability under International Humanitarian Law for United Nations and North Atlantic Treaty Organization Peace Support Operations’ (Martinius Nijhoff, 2004), 157; ‘Accountability of International Organizations’, 71 int'l. ass'n rep. conf. Berlin (2004), 164, 196, (asserting that the United Nations is “subject to international humanitarian law insofar as it is engaging in activities of the kind regulated by international humanitarian law”).

<sup>66</sup> See e.g., ICCPR and ICESR, preambles, para 6: “Realising that the individual, having duties to other individual and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in the present Covenant”; International Committee of Red Cross, Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law (2006), 14.Article 1(3).



## Example of a multilateral organisation's alleged complicity in human rights abuses.

A 2016 report alleges that the UN has breached the principles of neutrality, impartiality and independence in Syria by choosing to prioritise cooperation with the Syrian government at all costs, enabling the distribution of billions of dollars of international aid to be directed to one side of the conflict.<sup>67</sup> Another report suggests two UN agencies have partnered with the Syria Trust charity, chaired by Bashar Assad's wife Asma, spending a total of \$8.5m. The first lady is under both US and EU sanctions.<sup>68</sup>

### How to document procurement processes?

Given the potential impact of procurement processes, multilateral organisations and charities should set and adhere to well-documented and organised procurement policies and processes, which incorporate human rights standards and ensure transparency. In addition to documenting abuse during procurement by multilateral organisations and charities, you should identify and document whether such organisations have adequate procurement processes in place to support compliance with international law.

#### What should a procurement process contain?

There are no international standards delineating the necessary ingredients of a multilateral organisation's or charity's procurement process. However, all multilateral organisations and charities should integrate human rights standards and due diligence (See Chapter 3) into their procurement practices.

At a minimum, when monitoring procurement processes you should ask yourself the following questions:

##### Is there a clear policy and strategy for managing human rights risks?

The organisation should have clearly defined procurement policies that, in particular commit to avoid human rights violations through its procurement processes and to not support, directly or indirectly, any group or organisation involved in international crimes or human rights abuses.

##### Is the procurement process fair and equitable?

All suppliers should be treated equitably and be provided with transparency as to the procurement process.<sup>69</sup> The procurement policy should contain a clear decision-making process for procurement contracts that clarifies the responsibility of staff. The organisation should allow free access for all stakeholders, including suppliers, civil society and the general public, to information on procurement processes.<sup>70</sup>

##### Does the procurement process include adequate due diligence procedures?

Supply chain due diligence should be conducted to assess and mitigate the risk of human rights abuses and IHL violations that may be linked to the organization or charity through its supply chain, operations structure and business relationships.

##### Is the procurement process transparent?

Procurement processes and contracts should be transparent.<sup>71</sup> Transparency has been defined as 'unimpeded visibility and openness in all transactions, ensuring that all information on procurement procedures, opportunities and processes are clearly defined and made widely known and available.'<sup>72</sup>

##### Does the organisation have reporting procedures?

Multilateral organisations and charities should also communicate and account for how they address their human rights impacts, particularly when concerns are raised by or on behalf of affected stakeholders.<sup>73</sup>

##### Does the organisation have mechanisms to remedy abuse?

Where human rights abuses occur in their procurement process, organisations should seek to remedy harm through legitimate processes.

##### Is the organisation committed to terminate contracts?

If it is determined that the contractor has engaged in corrupt or fraudulent practices or is involved in violations of international law.

For more information on business and human rights risk management processes, see Chapter 3.

<sup>67</sup> <http://takingsides.thesyriacampaign.org/wp-content/uploads/2016/06/taking-sides.pdf>.

<sup>68</sup> <https://www.theguardian.com/world/2016/aug/29/un-pays-tens-of-millions-to-assad-regime-syria-aid-programme-contracts>.

<sup>69</sup> See e.g., OECD Recommendation of the Council on Public Procurement, 7. <sup>70</sup> OECD Recommendation of the Council on Public Procurement, 7.

<sup>71</sup> Public Procurement Practice, Transparency in Public Procurement, (2012); OECD Recommendation of the Council on Public Procurement, 7

<sup>72</sup> European Commission, Public Procurement- Guidance for Practitioners, (2018), 19. <sup>73</sup> UNGP 21.



## Examples of Procurement Policies

### ICRC: Code of Ethics for Purchasing

The ICRC requires its suppliers to ensure compliance with social and environmental standards and to be neutral towards conflicting parties. The selection of suppliers is based on their ability to meet ICRC specifications, production capacity, and on their compliance with social and environmental standards.

### United Nations: UN Supplier Code of Conduct<sup>74</sup>

The UN has a Supplier Code of Conduct which delineates the ethical standards it expects of its suppliers. In particular:

- 'The UN expects its suppliers to support and respect the protection of internationally proclaimed human rights and to ensure that they are not complicit in human rights abuses.'<sup>75</sup>
- 'The UN expects its suppliers to adhere to the highest standards of moral and ethical conduct, to respect local laws and not to engage in any form of corrupt practices, including, but not limited to extortion, fraud, or bribery.'

### Oxfam: Ethical Purchasing Policy

Oxfam's Ethical Purchasing Policy requires Oxfam to purchase goods and services that:

- 'Are produced and delivered under labour conditions that meet the Ethical Trade Initiative Base Code (ETI) and therefore do not involve the abuse or exploitation of any person'
- 'Have the least negative impact on climate change and the environment.'

Moreover, Oxfam promises to 'seek alternative sources where the conduct of suppliers demonstrably violates the basic rights of Oxfam's intended beneficiaries, and there is no willingness to address the situation within a reasonable time, or where companies in the supply chain are involved in the manufacture or sale of arms in ways that are unacceptable to Oxfam.'

Oxfam adheres to framework agreements with its major suppliers and carries out ethical vetting checks before awarding supply contracts.<sup>76</sup> These checks include an evaluation of fair labour practices, gender policies, child labour, and environmental policies.<sup>77</sup>

<sup>74</sup> [https://www.un.org/Depts/ptd/sites/www.un.org.Depts.ptd/files/files/attachment/page/pdf/unscconcernsconduct\\_english.pdf](https://www.un.org/Depts/ptd/sites/www.un.org.Depts.ptd/files/files/attachment/page/pdf/unscconcernsconduct_english.pdf).

<sup>75</sup> UN Supplier Code of Conduct, 3. <sup>76</sup> Oxfam Supply Centre, Responsible Sourcing. <sup>77</sup> Oxfam Supply Centre, Responsible Sourcing.

# “Chapter 3”

## Documenting Compliance with the Businesses’ Responsibility to Prevent and Address Human Rights Abuses

**Chapter 2** explains how to identify and document human rights abuses related to business activity in Syria. **Chapter 3** complements **Chapter 2** and addresses what businesses must do when doing business in Syria if they are to respect human rights and avoid harm. It explains the practical steps, as identified in the UN Guiding Principles on Business and Human Rights (UNGPs), businesses should take to prevent and address human rights abuses. **Chapter 3** also explores how you can document compliance with these obligations.

By detailing the practical steps companies are obliged to follow to comply with international law, the UNGPs represent a minimum standard expected of business. A documented failure to comply with this international legal standard can be used to advocate for remedies for harm (see **Chapter 4**), future compliance and a human rights-based approach to business in Syria. Furthermore, knowledge of the UNGPs provides you with an authority to support your claims against businesses operating or planning to operate in Syria.

### 3.1 Chapter

introduces the three practical steps businesses are required to take in order to comply with their responsibility under international law.

### 3.2 Chapter

addresses the first step: the requirement to implement a human rights policy and to embed it in the business’ operations.

### 3.3 Chapter

addresses the second step: the requirement to carry out human rights due diligence whenever a business activity is initiated or a new business relationship is formed.

### 3.4 Chapter

addresses the third step: the requirement to provide for remediation.

# Chapter 3 SETTING THE SCENE

## What should businesses do?

As explained in **Chapter 2**, businesses have a responsibility to uphold human rights standards. In order to meet this responsibility businesses are expected to avoid becoming involved in human rights abuses in the manner described in **Chapter 2** by adopting and implementing a number of internal policies and processes (UNGPs, Principle 13).<sup>78</sup>

More specifically, businesses are expected to **prevent** and remedy human rights abuses:

**1** They **cause directly** through their own operations (see Table in **Chapter 2.1 – Causation**), and

**2** That are carried out by other entities, but to which they have **contributed** (see Table in **Chapter 2.1 – Contribution**).

Moreover, businesses are expected to **seek to prevent or mitigate** human rights abuses:

**1** Caused by their business relationship that are **directly linked** to their operations, products or services (see Table in **Chapter 2.1 - Linkage**).

**This means that businesses are required to take action also in relation to the human rights abuses caused by their business partners or by other entities such as the State or non-State entities that are directly linked to the business' own operations, products, or services.**

The UNGPs lay out the policies and processes that businesses must adopt in order to respect human rights and, in turn, to adequately **prevent, address, and/or mitigate** the human rights violations they may be involved with (UNGPs, Principle 15).<sup>79</sup> Business actors are required to:

**A** implement a human rights policy,

**B** carry out human rights due diligence, and

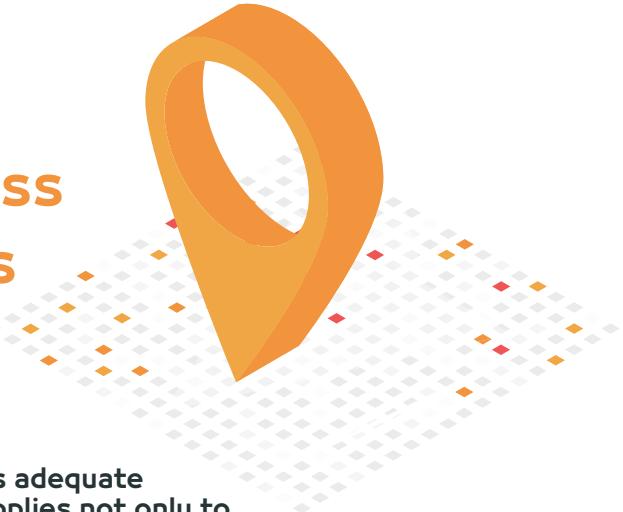
**C** to establish processes to enable the remediation of adverse human rights impacts.

These requirements apply **to all businesses** regardless of how the business may be involved in human rights abuses. As a matter of international law, these processes are considered the minimum steps required from businesses to identify and prevent human rights abuses.

<sup>78</sup> UNGPs, 13.

<sup>79</sup> UNGPs, 15.

## “Does the size of the business and the area of operations affect the actions they are required to take?



The responsibility to have in place policies and processes adequate to prevent and remedy negative human rights impacts applies not only to large multinational companies, but to all businesses that might work in Syria regardless of their size or area of operations. That said, the processes and policies businesses are expected to put in place must be appropriate to their size and to the complexity of their operations.

This means that the policies and processes implemented by large businesses will be more formalised than those of smaller businesses in order to be effective.<sup>80</sup> At the same time, the size of the business is not the only relevant factor. The circumstances in which a business operates are equally important in determining the type of policies and processes it is expected to implement.<sup>81</sup> Thus, small and medium-sized businesses operating in areas where there is a high-risk of negatively impacting human rights, such as Syria, are expected to implement policies and processes that would otherwise be expected only from large businesses.

The rest of the Chapter looks into each of these requirements in more detail to provide you with a strong understanding of what you should expect from businesses operating in Syria. Whenever you find out that a business operating (or intending to operate) in Syria does not comply with the requirements identified in the following sections, they will not be managing their risks according to international law. You should consider engaging with the business in question or with one of the other relevant entities identified in Chapter 4.3.

## Chapter 3 HUMAN RIGHTS POLICY

The first action businesses are expected to take in order to meet their responsibility to respect human rights is to adopt a human rights policy (UNGPs, Principle 16).<sup>82</sup>

### Definition

A human rights policy is a public statement committing a business to respect international human rights standards and to do so by having policies and processes in place to identify, prevent, or mitigate human rights impacts, and remediate any adverse impact it has caused or contributed to.<sup>83</sup>

<sup>80</sup> UN Office of the High Commissioner for Human Rights (OHCHR), The Corporate Responsibility to Respect Human Rights: an Interpretative Guide, 20.

<sup>81</sup> OHCHC, Interpretative Guide, 20.

<sup>82</sup> UNGPs, 16.

<sup>83</sup> UN Global Compact, ‘How to develop a human rights policy,’ 4.



**Businesses are not expected to follow a specific template when developing human rights policies. Human rights policies are usually included in documents called “Sustainability Report” or “Annual Report”. Through their human rights policies, businesses are expected to commit to respect all internationally recognised human rights and are encouraged to specifically identify and commit to respect the human rights that are most relevant to their business operations. In other words, the human rights that the business is most likely to impact through its operations.**



**Human rights policies should be expressly approved at the most senior level of the business (i.e., the executive board) and should establish the business’ human rights expectations not only in relation to the business’ employees and management, but also with regard to its business relationships.” In other words, it should outline the conduct the business expects from its partners and other entities directly linked to its operations, products or services with respect to human rights.**



**Finally, when developing human rights policies, businesses operating in high-risk contexts - such as Syria - are expected to consult with groups that are likely to be affected by the businesses’ operations or with organizations, such as you or other civil society organisations representing these groups.<sup>85</sup>**

**Adopting and publishing a human rights policy is not sufficient. Businesses are also expected to embed the policy in their operations. In order to do so, businesses must:<sup>86</sup>**

**A** Make sure that internal policies and procedures reflect the policy;

**B** Assign responsibility for the implementation of the human rights policy to a person or a department within the business;

**C** Establish internal mechanisms to monitor the implementation of the policy;

**D** Make sure that their employees are aware of the business’ human rights policy and are adequately trained to understand the policy’s implications on how they conduct their work;

**E** Make sure that the human rights policy is communicated to their business relationships;

**F** Strive to include obligations to respect human rights in their contracts with business relationships;

**G** Incentivise employees, especially those responsible for the implementation of the policy to implement the human rights policy (e.g., make a bonus dependent on the human rights performance of the business). Have strong disincentives (e.g., serious disciplinary penalties) for conduct that is inconsistent with the human rights policy.

<sup>84</sup> OHCHR, Interpretative Guide, 27. <sup>85</sup> OHCHR, Interpretative Guide, 29.

<sup>86</sup> Shift, 2016, 40; OHCHR, Interpretative Guide, 47; Institute for Human Rights and Business (IHRB), The ‘State of Play’ of Human Rights Due Diligence, (2011), 25.

The process of embedding human rights policies should not be confused with the process of integration required as part of due diligence (see below).<sup>87</sup>

Below are a set of questions that will help you document a business' compliance with these obligations.



## TOOLBOX:

**Questionnaire 1 – Does the business comply with the requirement to implement a human rights policy and to embed it in its operations?**<sup>88</sup>

(See Annex 1 on where to find the information needed to establish compliance with the UNGPs)

## Implementation



- 1. Does the business have a human rights policy?**
- 2. Is the human rights policy available on the business' website or upon request?**
- 3. Which international human rights standards does it refer to? Does the policy contain a commitment to respect human rights particularly relevant to the industry and the specific business? (e.g., a construction company should publicly commit to respecting the human rights of communities' rights to security and ownership or use of land?)**
- 4. Is the policy adequate to protect the rights of Syrians likely to be affected by the business?**
- 5. Does the business publicly commit to carrying out human rights due diligence where appropriate?**
- 6. Does the business publicly commit to engaging with potentially and actually affected stakeholders, including local communities when needed?**
- 7. Does the business publicly commit to providing for remediation (or engagement in remediation) for affected individuals through fair, effective and transparent processes?**
- 8. Does the human rights policy stipulate the business' human rights expectations of personnel, business partners, and other parties directly linked to its operations, products, or services?**
- 9. Has it been approved by the most senior level of the business (eg. CEO/Director/ Company Board)?**

<sup>87</sup> Shift, 2016, 63.

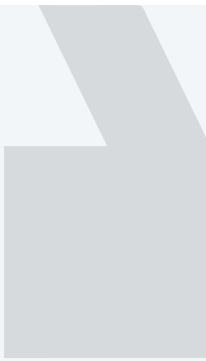
<sup>88</sup> The questions used in the three questionnaires in this Chapter are largely drawn from SOMO, CEDHA, Cividep India, 'How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy: a guide for civil society organisations', 2012 and from the indicators used in the 2018 Corporate Human Rights Benchmark Report.

# Embedding the Policy in the business' operations

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- 1.** Does the business provide incentives to the management linked to the implementation of its human rights policy commitments or targets?
  - 2.** Does the business describe the process it has in place to discuss and address human rights issues at management level or whether the management regularly reviews the business' most relevant human rights issues?
  - 3.** Does the business indicate the senior manager role(s) responsible for relevant human rights issues within the company?
  - 4.** Does the business integrate its approach to human rights risks into its broader risk management system?
  - 5.** Are other policies and business processes coherent with the human right statement? For instance, does the business ensure its procurement policies do not undermine respect for human rights?
  - 6.** Is the policy communicated to all personnel and business partners?
  - 7.** Does the business train its workers on its human rights policy commitment?
  - 8.** Does the business monitor the implementation of its human rights policy commitment(s) across its operations and business relationships and follows up on corrective actions and necessary changes to policies or processes?
  - 9.** Does the business have a human rights clause in contracts with business partners?
  - 10.** Is the policy communicated to potentially affected stakeholders, including local communities?
-

“



# Best Practice

You can use this as a benchmark when assessing the human rights policies of companies operating in Syria.”

**BHP Billiton is an Australia-based company operating in the extractive industry.<sup>89</sup>**

The company’s human rights policy can be found under a section of the company’s website called ‘operating with integrity’<sup>90</sup> and in the ‘Society Section’<sup>91</sup> of the company’s annual ‘Sustainability Report.’

**Below are some relevant extracts from the company’s human rights policy.**

Respecting human rights wherever we operate is critical to the sustainability of our business and is consistent with our commitment to operate in a manner consistent with the United Nations (UN) Declaration on Human Rights, the UN Guiding Principles on Business and Human Rights, the Voluntary Principles on Security and Human Rights and the 10 UN Global Compact Principles.<sup>92</sup>

Human rights are integrated into BHP’s risk management system through the ‘Our Requirements’ standards. We seek to identify and manage human rights risks and perform due diligence across all our activities. We engage regularly with communities, investors, civil society and industry associations on human rights-related issues and impacts of our operations on communities.<sup>93</sup>

Our asset teams are required to identify and document key potential human rights risks by undertaking a Human Rights Impact Assessment (HRIA), which is reviewed whenever there are changes that may affect the impact profile.<sup>94</sup>

Decisions around acquisitions and divestments, new activities in high-risk countries and major capital projects are required to take a risk-based approach that includes consideration of human rights risks and community impact issues.<sup>95</sup>

Our expectations of our people, contractors and suppliers (where under relevant contractual obligation) are set out in ‘Our Code of Conduct’ and other relevant standards. Performance against those standards is overseen by our management and subject to internal audit.<sup>96</sup>

We acknowledge the challenges of respecting human rights throughout our value chain and we are committed to working with our suppliers and business partners to adopt principles and standards similar to BHP’s.<sup>97</sup>

Governance oversight of BHP’s human rights performance is the responsibility of the Board’s Sustainability Committee. Each of our operations assigns accountability for compliance with our mandatory human rights performance requirements to appropriate senior managers and leaders.<sup>98</sup>

In 2017, BHP’s Human Rights Working Group reviewed our current approach to human rights across the business, following a benchmarking exercise against the UN Guiding Principles on Business and Human Rights. Based on the review, the following actions have been taken in 2018 to strengthen our approach to human rights management across third-party relationships, community risk and reporting.<sup>99</sup>

<sup>89</sup> The 2018 Corporate Human Rights Benchmark gave BHP Billiton a score of 8.9 out of 10 to its governance and policy commitments.

<sup>90</sup> BHP, Operating with Integrity, available at: <https://www.bhp.com/our-approach/operating-with-integrity/respecting-human-rights>.

<sup>91</sup> BHP, Sustainability Report, (2018), 36. <sup>92</sup> Ibid, 45. <sup>93</sup> Ibid. <sup>94</sup> Ibid.

<sup>95</sup> Ibid. <sup>96</sup> Ibid. <sup>97</sup> Ibid.

<sup>98</sup> BHP, Operating with Integrity,

<sup>99</sup> BHP Sustainability Report (2018), 46.

# 3 Chapter

# HUMAN RIGHTS DUE DILIGENCE

The second action businesses are expected to take in order to meet their responsibility to respect human rights is to carry out human rights due diligence (UNGPs, Principle 17).<sup>100</sup>

## Definition

**Human rights due diligence is the process that allows companies to:**

**1** identify the potential or ongoing human rights impacts they may be/are involved with; and

**2** take timely measures to address them through prevention, mitigation, or remediation.



**At a minimum, the human rights due diligence process should include the following steps:**

**1** Identifying and assessing potential or ongoing human rights impacts the business is involved with – Human Rights Impact Assessment (HRIA);

**2** Integrating and acting on the findings of the HRIA;

**3** Tracking the effectiveness of the actions taken; and

**4** Communicating externally how potential or ongoing human rights impacts have been addressed.

In order to be effective and to comply with the international standards established by the UNGPs, the due diligence process must be applied not only to the business' own operations, but also to the potential or on-going human rights impacts of its business relationships (business partners as well as the state or other non-state entities) that are directly linked to the business' operations, products, or services.<sup>101</sup> For instance, if a business facilities are protected by state security forces, the business should assess the risks that human rights abuses may occur as a result of the security forces' presence at its facilities.<sup>102</sup>

Larger businesses with many business relationships are usually not expected to carry out human rights due diligence in relation to every single one of them. However, human rights due diligence in operating contexts, such as Syria, where the risks of human rights abuses are most significant, must include every business relationship.<sup>103</sup>

Finally, the due diligence process should be started as early as possible and should be undertaken whenever a new business activity is initiated, or a new business relationship is formed.<sup>104</sup> Due diligence processes should be ongoing processes that are expanded any time there are changes in the business' operations or operating contexts.<sup>105</sup>

The following sections look further into each of the steps businesses are required to take when carrying out human rights due diligence.

<sup>100</sup> UNGPs, 17.

<sup>101</sup> OHCHR, Interpretative Guide, 32.

<sup>102</sup> OHCHR, Interpretative Guide, 41-42.

<sup>103</sup> UNGPs, 17, Commentary.

<sup>104</sup> UNGPs, 18, Commentary.

<sup>105</sup> OHCHR, Interpretative Guide, 33.

# Identifying and assessing potential or ongoing human rights impacts – Human Rights Impact Assessment

A vital step is to identify and assess the potential and on-going human rights impacts a business may be involved with in Syria, either through its own activities or as a result of their business relationships (UNGPs, Principle 18).<sup>106</sup> This process is known as Human Rights Impact Assessment (HRIA). During a HRIA, businesses are, particularly in the case of Syria, expected to:

**1** assess the human rights situation in the locations within Syria where they intend to carry out business operations;

**2** identify who may be affected as well as whether there are individuals or groups that may be particularly affected;

**3** identify the human rights issues that may arise using international human rights instruments as a reference; and

**4** assess how the proposed activity and associated business relationships could have/have adverse human rights impacts on the individuals or groups identified.<sup>107</sup>

## IMPORTANT

When assessing human rights impacts in high-risk scenarios like Syria, businesses are expected to:

### Draw on independent external human rights expertise:<sup>108</sup>

Businesses should consult publications by human rights experts or civil society organisations on the human rights issues relevant to the context where they intend to operate, as well as directly engage and seek advice from human rights experts and civil society organisations with specific knowledge of the area where they intend to operate.<sup>109</sup> Finally, when operating in complex scenarios, such as Syria, businesses should consider carrying out the HRIA in partnership with a human rights organisation (see best practice box below).

### Consult with relevant stakeholders:

Businesses are specifically expected to consult with individuals and local communities whose rights are or may be impacted by business operations with a view to understand their concerns.<sup>110</sup> In order to identify the potentially affected individuals or groups, businesses should consult with civil society organisations with specific knowledge about the context in which the operations are to take place.<sup>111</sup> When engaging with potentially affected stakeholders, businesses are expected to prioritise consultations with groups that are at a heightened risk of being negatively impacted.<sup>112</sup> This means that often businesses should pay special attention to individuals from vulnerable or marginalized groups even though they are less visible to the business.<sup>113</sup> When direct consultation with potentially affected stakeholders is not possible or would put them at risk, businesses are expected to consult with other entities, such as local civil society organisations, which have direct insights into the perspectives of potentially affected stakeholders.<sup>114</sup>

<sup>106</sup> UNGPs, 18. <sup>107</sup> UNGP 18, Commentary. <sup>108</sup> UNGP 23, Commentary. <sup>109</sup> OHCHR, Interpretative Guide, 43.

<sup>110</sup> Danish Institute for Human Rights (DIHR), 'Human Rights Impact Assessment, Guidance and Toolbox,' 2016 94-96.

<sup>111</sup> UN Global Compact, Stakeholder Engagement in Human Rights Due Diligence, 15. <sup>112</sup> UN Global Compact, Stakeholder Engagement in Human Rights Due Diligence, 15.

<sup>113</sup> UNGP 18, Commentary. <sup>114</sup> UNGP 18, Commentary.; Shift, 2016, 50-51.

## The purpose of consultations is twofold:

The consultations should provide the relevant stakeholders with sufficient information about the business' proposed or ongoing activities.<sup>115</sup> The information provided must be clear, accurate, complete, delivered in Arabic, and must be communicated with sufficient time to be understood and verified.<sup>116</sup> In addition, it must include a preliminary assessment of the adverse impacts that the business' activities may have on the relevant stakeholders.<sup>117</sup>

The consultations should give stakeholders the opportunity to express their views and concerns about the proposed or ongoing activities.<sup>118</sup> The views expressed by the stakeholders must be taken into account by the business when assessing the human rights impacts of its activities and should inform the company's subsequent actions.<sup>119</sup>

The business' responsibility to consult with potentially affected stakeholders and to draw on independent external human rights expertise provides you with a valuable opportunity for engagement (see Chapter 4).

## Integrating and acting on the findings of the HRIA

The second step is to integrate the findings of the HRIA in their operations and to take appropriate action (UNGPs Principle 19).<sup>120</sup> Businesses are expected to integrate the findings by identifying which persons/departments within the businesses are required to address the potential or ongoing human rights impacts. The integration of findings will be effective only if the business has already embedded its human rights policy commitment in its operations. The type of action a business is expected to take depends on the nature of the involvement with the actual or potential human rights impacts:

If a business is **causing or may cause** (Causation) adverse human rights impacts in Syria, it should take the necessary steps to **cease or prevent** the impact.

If a business **contributes or may contribute** (Contribution) to an adverse human rights impact in Syria, it should take the necessary steps to **cease or prevent** its contribution and use its leverage to **mitigate** any remaining impact to the greatest extent possible.<sup>121</sup>

If a business is not directly causing or contributing to an actual or potential adverse human rights impact, but the adverse human rights impact is **directly linked** to its operations, products, or services by its business relationship with another entity (Linkage), it should use its leverage to **seek to prevent the impact from continuing or recurring**.<sup>122</sup>

If the adverse human rights impacts have already occurred, businesses are also expected to **provide remediation** (see following section).

<sup>115</sup> DIHR, Guidance and Toolbox, 95. <sup>116</sup> FAO, Free Prior and Informed Consent, Manual for Project Practitioners, (2016), 15,16. <sup>117</sup> DIHR, Guidance and Toolbox, 95.

<sup>118</sup> See OECD, Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, 2017. <sup>119</sup> DIHR, Guidance and Toolbox, 95.

<sup>120</sup> UNGPs, 19. <sup>121</sup> UNGPs, 19, Commentary. <sup>122</sup> Shift, 2016, 65.

In situations where the entity directly causing harm is a third party (e.g. Contribution or Linkage), the type of action required from the business depends on the leverage it has on the third party (business or government) and on the importance of the business relationship for the business. Leverage means the ability the business has to influence the conduct of the third party.<sup>123</sup>

| Nature of Business relationship   | Leverage   | Lack of leverage  |
|---|--|---|
| <b>Crucial business relationship<sup>124</sup></b><br><br>(A business relationship is crucial only if it provides a product or service that is essential to the business activity, and for which no reasonable alternative source exists) | Seek to mitigate the risk that the abuse continues/recurs.<br><br>If unsuccessful, consider taking steps to end the relationship or avoid entering into the business relationship. (When assessing whether to end the relationship, the severity of adverse human rights impacts should be taken into account) | Assess reasonable options for increasing leverage to mitigate the risk that the abuse continues/recurs.<br><br>If unsuccessful, consider taking steps to end the relationship or avoid entering into the business relationship. (When assessing whether to end the relationship, the severity of adverse human rights impacts should be taken into account) |
| <b>Non-crucial business relationship</b>  | Seek to mitigate the risk that the abuse continues/recurs.<br><br>If unsuccessful, consider taking steps to end the relationship or avoid entering into the business relationship. (When assessing whether to end the relationship, any adverse human rights impact should be taken into account)              | Assess reasonable options for increasing leverage to mitigate the risk that the abuse continues/recurs.<br><br>If unsuccessful, consider taking steps to end the relationship or avoid entering into the business relationship. (When assessing whether to end the relationship, any adverse human rights impact should be taken into account)              |

If a business decides to maintain a business relationship with an entity that is causing harm, it should - at the very least - be able to demonstrate its own ongoing efforts to mitigate the impact.

Failure to take any of these actions may result in the business being held accountable for its involvement in the harm (see Chapter 5).

## Tracking the effectiveness of the actions taken

The third step is to implement processes that track the effectiveness of the actions taken to prevent/mitigate adverse human rights impacts (UNGPs, Principle 20).<sup>125</sup> As with any other steps of the due diligence process, businesses are also expected to track the effectiveness of the actions taken by its business relationships. During the tracking and evaluation process, businesses are expected to take into account the perspectives of relevant stakeholders such as the affected individuals and communities.<sup>126</sup>

<sup>123</sup> Shift, 2016, 69.

<sup>124</sup> This table draws inspiration from OHCHR, Interpretative Guide, 50.

<sup>125</sup> UNGPs, 20. <sup>126</sup> OHCHR, Interpretative Guide, 55.

## Communicating externally how potential or on-going human rights impacts have been addressed

The fourth and last step is to be transparent about how adverse human rights impacts are addressed (UNGPs, Principle 21).<sup>127</sup> Businesses are specifically expected to communicate how they identify and address adverse human rights impacts to relevant stakeholders such as affected individuals and communities as well as to civil society organisations acting on behalf of affected stakeholders.<sup>128</sup>

Finally, businesses operating in contexts where there are risks of severe human rights impacts, such as Syria, are expected to publish reports addressing their actions.<sup>129</sup>

Below are a set of questions that will help you document a business' compliance with these obligations.

<sup>127</sup> UNGPs, 21.

<sup>128</sup> UNGP, 21, Commentary.; OHCHR, Interpretative Guide, 60.

<sup>129</sup> UNGP, 21, Commentary.





## TOOLBOX:

### Questionnaire 2 – Does the business have an effective human rights due diligence process?

(See Annex 1 on where to find information needed to establish compliance with the UNGPs)

- |  |  |   |  |
|--|--|---|--|
| <p><b>1</b></p> <p>Are documents about the business' due diligence processes publicly available?</p>   | <p><b>2</b></p> <p>Can you otherwise retrieve the business' document concerning its human rights due diligence processes?</p>  | <p><b>3</b></p> <p>What potential human rights impacts do you foresee in the context where the business operates?</p>   | <p><b>4</b></p> <p>Does the business acknowledge the human rights risk concerning their operations you have identified?</p>  |
| <p><b>5</b></p> <p>Which departments in the business are responsible for human rights due diligence?</p>   | <p><b>6</b></p> <p>Has the business developed processes for assessing its human rights impacts?</p>  | <p><b>7</b></p> <p>Does the business apply these processes both to identify and assess the human rights risks and impacts of its own operations as well as those of its business relationships?</p>   | <p><b>8</b></p> <p>Does the business rely on independent human rights expertise when assessing its human rights risks and impacts?</p>   |
| <p><b>9</b></p> <p>Does the business assess its human rights risks and impacts on an on-going basis, especially during key moments of the business' activities, such as when it starts new operations, acquires new business relationships or in light of changes in the human rights context in particular locations?</p> | <p><b>10</b></p> <p>Does the business respond to requests regarding its potential human rights impacts and strategies to prevent them? Is the business willing to communicate about its potential risks to human rights?</p> | <p><b>11</b></p> <p>Who are the individuals/communities potentially affected by the business' operations?</p>   | <p><b>12</b></p> <p>Does the business identify rights holders and other stakeholders that are/may be impacted by the business' operations? Are any of the stakeholders left out?</p>   |
| <p><b>13</b></p> <p>Does the business consult with individuals and groups potentially affected in the course of its impact assessment and inform them about potential impacts?</p>   | <p><b>14</b></p> <p>Does the business consult with them on an on-going basis?</p>  | <p><b>15</b></p> <p>If the business does not or cannot consult with potentially affected individuals/communities, what other credible sources does the business rely on to understand the individuals/communities' perspectives and concerns?</p> | <p><b>16</b></p> <p>Does the business integrate the findings of its assessments of human rights risks and impacts into relevant internal functions and processes by taking appropriate actions to prevent, mitigate, or remediate its human rights issues?</p> |

**17**

Were potentially affected rights holders and other stakeholders involved in the design of the impact assessment and preventive/mitigating measures?

**18**

More specifically, if the business has identified an adverse human rights impact through its due diligence process, has it taken the following actions?

**A**

If the business is causing (causation) an adverse human rights impact, has it developed a concrete action plan to cease the adverse human rights impacts and to prevent future impacts?

**B**

If the business is contributing (contribution) to an adverse human rights impact, has it developed a concrete action plan to cease its contribution to the adverse human rights impact, mitigate any remaining impact, and prevent such impacts in the future?

**C**

If the business is directly linked (linkage) to an adverse human rights impact, has it developed a concrete action plan to mitigate the human rights impact, and prevent such impacts in the future?

**22**

Once the business has identified the entity that caused the abuse, does the company offer necessary assistance to the entity?

**21**

Has the business engaged with the entity in order to alert it and cease the adverse human rights impact?

**22**

Has the business used its leverage over the entity to cease the impact?

**23**

If the business did not have enough leverage to mitigate the impact, has it made efforts to increase its leverage?

**24**

Has the business continued the relationship with the entity that violated human rights, even if its efforts to mitigate the abuses were not successful and ending the relationship would not have adverse human rights impacts?

**19**

What has the business communicated to them about how it will prevent any negative impact on them?

**25**

Are all relevant departments within the business that are related to the human rights risks or impacts informed about and are they engaged in responding to them?

**26**

Does the business track and evaluate the effectiveness of actions taken in response to its human rights risks and impacts and describe how it uses that information to improve processes and systems on an ongoing basis?

**27**

Has the evaluation taken into account the perspective of the affected rights holders?

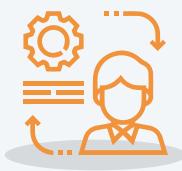
**28**

Does the business communicate externally how it addresses its human rights impacts in a manner that is accessible to its intended audiences, especially affected stakeholders who have raised concerns, providing enough information to evaluate the adequacy of the response?

**29**

Do potentially affected rights holders and other stakeholders indicate that the due diligence procedures adequately take their concerns into account?

“



## Best Practice

This is an example of a business drawing on external independent human rights expertise when carrying out a HRIA that you can use as a benchmark when assessing the human rights due diligence processes of companies operating in Syria.

**ENI** is an Italian oil and gas company operating in 71 countries.<sup>130</sup>

In 2015-2016 Eni collaborated with the Danish Institute for Human Rights (DIHR)<sup>131</sup> in undertaking a HRIA for some of its operations in Myanmar.

Before the assessment, the DIHR helped ENI planning the assessment and provided a number of recommendations to ensure a meaningful participation of relevant stakeholders in the process.<sup>132</sup>

The on-field impact assessment lasted two weeks and the DIHR, together with ENI's assessment team, interviewed the company's headquarters staff and workers, its business partner in the country, relevant NGOs and CSOs, and community members. Following the assessment, the DIHR developed a human rights report<sup>133</sup> with the assessment findings and recommendations for Eni, including a checklist of actions ENI and its contractor should take to avoid or mitigate negative impacts in preparation for, during and after the planned operations. In 2018 ENI and the DIHR conducted a follow-up assessment to evaluate how ENI had implemented the checklist and other controls, in particular regarding consultation and engagement, land management and compensation, access to grievance mechanisms, and contractor relations. During a one-week visit, the DIHR spoke with all relevant stakeholders in the affected area, in particular with community members whose land had been accessed, to hear first-hand how ENI had performed.<sup>134</sup>

## Chapter 3.4 REMEDIATION

The third action required from businesses in order to meet their responsibility to respect human rights is to provide for remediation in case of failure to prevent adverse human rights impacts (UNGPs, Principle 22).<sup>135</sup>

The responsibility to provide for remediation applies even if businesses became involved with adverse human rights impacts despite having implemented an effective human rights policy and despite having carried out human rights due diligence.

When businesses cause or contribute (See Table in Chapter 2.1) to adverse human rights impacts, they are expected to provide for remedies themselves.<sup>136</sup> When businesses are involved in adverse human rights impacts through a direct link with their operations, products, or services by a business relationship (See Table in Chapter 2.1), they are not expected to be directly involved in providing remedy, but they may be expected to play a role in the process.<sup>137</sup>

<sup>130</sup> ENI, available at: [https://www.eni.com/en\\_IT/home.page](https://www.eni.com/en_IT/home.page). <sup>131</sup> DIHR, available at: <https://www.humanrights.dk/>.

<sup>132</sup> DIHR, 'ENI Myanmar: Human Rights Report,' available at: [https://www.eni.com/docs/it\\_IT/enipedia/presenza-internazionale/asia-e-oceania/myanmar/dihr-eni-myanmar-rsf-5-human-rights-report-final.pdf](https://www.eni.com/docs/it_IT/enipedia/presenza-internazionale/asia-e-oceania/myanmar/dihr-eni-myanmar-rsf-5-human-rights-report-final.pdf).

<sup>133</sup> Ibid. <sup>134</sup> ENI, Sustainability Report 2017, 46. <sup>135</sup> UNGPs, 22.

<sup>136</sup> OHCHR, Interpretative Guide, 64.

<sup>137</sup> UNGP, 24-25, Commentary.

# Remedies can take different forms:

**A**

An apology to those affected;

**B**

Compensation (financial or other) for the harm suffered;

**C**

The implementation of changes within the business to ensure that adverse human rights impacts do not recur;

**D**

Cessation of a particular activity or relationship; or

**E**

Any other form of remedy agreed by the parties.<sup>138</sup>

In some circumstances, businesses are expected to defer to and cooperate with other remediation processes instead of directly providing for remedies, especially if their remediation process risks undermining the parallel remediation process. An example of this is where judicial proceedings or other state-based accountability mechanisms (see Chapter 5) are addressing the adverse human rights impact in question.<sup>139</sup>

In circumstances where victims do not have the possibility to access other remediation mechanisms -such as judicial proceedings- until a later date, businesses must not use the remedies they provide as a way of preventing victims from accessing other accountability mechanisms in the future.<sup>140</sup>



## What processes are businesses expected to establish?

In order to provide for remediation, businesses are expected to establish or participate in effective grievance mechanisms (UNGPs, Principle 29).<sup>141</sup>

### Definition Box

Grievance mechanisms are channels established by the business allowing individuals or organisations to raise concerns about the impacts or potential impacts of the business' operations.

To be fully effective, grievance mechanism should be known to the public, accessible to everyone and not just to the business' employees and should not be limited to addressing only complaints that amount to breaches of human rights or other specific standards. Grievance mechanisms should allow a business to identify and address problems early, before they escalate.<sup>142</sup> The establishment of a grievance mechanism contributes to meeting the business' responsibility to engage with relevant stakeholders, but is not sufficient without wider stakeholder engagement processes (see Chapter 3.3 on due diligence).<sup>143</sup>

If trust between the business and affected stakeholders is low or where human rights risks are significant, such as the case in Syria, companies are encouraged to have joint oversight of the mechanism by both representatives of the enterprise and the affected stakeholder groups.<sup>144</sup>

<sup>138</sup> OHCHR, Interpretative Guide, 64. <sup>139</sup> OHCHR, Interpretative Guide, 64. <sup>140</sup> OHCHR, 29, Commentary.

<sup>141</sup> UNGPs, 29. <sup>142</sup> OHCHR, Interpretative Guide, 68-69. <sup>143</sup> OHCHR, Interpretative Guide, 72.

<sup>144</sup> OHCHR, Interpretative Guide, 70-71.

Crucially, grievance mechanisms should be based on dialogue and mediation, not on adjudication by the business. This is because, where the business adjudicates the complaint; the business is not only the subject of the grievance, but also the final judge of the complaint. Adjudication based processes raise doubts about the business' seriousness about handling stakeholder complaints<sup>145</sup> and may be lead to abuse or unfairness by the business. Finally, grievance mechanisms should satisfy the following requirements:

#### UNGP 31

In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

**A Legitimate:** enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;

**B Accessible:** being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;

**C Predictable:** providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;

**D Equitable:** seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;

**E Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognized human rights;

**F A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

**G Transparent:** keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;

#### **H Operational-level mechanisms should also be:**

Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances

### IMPORTANT

**In situation of ongoing conflict or unstable transition, victims of business related human rights abuses are unlikely to be able to access remedies through judicial proceedings before Syrian courts. In addition, Syria has not yet established any State-based non-judicial accountability mechanism (see Chapter 5), which would allow victims of business-related human rights abuses to seek redress. Against this background, it is crucial that businesses operating in Syria establish grievance mechanisms if they are to meet their responsibility to respect human rights. In the majority of cases, these grievance mechanisms may be the only remediation mechanism accessible to victims of business-related human rights abuses.**

<sup>145</sup> Shift, 2016, 110.



## Are all businesses expected to establish or participate in remediation processes?

Despite the fact that only businesses that actually cause or contribute to adverse human rights impacts are expected to be directly involved in providing remedy, **every** business should establish or participate in processes that are effective in providing remediation.

This means that businesses should establish grievance mechanisms **before** they actually become involved with adverse human rights impacts. These mechanisms, besides allowing the business to provide for remediation, serve an important preventative function. When functioning correctly, grievance mechanisms work as an early warning system to address issues before they become human rights abuses and as such they are an important part of human rights due diligence.<sup>146</sup>

Finally, as explained above, the size of businesses and the circumstances in which they operate affect the type of grievance mechanisms they are expected to establish or participate in. As a consequence, larger businesses or businesses (including small and medium-sized businesses) operating in circumstances where there are significant human rights risks, such as Syria, are expected to establish structured complaint mechanisms.<sup>147</sup>

<sup>146</sup> SOMO, 'How to use the UNGPs,' 2012, 29.

<sup>147</sup> OHCHR, Interpretative Guide, 77.



Below are a set of questions that will help you document a business' compliance with these obligations.

## TOOLBOX:

### Questionnaire 3 – Does the business comply with the requirement to provide for the remediation of adverse human rights impacts?

(See Annex 1 on where to find information needed to establish compliance with the UNGPs)



**1**  
Does the business have a functioning and safe complaint mechanisms in place?



**2**  
If not, does the business participate in a complaint mechanism established by a third party?



**3**  
Is the complaint mechanism accessible in Arabic?



**4**  
Is the information about how complaints or concerns are received, processed and addressed publicly available?



**5**  
Does the business expressly prohibit retaliation for raising complaints or concerns?



**6**  
Who in the business handles complaints?



**7**  
Is the complaint mechanism otherwise in line with the requirements of UNGP 31? (see page 56).



**9**  
Who in the business is responsible for enabling remediation if a human rights impact occurs?



**10**  
Has the business ever obstructed the access to remedy in the past?



**11**  
Is there any fear of retribution if the affected people engaged with the mechanism?



**12**  
Are potentially affected rights holders aware of the complaint mechanisms? Were they involved in developing/reviewing them?



**13**  
Does the business expect its business partners to establish complaint mechanisms or do individuals and communities affected by the business partners have access to the business' own complaint mechanism?



**14**  
Does the business require individuals to waive their legal rights to bring a claim through a judicial process as a condition to bring a complaint? More generally, does the business prevent those that present a complaint from accessing State-based judicial or non-judicial mechanisms (see Chapter 5) or other mechanisms?



**15**  
Is the complaint mechanism designed in a way to provide fair, independent and impartial processes and outcomes?



**16**  
If the business has been involved in adverse human rights impacts in the past, to what extent has the business delivered meaningful action to stop and address adverse impacts?



**17**  
Does the business provide for or cooperate in remediation to victims where it has identified that it has caused or contributed to adverse human rights impacts?



**18**  
Does the business have processes in place to enable remediation if human rights concerns are raised through other complaint mechanisms?

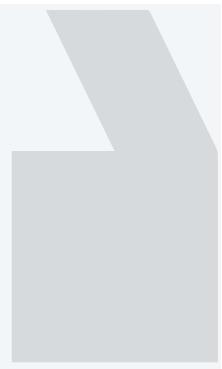


**19**  
Is the complaint mechanism accessible by people other than the business' employees? In particular, do individuals and communities that may be affected by the business and CSOs acting on their behalf have access to the complaint mechanism?



**20**  
Did the business subscribe to a voluntary initiative (see Chapter 4.3)? What is its role in the initiative? Does the voluntary initiative ensure that there are effective grievance mechanisms available?

“



# Best Practice

You can use this as a benchmark when assessing the complaint mechanisms of companies operating in Syria.

”

**Adidas** is a clothing company based in Germany.<sup>148</sup>

Adidas' complaint mechanism allows the following to present a complaint:

- any individual or organisation directly affected by a violation of an international human rights norm;
- any organisation representing individuals or communities directly affected by a violation of an international human rights norm.<sup>149</sup>

The complaint can concern violations of international human rights norms related to Adidas' own operations or violations related to an external service provider or supplier.

The complaint can be made in writing in the individual's or organisation's own language and emailed, faxed, or posted to a specific address.

The complaint should include a number of information including the human rights norm that is being breached, the person/entity responsible for the violation, whether the complainant must remain anonymous, and should identify the preferred remedy.

If the complaint is not accepted, reasons are given to the complainant. If the complaint is accepted, Adidas starts an investigation of the complaint. If required, during the investigation Adidas may also engage with other stakeholders from the local communities and civil society. In addition, Adidas may choose to commission an external investigation from an independent third party, or use the services of an independent specialist or appoint an independent ombudsman or mediator to manage the complaint process.

Where Adidas determines that it has caused or directly contributed to a violation it will cease or make changes to the activity that is responsible, in order to prevent or mitigate the chance of the impact occurring or recurring. Where Adidas is neither causing nor directly contributing to a violation it will encourage the entity that has caused or contributed to the impact to prevent or mitigate its recurrence. Adidas may cease business with the entity subject of the complaint in accordance with the terms of the relevant contract or agreement.

Depending on the type of remedial action agreed, the parties will seek to reach agreement on how the remedy is to be monitored and checked to ensure that it is implemented within the agreed timescale.

If the complainant is unhappy with the way the complaint has been handled, the complainant can raise the issue with the department responsible for handling the complaints, which will review the case and communicate the information to the Adidas General Counsel/Chief Compliance Officer for a final decision.

Adidas expressly identifies alternative complaint mechanisms (Germany's OECD National Contact Point – see chapter 4) complainants can use if they are still dissatisfied with the outcome of their complaint and the actions taken by Adidas.

Finally, Adidas implements an anti-retaliation policy to protect complainants. The company encourages complainants to get in contact if they have been subject to retaliatory measures and commits to take action to remedy the situation.<sup>150</sup>

<sup>148</sup> The 2018 Corporate Human Rights Benchmark awarded Adidas a score of 15 out of a maximum of 15 for its remedy and grievance mechanisms.

<sup>149</sup> Although Adidas' complaint mechanism is an example of best practice when compared to the mechanisms implemented by other companies, it is not perfect. Complaint mechanisms should **not be limited to addressing only complaints that amount to breaches of human rights or other specific standards**. Complaint mechanisms **should allow a company to identify and address problems early, before they escalate to human rights abuses**.

<sup>150</sup> Adidas, 'Third Party Complaint Process for Breaches to adidas Group Workplace Standards or Violations of International Human Rights Norms,' Version 3, (Nov. 2016), available at: [https://www.adidas-group.com/media/filer\\_public/47/95/47956de4-7a3b-4559-a449-51ef963c7f9e/adidas\\_group\\_complaint\\_process\\_november\\_2016.pdf](https://www.adidas-group.com/media/filer_public/47/95/47956de4-7a3b-4559-a449-51ef963c7f9e/adidas_group_complaint_process_november_2016.pdf). See a summary of the complaint process at: Adidas, 'Summary of Third Party Complaint Process,' available at: [https://www.adidas-group.com/media/filer\\_public/20/d/20df7722-e850-487f-a029-175d7ee5fcf9/summary\\_third\\_party\\_complaint\\_process\\_2017\\_english.pdf](https://www.adidas-group.com/media/filer_public/20/d/20df7722-e850-487f-a029-175d7ee5fcf9/summary_third_party_complaint_process_2017_english.pdf).

# CHAPTER 4 ADVOCATING

**Chapter 2** identifies the different ways in which businesses may be involved in human rights abuses. **Chapter 3** details the minimum processes and policies businesses are required to implement to prevent and effectively address human rights abuses. **Chapter 4** builds on the previous two chapters and explores the strategies you can use in your advocacy efforts towards a human rights-based approach to business in Syria.

If your advocacy efforts fail to make businesses operating in Syria adopt a human rights-based approach to business, **Chapter 5** explores the existing judicial and non-judicial mechanisms to hold them to account.

## ○ Chapter 4.1

addresses the question of  
**when**  
you should start your advocacy efforts.

## ○ Chapter 4.2

addresses the question of  
**how**  
you should conduct your advocacy efforts. It includes a sub-section on negotiation strategies in case your advocacy efforts are successful and the business agrees to engage in a dialogue.

## ○ Chapter 4.3

addresses the question of  
**whom**  
you should target in your advocacy efforts.

# 4.1 WHEN SHOULD YOU START YOUR ADVOCACY EFFORTS?

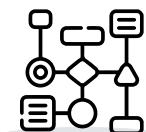
## Before:

You should consider beginning your advocacy efforts before a business becomes involved in human rights abuses or even before a business begins its operations in Syria. In these situations, the aim of your advocacy will be to put pressure on the business to implement the minimum processes enabling it to identify and prevent adverse human rights impacts.

## After:

If you begin your advocacy when a business is already involved in human rights abuses the aim will be different. Your goal will be to put pressure on the business to ensure that it ceases the human rights abuses it is involved with, implements the minimum risk management processes (See [Chapter 3](#)) and that it provides adequate remedies to those who were directly affected by the human rights abuses.

# 4.2 HOW SHOULD YOU CONDUCT YOUR ADVOCACY?



## Advocacy strategy

You need to carefully plan your advocacy activity. The issues addressed by this toolkit are complex, require time, and your advocacy efforts are unlikely to produce immediate result. This section suggests some basic steps you should follow in building your advocacy strategy to maximise your chances of success.<sup>151</sup>

## 1 Identify the problem

The first step is to identify the issue you want to address in your advocacy. You must make sure to have done sufficient research to have a solid understanding of the problem.

Chapters 2 and 3 will help you identifying the issues on which to focus your advocacy. You should refer to [Chapter 2](#) to determine whether a business is involved in human rights violations or international crimes. You should refer to [Chapter 3](#) to determine whether a business has failed to implement adequate processes to prevent or adequately address human rights violations.

<sup>151</sup> The structure identified in this section draws inspiration from CARE, The Care International Advocacy Handbook, 2014.

## 1 Examples:

A business is involved in human rights abuses as a result of the industry it operates in or as a result of the location of its operations.

A business is not in itself involved in human rights abuses, but the business owners are/have been involved in human rights abuses and the profits may be used to further the human rights abuses.

A business is not involved in human rights abuses, but it is planning to start operating in an area/industry that is likely to result in its involvement in human rights abuses and it does not have adequate processes to identify, prevent and address potential human rights abuses.

## Identify your goal

The second step is to determine what you want to see changing in order to solve the problem you have identified. As a general rule, the goal should be: specific, measurable, achievable, realistic, and time-bound. If the goal you have identified is particularly ambitious or long-term you should also identify more concrete short or medium-term goals.

## 2 Examples:

If a business is already involved in human rights abuses your goals could be to pressure the company into ceasing its involvement in violations and to try to hold it to account.

If a business is not directly involved in human rights abuses, but the business' owners are, your goal should be to try to prevent the business owners from profiteering through the business.

If a business is planning to start operating in high-risk areas, your goal should be to pressure the business entity to adopt the policies or processes identified in the UNGPs.

## Identify who can make the change

The third step is to identify the entities and/or individuals that are able to deliver the change you have identified as your goal. The main entities/individuals with the power to change the conduct of the business are the business owner/management themselves and the national institutions (e.g. government or parliament) of the State in which the business is based.

### 3 Examples:

If your goal is for a business to cease its involvement in human rights abuses, the entities able to deliver the change are the business owners/management and the national institutions of the State where it is based.

If your goal is for a business owner involved in human rights abuses to stop profiteering from its apparently legitimate business, the entities able to deliver the change may be the customers of the business and the business partners of the business in question.

If your goal is for a business to adopt policies and processes adequate to prevent and address human rights abuses, the entities able to deliver the change are the business itself and State institutions with legislative/regulatory power over the business.

## Assess your resources

You should make a realistic assessment of your resources, in terms of financial resources and expertise on the issue you have identified. You should also map your allies - the entities with influence over the business, who may be able to pressure it into delivering the change you have identified as your goal – and assess the extent of their influence over the business you are targeting. Chapter 4.3 helps you identify which entities you should consider engaging in your advocacy.

# Plan your activities

Having completed the preparatory steps, you should plan the activities that will allow you to achieve your goal.

## 5 Examples:

You should always consider beginning your advocacy activity by **engaging privately** with the business or with other relevant stakeholders before making public the business' involvement in human rights violations. In most cases, you are likely to have more influence over a business before its involvement in human rights abuses is made public.

If, as part of your advocacy, you decide to write **a report** addressing the violations or the shortcomings of a specific business or the human rights issues raised by businesses operating in a certain area or in a specific industry, you are strongly recommended to **share the report with the business before you publish it**. This will give the business an opportunity to comment on your findings and may start a constructive dialogue. Before talking with or sharing a report with a business always make sure that you assess the security risks that may derive from your actions.

If private engagement does not produce the expected outcomes, you should consider launching **a public campaign to name and shame** the business for its involvement in human rights violations with a view to pressuring the business to implement the changes you have identified. If you decide to launch a public campaign you should consider partnering with civil society organisations that are more established in the state where the business or other relevant entities (see [Chapter 4.3](#)) are based. This can give your campaign a larger potential audience and heighten the pressure on the business. Most businesses are aware of the need to maintain their reputation to ensure profitability. However, this strategy must be approached carefully. It may come with significant risk of harm to those involved (see [Do No Harm principle and risk assessments – Chapter 1](#)). It may be useful to continue pursuing other engagement strategies in parallel to public campaigning.

A useful and easy to access tool to raise public awareness about the involvement of a company in human rights abuses is the Business and Human Rights Resource Centre Cases and Responses mechanism.<sup>152</sup> Civil society organisations that are unable to make companies engage meaningfully with them can request the Business and Human Rights Resource Centre (BHRRC) to ask the company in question to answer the allegations or concern on their behalf. Furthermore, the BHRRC pursues companies that fail to respond adequately to allegations of abuse. Since the establishment of this mechanism in 2005, 73% of the companies contacted by the Business and Human Rights Resource Centre have responded to the allegations or concerned raised.<sup>153</sup>

<sup>152</sup> Business & Human Rights Resource Centre, Company Response Rates, available at: <https://www.business-humanrights.org/en/company-response-rates>.

<sup>153</sup> A report on the positive impact of this mechanism can be accessed at: Business & Human Rights Resource Centre, Examples of our Impact, available at: <https://www.business-humanrights.org/sites/default/files/documents/Examples-of-impact-full-Jan-2015.pdf>.

# Monitoring and evaluation

By regularly monitoring the activities you carry out as part of your advocacy efforts you should be able to assess their effectiveness and make timely decisions about whether to change your strategy. It will also enable you to reflect on what went wrong in previous advocacy efforts and constantly improve the effectiveness of your work.

## The importance of drawing on international standards.

In your advocacy efforts you should make sure to always use language that draws from international legal instruments and international standards. When denouncing the involvement of businesses in human rights abuses, you should identify the specific human rights the businesses have violated as described in the relevant international human rights instruments (see chapter 1).

When advocating for the adoption of effective processes to prevent and effectively address adverse human rights impacts you should refer to the standards established by the UNGPs.

If the target business is a signatory of a voluntary initiative (see Chapter 4.3) such as the UN Global Compact, the Voluntary Principles on Security and Human Rights and other similar initiatives, in your advocacy you should refer to and use the language drawn from the principles on which the initiative in question is based. Referring to these principles is an effective advocacy strategy since the member businesses have voluntarily agreed to abide by them.

Even in these circumstances, you should also refer to the standards established in the UNGPs since the UNGPs are the overarching, minimum standards and provide useful guidance for the implementation of more specific standards. For instance, by becoming signatories to the UN Global Compact, businesses are not only expected to abide by the Global Compact Ten Principles, but are also required to implement the processes identified in the UNGPs in order to give effect to the requirement to ‘respect the protection of internationally proclaimed human rights’<sup>154</sup> as established in the Ten Principles.<sup>155</sup>



## Negotiation strategy

If businesses respond positively to your advocacy efforts or if businesses correctly implement the processes established in the UNGPs and consult with you as part of their due diligence process, you will have already started a dialogue with them. In this scenario you may find yourself in a situation where you have to negotiate directly with a business. This section suggests some basic rules that can help you adopting a structured approach to negotiations and which should ultimately maximise your chances of success.

This section draws inspiration from Centre for Humanitarian Dialogue, Humanitarian Negotiation Handbook, 2004.

<sup>154</sup> UN Global Compact, Ten Principles, Principle 1.

<sup>155</sup> Shift, 2016, 113.

## Important

Remember that the ultimate goal of companies is to maximise their profits. In most cases, you should not assume that they are engaging with you out of good will or for the greater good. However, that does not mean that they will not negotiate in good faith or that there is no prospect of improving the situation.

# Analyse the negotiation scenario you are facing

In this phase you should:



### Define your objectives

When you define your objectives, you should not only decide what you want as a result of the negotiation, but also what your bottom lines are (the least you are willing to accept). You probably have several objectives; it is recommended that you put them in order of priority. In addition, you should try to limit the number of objectives you are trying to achieve as having too many goals risks making your demands being perceived as vague or excessive.



### Identify the right counterpart

You should strive, for what is possible, to make sure you negotiate with someone that has the power to ensure that any agreement is implemented by the business.



### Identify the business' goals and assess how compatible they are with your goals

Understanding the business' interests and goals should give you a sense of the chances of reaching an agreement.



### Assess your leverage

You should identify all the elements that give you power over the business: what do you have or what you can do to influence the business. You should think carefully about the risks and opportunities deriving from using each one of these elements with respect to the success of your negotiation.

# Examples:

- The threat of a public campaign exposing the business' involvement in human rights violations;
- The threat of losing customers and/or business partners;
- The threat of bringing a case before a court or of bringing a complaint before a non-judicial body (see [Chapter 5](#));
- The threat of sanctions (see [Chapter 5](#));
- Access to other entities (see [Chapter 4.3](#)) that may be able to apply pressure on the company;
- Any incentives you are able to suggest to the business;
- Having a plan B in case your negotiations with the business fail. Knowing what you are going to do if no agreement is reached gives you confidence in the negotiations. More importantly, if the business becomes aware that the ongoing negotiations are not your only option, it may increase the pressure on it to reach an agreement.
- Being perceived as a credible counterpart will increase the willingness of the business to reach an agreement. You should not make promises you cannot maintain or make threats you cannot implement.

## Develop a strategy

In this phase you should develop an action plan that will allow you to achieve the objectives you have identified in the previous phase. You should:

### Maximise the compatibility of your respective goals

You should try to think in advance about all the possible negotiation outcomes that will satisfy both you and the business. Preparing for different options will allow you to avoid a deadlock in the negotiations.

### Maximise your leverage

First, having identified the elements that give you power over the business you should take the preliminary steps that will enable you to use them during the negotiation.

#### Examples:

- Start identifying the channels you will use for a public campaign;
- Start seriously considering the possibility of bringing a case against the business and identify what you need to do to this end;
- Start engaging with other entities that may be able to put pressure on the business.

Second, you should think about measures that you can take to increase your credibility.

Finally, you should think carefully about which people to include in the negotiation team. Having a capable and appropriate team will increase your chances of success.

#### Examples:

- If during the negotiations you will address specific issues, consider including in your team an expert on those issues;
- If possible, consider including in your negotiation team people who are similar to your counterpart in terms of position, expertise, personality and cultural background.

## Define your approach

Depending on the compatibility of your respective objectives and on the amount of leverage you have on the business you should decide what approach to have during the negotiations.

In a situation where you have low leverage and there is little compatibility between your respective objectives you may decide to have an aggressive approach to negotiations. If the circumstances are different, it may be advisable to adopt a more patient and conciliatory approach.

## Choose the rights tactics

You should try to identify the techniques you will use to try to influence and persuade the counterpart.

## Examples:

- If negotiations reach a deadlock you could consider re-framing the issue you are discussing by using different words to describe it;
- you could try to find something, not necessarily related to the issue you are negotiating, you and the counterpart agree about. Forming some sort of bond with the counterpart will facilitate reaching an agreement.

## Prepare your arguments

You should make sure to prepare compelling arguments to support your requests. You should also think about and be able to present the reasons why a certain outcome is in the interest of the business. If needed, you should consider consulting with relevant experts in the preparation of your arguments.

## Examples:

- You could refer to the international standards businesses are expected to respect (see [Chapters 2 and 3](#));
- If the business adheres to a voluntary initiative (see [Chapter 4.3](#)) you could refer to the set of principles the company voluntarily decided to adhere to;
- you should consider appealing to cultural and religious values;
- you should try to think about concrete ways in which the business will benefit from adopting a human rights-based approach to business.

# WHOM SHOULD YOU ENGAGE ?

This section identifies the entities with influence over businesses active in Syria, which you should consider engaging throughout your advocacy activity.

Part A identifies the entities you should consider targeting if the business involved in human rights abuses is a company. Part B identifies the relevant entities if the business actor involved in human rights abuses is a non-profit organisation. Part C identifies the relevant entities if the business actor involved in abuses is a multilateral organisation.

## The entity involved in human rights abuses is a company

You should consider engaging with the following entities:

**1**  
The company itself (or the parent company if it is a subsidiary);

**2**  
The company's shareholders;

**3**  
The company's institutional funders;

**4**  
The company's business partners;

**5**  
Voluntary initiatives to which the company has subscribed;

**6**  
National institutions in the State where the parent company is incorporated;

**7**  
UN initiatives;

**8**  
Other civil society organisations.

### • The company itself

- ✓ Does engaging directly with the company expose you to security risks? (See **Chapter 1** and do no harm, including to you).
- ✓ Is the company a subsidiary of a company incorporated in a state that is more receptive to civil society engagement? (see Annex 2 explaining how to research the corporate structure of a company)
- ✓ Have you identified the company's personnel with the power to change the way in which the company operates?
- ✓ Have you considered applying pressure on the company to become involved in the development of a more effective human rights policy and due diligence? (See **Chapter 3.2** and **3.3** on the company's obligations with regard to the human rights policy and due diligence)
- ✓ Have you considered using the company's complaint mechanism to raise concerns about the company's operations? (See **Chapter 3.4** on the company's obligations with regard to remediation)

## • The company's shareholders

- ✓ Who are the company's shareholders? (See Annex 2 explaining how to research the corporate structure of a company)
- ✓ Are the shareholders physical persons, other companies or investment funds?
- ✓ Does the company have shareholders in a state that is more receptive to civil society engagement?

### Why?

Shareholders, including minority shareholders, although not always involved in running the company's operations may have considerable influence on the other shareholders and may be able to pressure the company into changing its policies or its conduct.<sup>156</sup>

Large investment funds such as the Norwegian Government Pension Fund Global, which holds shares in over 9000 companies, are likely to be responsive to engagement on human rights abuses by companies they have invested in and in the past have withdrawn their investments from companies with poor human rights records.<sup>157</sup>

## • Institutional funders

- ✓ Did the company receive/ is expected to receive funding from banks or other institutional funders like the World Bank?
- ✓ If funding comes from the World Bank, have you considered using the complaint mechanism available to individuals and groups affected by the operations of companies supported by the World Bank? (see [Chapter 5](#) for more information on the mechanism)

### Why?

Institutional funders may decide to withdraw the financial support the company enjoys and/or pressure the company to cease its involvement in human rights abuses.

## • The company's business partners

- ✓ What are the company's business partners?
- ✓ What are the accounting firm and the law firms working with the company?
- ✓ What companies buy the products manufactured by the company?

### Why?

The company's business partners may decide to stop doing business with the company or otherwise use their influence to pressure the company concerned to change its practices.<sup>158</sup>

<sup>156</sup> FIDH, Corporate Accountability for Human Rights Abuses: Guide on Recourse Mechanisms, 2016, 529-533.

<sup>157</sup> For additional information on engaging with funds such as the Norwegian Government Pension Fund Global see FIDH, Corporate Accountability for Human Rights Abuses, 527-529 or visit: <https://www.nbim.no/en/>.

<sup>158</sup> SOMO, 2012, 62.

## • Voluntary initiatives

- ✓ Did the company subscribe to an international initiative requiring its members to commit to a set of principles set by the initiative?
- ✓ If the company is a member of the UN Global Compact<sup>159</sup> have you considered using its complaint mechanism? (The UN Global Compact is the largest corporate voluntary initiative, with more than 12,000 participating companies<sup>160</sup>)
- ✓ If the company is a member of an industry initiative to regulate a specific aspect of its activities (e.g. the Voluntary Principles on Security and Human Rights), have you considered using the relevant consultation (or complaint) mechanism? (The Voluntary Principles are a voluntary initiative specific to the extractive industry and focus on the potential impact on human rights of public and private security forces)

## Why?

The set of principles underlining these initiatives expressly refer to or allude to the companies' responsibility to respect human rights.<sup>161</sup>

## UN Global Compact

Serious allegations of the involvement in human rights violations by a participant company can be sent to the Global Compact Office ([info@unglobalcompact.worg](mailto:info@unglobalcompact.worg)) or sent to the Chair of the Global Compact Board (the UN Secretary General). The Global Compact Office may forward the matter to the company concerned requesting written comments and to be kept informed about any action taken by the company to address the situation. If the participating company refuses to engage in dialogue, the Global Compact Office may decide to remove the company from the list of participating companies.<sup>162</sup> This procedure was used in the past, but it is unclear if a company was ever de-listed because of its involvement in egregious human rights violations.

## The Voluntary Principles on Security and Human Rights

If a participant is failing to implement the Voluntary Principles a process involving consultations between the participants can be started and may lead to the exclusion of the offending company from the initiative.<sup>163</sup> However, only participants can start this process. If you intend to use this mechanism you should engage with another participants to the initiative (preferably an NGO).<sup>164</sup> This mechanism was used several times in the past, but doubts exist as to its effectiveness. In 2013, several NGOs including Amnesty International and Oxfam withdrew their participation from the initiative because of its failure to keep the participants accountable.<sup>165</sup>

## • The government or the legislative body of the state of incorporation of the company

- ✓ If the company concerned is a foreign company, have you considered engaging with the government or parliament of the State where the company is incorporated?
- ✓ Have you considered engaging with political actors within the State that are likely to respond positively to advocacy efforts focusing on human rights or that are aligned with your position on Syria?

## Why?

Governments and parliaments can have a great impact on the way companies operate by enacting specific laws or regulations. However, engaging with such bodies may be complex and this type of engagement is unlikely to produce immediate results.

<sup>159</sup> UN Global Compact, available at: <https://www.unglobalcompact.org/>. <sup>160</sup> UN Global Compact, Participants, available at: <https://www.unglobalcompact.org/what-is-gc/participants>.

<sup>161</sup> The UN Global Compact principles expressly require companies to "respect the protection of internationally proclaimed human rights," UN Global Compact, The Ten Principles, <https://www.unglobalcompact.org/what-is-gc/mission/principles>. <sup>162</sup> For further information on this procedure see FIDH, 539-545. <sup>163</sup> For further information on this procedure see FIDH, 554-557.

<sup>164</sup> For a list of participating NGOs see Voluntary Principles on Security and Human Rights, For NGOs, available at: <http://www.voluntaryprinciples.org/for-ngos/>.

<sup>165</sup> FIDH, 555.

## • Other national institutions in the State of incorporation of the company/parent company

- OECD National Contact Points  
(See Chapter 5)
- National human rights institutions/ombudsperson  
(See Chapter 5)

## • UN initiatives

- The UN Working Group on the issue of human rights and transnational corporations and other business enterprises
- Have you considered making a submission<sup>166</sup> concerning the implementation of the UNGPs to the Working Group?

### Why?

The Working Group<sup>167</sup>is tasked with promoting the implementation of the UNGPs and to develop a dialogue with governments as well as with other relevant actors, such as companies. The Working Group will use the submissions received to inform its recommendations to governments and companies on the implementation of the UNGP.

## • Other civil society organisations

- Have you considered partnering with civil society organisations based in the States where the company's parent company or shareholders are based?
- Have you considered partnering with international civil society organisations with specific expertise in the field of business and human rights?

### Why?

These organisations may be able to apply more pressure on the company because of their geographical proximity and may have experience of engaging with the company in question. In addition, they may allow you to extend the reach of your advocacy efforts.

## B The entity involved in human rights abuses is a non-profit organisation

### • The non-profit organisation itself

- Does engaging directly with the organisation expose you to security risks? (See Chapter 1 and do no harm, including to you).
- Who are the individuals that face liability for the acts of the organisation?
- Who are the organisation's directors?
- Who are the board members?
- If the organisation is registered in the UK, who are the organisation's trustees?

### Why?

You should not assume that, because the organisation is involved in human rights abuses, it is unwilling to engage with you. The management of the organisation or the individuals that are ultimately liable for the acts of the organisations may not be aware of the involvement of the organisation in human rights abuses. For instance, they may not be aware of the implications deriving from procuring from certain entities.

<sup>166</sup> OHCHR, Submissions to Working Group, available at: <https://www.ohchr.org/EN/Issues/Business/Pages/Submissions.aspx>.

<sup>167</sup> OHCHR, The Working Group on Human Rights and Transnational Corporations and Other Business Enterprises.

## • The organisation's partners

- ✓ Does the organisation partner with other NGOs or charities?
- ✓ Is the organisation member of a coalition?

### Why?

The organisation's partners or the other members of the coalition may be willing and able to pressure the organisation to cease its involvement in human rights abuses.<sup>168</sup>

## • The organisation's donors

- ✓ What are the organisation's donors? (Donors are usually easily identifiable on the organisation's website)

### Why?

Non-profit organisations rely on the financial support of donors. Donors have considerable influence over non-profit organisations.

## • National institutions overseeing the organisation's operations

- ✓ If the organisation is registered in a state which has national institutions overseeing the operations of non-profit organisations registered in the State, have you considered engaging with one of these national institutions?

### Why?

An example of a similar institution is the UK Charity Commission. The Commission allows any interested party to submit complaints if a charity registered in the UK is involved in activities that are harmful to people or if the charity is otherwise involved in illegal activities.<sup>168</sup>

## • Voluntary initiative

- ✓ Did the organisation subscribe to an international initiative requiring its members to commit to a set of principles set by the initiative?
- ✓ If the organisation is a member of the UN Global Compact, have you considered using its complaint mechanism?

### Why?

As explained above, the set of principles underlining these initiatives expressly refer to or allude to the members' responsibility to respect human rights. Some charities and NGOs have become members of the UN Global Compact. For example, Oxfam joined the UN Global Platform on 3 July 2018.<sup>169</sup> If the organization is a member of the UN Global Compact, you should consider using the complaint mechanism explained above.

<sup>168</sup> For more information on how to submit a complaint see United Kingdom Government, Complain About a Charity, available at: <https://www.gov.uk/complain-about-charity>.

<sup>169</sup> UN Global Compact, Our Participants.

## The entity involved in human rights abuses is a multilateral organisation

### • The organisation itself

- What agency within the multilateral organisation is involved in the human rights abuses?
- Who are the individuals within the agency that are accountable for the agency's operations in Syria? (For instance, for UNDP Syria, the officers with the highest level of accountability are the Resident Representative and the Country Director)
- Who are the agency's representative and deputy representative in Syria?

### Why?

Although this is usually not the case, the management of the organisation may be unaware about the human rights abuses it is involved as a result of some of its activities, such as procurement.

### • Grievance mechanisms

- Have you considered using the relevant agency's grievance mechanisms?

### Why?

Complaints submitted through these channels are usually processed by the agency's central office and not by the Syria office. For instance, the UNDP has two main grievance mechanisms:

- The Social and Environmental Compliance Unit (SECU) mechanism, which allows individuals and groups affected by a UNDP-supported project to file a complaint. Civil society organisations, may also file a complaint on behalf of affected communities.<sup>170</sup>
- The Stakeholder Response Mechanism, which allows individuals and groups affected by a UNDP-supported project to submit a request to start a process to seek to solve the issues raised by the project.<sup>171</sup>

### • Donors

- Have you considered engaging with the relevant agency's main donors?

### Why?

UN agencies rely on financial contributions from States to run their operations. States may be able to pressure the agency into changing the manner in which it operates. Information about the main donors of a UN agency is usually publicly available on the agency's website.<sup>172</sup>

<sup>170</sup> For more information on how to submit a complaint see UNDP, Social and Environmental Compliance Review, available at: <http://www.undp.org/content/undp/en/home/accountability/audit/secu-srm/social-and-environmental-compliance-unit.html>.

<sup>171</sup> For more information on how to start this process see UNDP, Stakeholder Response Mechanism, available at: <http://www.undp.org/content/undp/en/home/accountability/audit/secu-srm/stakeholder-response-mechanism.html>.

<sup>172</sup> The list of UNDP's main donors can be accessed at UNDP, Our Funding, available at: <http://www.undp.org/content/undp/en/home/funding/top-contributors.html>.

# 3 PART “HOLDING TO ACCOUNT”

Syrian Legal Development Programme  
The Human Rights and Business Toolkit for Syria

# CHAPTER

## “ HOLDING TO ACCOUNT

If your advocacy efforts fail to prevent businesses from being involved in human rights violations and to persuade them to comply with their responsibility to respect human rights, another option is to turn to legal remedies to hold such businesses to account.

This section will describe some of the international remedies you can use to hold businesses - including non-governmental organisations and charities- to account when they fail to prevent, end or remediate human rights breaches. The remedies described in this chapter apply, in theory, also to multilateral organisations, such as the UN. However, holding multilateral organisations to account using judicial mechanisms is a process that raises several complex and highly technical legal issues that go beyond the scope of this toolkit and that would require you to obtain expert legal advice.

**International remedies can be broadly divided into two categories:**

1

Judicial mechanisms

2

Non-judicial mechanisms

These mechanisms are crucial to maximise businesses' compliance with human rights obligations, acting as the stick to advocacy and engagement's carrot. They also provide a forum for victims to seek justice, and at the very least have their stories heard.

Although holding businesses to account for their involvement in human rights abuses is possible and has been achieved in the past, bringing a legal case against a business operating in Syria is not easy for many reasons. However, that should not stop you from considering it.

**Chapter 5** is divided into two sections. The first section discusses **judicial remedies** in general, i.e. ways to bring judicial proceedings against a business, in order to obtain a legally enforceable remedy. If successful, such proceedings can lead to substantial fines being imposed on businesses found guilty of violations, in some cases to the most responsible individuals (e.g. CEO or high-ranking executives) being sent to prison and to financial compensation being awarded to victims.

The second section provides an overview of some of the **non-judicial remedies** available to civil society. This includes, for example, using the channels provided by national human rights institutions, ombudsman agencies, or mechanisms associated with the World Bank. Non-judicial mechanisms offer a variety of outcomes, from 'simple' recommendations to a business to change its course of conduct, to a (non-judicial) finding of violation of human rights, to recommendations, or even sometimes mediation between a business and the community and/or individuals affected. Although the majority of these mechanisms are non-binding, i.e. they cannot be legally enforced and imposed on a business, they nevertheless often provide a process similar to an adjudication process and can be a way to obtain some redress and an efficient way to apply pressure on businesses.

## JUDICIAL REMEDIES – Bringing judicial proceedings against a business

The following questions will help you determine what kind of judicial remedies are available, and whether a claim is worth bringing:

### 5.1.1 Chapter

What is the offending conduct?

### 5.1.2 Chapter

Who is/are the perpetrator(s)?

### 5.1.3 Chapter

Who is/are the victim(s)?

### 5.1.4 Chapter

Is there a Court with jurisdiction over the matter?

### 5.1.5 Chapter

What type of evidence would be needed to bring a successful claim?

### 5.1.6 Chapter

How to choose a lawyer, and who can you get in contact with?



# 5.1.1 Chapter

## What is the offending conduct?

The first question to determine is: **what happened for you to want to bring a case?** The answer to this question will guide you in choosing a way ahead.

First, you might want to ask yourself: was an **international crime** committed? (See **chapter 2**). Many States incorporate international crimes into their domestic criminal legislation, which means offenders could be prosecuted for such crimes under domestic law. For example, since 2014 Swedish law explicitly incorporates liability for genocide, crimes against humanity and war crimes into Swedish legislation.<sup>173</sup>

Even if it does not fit in the category of core international crimes, the offending conduct could still give rise to **criminal liability** under the domestic law of a State. For example, three Belgian businesses and their owners were recently found criminally liable for unlawfully exporting chemicals to Syria without the required licences.<sup>174</sup>

If the corporate behaviour falls short of such crimes, does it nevertheless constitute a violation of the rights of an individual or a community? It is important to remember that claims for rights violations can also be pursued through **civil liability**, which does not use the language of criminal law and often does not explicitly use the language of human rights either. In this case, it might be helpful to ask the question more generically: Was harm inflicted to an interest of the victim that is protected by law?

### Why is this step important?

The offending conduct will be at the core of your case. The type of violations committed, and the context in which they were committed, will determine **what** you will have to prove, i.e. the evidence you will have to collect. It might also affect **who** you can hold to account.

For example, criminal law usually requires proving two elements: the commission of certain acts (called the *actus reus*) and a specific state of mind or intention (called the *mens rea*).

On the other hand, litigating human rights violations through tort law (i.e. civil law) will normally rely on the legal concept of negligence. This involves proving that:

A the offending entity owed a duty of care to the victims;

B it breached that legal duty of care; and

C there is a causation link between the defendant's actions (or omissions) and the damage suffered by the victims.

<sup>173</sup> Swedish Code of Statutes, 'Act on Criminal Responsibility for Genocide, Crimes Against Humanity, and War Crimes,' (2014), available at: [https://www.gov.se/49cd62/contentassets/6e0e65c994124235a39387e2dcf5ad48/2014\\_406-act-on-criminal-responsibility-for-genocide-crimes-against-humanity-and-war-crimes-.pdf](https://www.gov.se/49cd62/contentassets/6e0e65c994124235a39387e2dcf5ad48/2014_406-act-on-criminal-responsibility-for-genocide-crimes-against-humanity-and-war-crimes-.pdf).

<sup>174</sup> Simon Marks, 'Belgian Exporters Found Guilty of Sending Chemicals to Syria,' Politico, (2019), available at: <https://www.politico.eu/article/belgian-exporters-found-guilty-of-sending-chemicals-to-syria/>.



# 5.1.2 Chapter

## Who is the perpetrator (and/or potential defendant)?

The first step should be to determine where the offending business is incorporated, i.e. in which State it was legally formed. In many cases, this can be done through an internet search, by looking at legal documents filed by the company, physical address of the registered office, or location of the shareholders (for further information see Annex 2).

The second step is to determine whether the business forms part of a wider corporate structure – for example, is it a subsidiary with a parent company located elsewhere in the world? (for further information see Annex 2) This could also provide a precious ‘hook’ to bring the subsidiary company to account through its parent company (see below).

The third step is to identify the individuals within the business that could reasonably be considered “the most responsible” for the business’ offending activities. Most of the time, this will include CEOs and high-level executives.

### Why is this step important?

Having a clear idea of who you want to hold to account, and where they come from or where the company is registered, will allow you to determine what the most likely jurisdiction will be for a claim. For example, if the offending business is incorporated in Sweden, there is the possibility of filing a complaint with the Swedish prosecutor for them to use the State’s ‘universal jurisdiction’ and domestic laws to hold the business personnel to account in the Swedish courts pursuant to criminal law (or even the corporation on a civil law basis). Different jurisdictions have different rules and approaches, so this is a crucial step to determine the chances of success of a claim.

Sometimes, an action can also be brought against different people and/or entities (within a same business group). Bringing a claim against various types of defendants (subsidiary company in Syria, parent company located elsewhere in the world, individuals within the business who are the most responsible, etc.) can therefore maximise the chances of successfully holding the business to account.

### Case study: French investigation for crimes against humanity committed by French parent company Lafarge, its subsidiary Lafarge Cement Syria and former CEOs

In June 2018, French cement company Lafarge SA (now LafargeHolcim) was officially placed under investigation for actions of its subsidiary, Lafarge Cement Syria, relating to the operation of the Jalabiya cement plant in Syria between 2011 and 2014.

The parent company was charged with complicity in crimes against humanity and financing terrorists, for allegedly paying millions to jihadists, including the Islamic State, to keep its factory open during the Syrian conflict.

It was also charged with endangering the lives of former employees in Jalabiya. According to French rights group Sherpa, one of the plaintiffs in the case, this is the first time that a parent company anywhere in the world has been charged with complicity in crimes against humanity.



# 513

## Chapter

### Who are the victims?

You need to ask yourself:

1

Who are the victims?

2

Where are they based?

3

What passports do they carry?

4

Are they individual victims?

5

Do they form part of a wider community that has been affected as a whole?

Looking at the harm inflicted, you might need to determine whether the victims are directly impacted by the business' actions, or whether they are indirect victims. For example, equipment manufactured by a specific company could be used by a State or even non-State entities to torture or harm victims – who would therefore be indirect victims of the company, rather than direct victims.

#### Why is this step important?

This will allow you to get an idea of the scale of the claim, to see how many people are affected and could be potential witnesses, and whether they are citizens of another State, which could help you 'anchor' a claim in the national courts of that country.



# 514

## Chapter

### Is there a court, at the international or national level, with jurisdiction over the matter?

Perhaps the most important step in the process is to determine which court is likely to have jurisdiction over the matter, i.e. the authority to determine that there has been a violation of human rights and to rule against the defendant(s).

Jurisdiction can be broken down into two questions:

1

What type of court could hear the claim?

2

What type of legal wrong can be addressed?

The first question concerns the forum where the legal proceedings will take place: international criminal courts/tribunals or domestic courts.

The second question concerns the subject matter of the proceedings: international crimes, criminal liability (rooted in domestic criminal law), and/or civil liability (rooted in domestic civil law).

In the case of human rights violations occurring in Syria, unfortunately, there is currently no way of bringing a claim for international crimes before **international** criminal courts and tribunals, for reasons explained below.

A more realistic option is to bring a claim (for international crimes, under national criminal law, or under national civil law) before a State's domestic courts. This chapter explores the various options before **domestic** courts.

Finally, this chapter describes the UN-supported International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Those Responsible for the Most Serious Crimes in Syria ('IIIM'). Although its mandate focuses on collecting and preserving evidence of violations of international human rights law in Syria, it is not a court, a Prosecutor's office or a tribunal. It can, however, play a role in sharing information and files with national prosecutors, and is therefore briefly covered in this chapter.

## Bringing a claim before the ICC/international tribunals is not currently possible

International crimes (see **Chapter 2**) that see the involvement of businesses can be prosecuted before international courts and tribunals, such as the International Criminal Court ('ICC'), or hybrid tribunals with both international and national judges (e.g. the Special Court for Sierra Leone or the Special Tribunal for Lebanon). As a general rule, international tribunals do not have jurisdiction over legal entities (e.g. businesses), but high-ranking members of a business may be prosecuted if they are held to be responsible for the criminal conduct (see **Chapter 2** for further information on the different ways in which an individual can be held responsible for an international crime).

There are several examples of businessmen charged or convicted by international courts for their involvement in international crimes. However, the prosecution of business-related international crimes in Syria faces a major hurdle: Syria is not a signatory of the Rome Statute, which gives the Court jurisdiction. It follows that the ICC does not have jurisdiction over Syria. The ICC could

— — theoretically obtain jurisdiction if the UN Security Council referred the situation to the ICC.<sup>175</sup> Although there is precedent for such a referral, in the case of Syria, in May 2014, two permanent members of the Security Council, Russia and China have vetoed such referral.<sup>176</sup> Furthermore, the creation of an ad hoc international criminal tribunal with jurisdiction over Syria is currently unlikely since it would require the approval of the UN Security Council.

Although currently there is no international court with jurisdiction over Syria, this may change in the future. Therefore, the cases studies below showing how international courts have dealt with business-related cases in the past are relevant.

## CASE STUDIES

- Joshua Arap Sang faced prosecution at the ICC as an indirect co-perpetrator of crimes against humanity for actions taken as the former head of operations and well-known radio personality of Kass FM in Nairobi, Kenya in the context of 2007-2008 post-election violence in Kenya. He was accused of contributing to the implementation of crimes against humanity through his influential role at Kass FM radio, which allegedly fanned violence by spreading hate messages, explicitly revealing a desire to expel member of certain communities and broadcasting false news to inflame the violent post-elections atmosphere. The charges were later vacated, but Sang's indictment shows how a corporate executive can potentially be held responsible for actions of a legal entity (in this case, those of radio Kass FM).
- In three cases at the Nuremberg trials - ad hoc international criminal tribunals established after the Second World War- the leaders of large German industries were prosecuted for crimes against peace (i.e. initiating World War II), war crimes and crimes against humanity, for their active involvement in Nazi practices such as slave labour and deportation. In the case of Krupp et al., the defendants, German businessmen, were found guilty of the crime of plunder (pillage) on a large scale. Their actions included the physical removal of property and the deprivation of property previously belonging to the Jewish population.
- In the Musema case before the International Criminal Tribunal for Rwanda – and ad hoc international criminal tribunal established to adjudicate crimes committed during the conflict in Rwanda - the director of a tea factory was convicted of the crime of genocide and the crime against humanity of extermination for his acts during the Rwandan genocide which included using company assets to facilitate crimes (including vehicles, drivers and employees). The defendant had on various occasions transported armed attackers, including employees of his factory to different locations and ordered them to attack members of the Tutsi ethnic group.

<sup>175</sup> The UN Security Council may refer alleged atrocity crimes committed in any country (including those that are not party to the Rome Statute) by passing a resolution authorised by the UN Charter.

<sup>176</sup> In February 2011, the UN Security Council referred the situation in Libya to the ICC. The UN Security Council referred to the situation in Darfur, Sudan to the ICC in March 2015.

## CASE STUDY: Conviction of a corporation by an international criminal tribunal

The Special Tribunal for Lebanon (“STL”) is a tribunal of international character inaugurated in 2009, whose primary mandate is to hold trials for the people accused of carrying out the attack of 14 February 2005 which killed 23 people, including the former prime minister of Lebanon, Rafiq Hariri.

Under the Tribunal’s Rules of Procedure and Evidence, the STL may hold in contempt “any person” that knowingly and wilfully interferes with its administration of justice.

On 31 January 2014, two individuals and two media companies were charged with contempt and obstruction of justice before the STL in relation to media reports containing information about alleged confidential STL witnesses.

On 15 July 2016, the STL found a Beirut-based corporation called Akhbar Beirut S.A.L. guilty on the basis that it owned a newspaper and website that hosted articles pretending to reveal confidential information on certain protected witnesses, which in the STL’s view may have affected public confidence in the STL and proceedings before it.

This was the first time in history that a legal entity (as opposed to an individual) was convicted of contemptuous conduct by an international criminal tribunal. The decision sets an important precedent and may incite other international tribunals to widen their jurisdiction over corporates for interference or criminal conduct.

## Bringing a claim before domestic courts

Cases of business involvement in gross human rights abuses may attract the theoretical possibility of penalties under the criminal laws of many States and may also give rise to potential civil liability under domestic “tort-based” regimes.

At the national level, business-related human rights abuses may violate Constitutions or a range of applicable legislation, such as environment, labour, anti-bribery, and corruption, or anti-discrimination laws. Tort law in particular has proven a relatively successful tool to pursue corporate accountability in recent years. National courts are increasingly being used as an avenue for victims of human rights to seek remedy for harm caused by business activity.

Similarly, it has become increasingly common for multinational companies to face legal charges for alleged human rights abuses both in the State and extraterritorially.<sup>177</sup> There is a clear trend of bringing claims before the national courts of countries in which businesses may be registered, as opposed to international fora or the courts of the country in which violations of human rights are committed.

Prosecutors in States such as Sweden and Germany have also brought charges on the basis of universal jurisdiction, under which national courts can have jurisdiction over certain international crimes that take place outside their territory.

**There are broadly three types of claims before domestic courts:**

**Claims for international crimes**

**Claims under domestic criminal law**

**Claims under domestic civil law**

While the main avenue for redress for international crimes would normally be proceedings in the courts of the State where the crimes were committed, in this case Syria, the UN Commission of Inquiry on Syria stated that, given the protracted and increasingly sectarian nature of the conflict there, it was very unlikely that independent, credible prosecutions that meet minimum international standards could be carried out there in the near term.<sup>178</sup> Similarly, civil courts were found to generally fail to live up to international standards of independence and impartiality.<sup>179</sup>

As a result, the sections below will focus on criminal responsibility and civil liability in domestic legal orders other than the Syrian legal system.

## A Corporate responsibility for international crimes in the domestic courts

The prosecution of international crimes can also occur before national courts,<sup>180</sup> as many national jurisdictions have incorporated prohibitions of crimes under international law into their national criminal laws.<sup>181</sup>

The fact that international criminal law institutions traditionally focus on individual criminal responsibility rather than corporate responsibility does not mean that businesses will necessarily escape legal liability for international crimes.<sup>182</sup> Some jurisdictions provide for the possibility of corporate criminal responsibility for involvement in international crimes, as well as liability for individuals.<sup>183</sup> Furthermore, domestic incorporation may also have an extraterritorial dimension. Several States extend their jurisdiction to international crimes committed by or against their nationals regardless of where the crimes take place; and a few rely on 'universal jurisdiction' to extend their jurisdiction regardless of nationality links.<sup>184</sup>

<sup>177</sup> Examples include: a civil liability claim against Shell in the Netherlands for its damaging effect on livelihood in Nigeria in 2013; a 2012 criminal complaint filed in Switzerland against Nestle for their alleged omission to protect one of their former employees who was killed in 2005; or the Alien Torts Claim Act. See Andreas Graf & Andrea Iff, 'Conflict-Sensitive Business: Review of Instruments and Guidelines,' Swiss Peace Foundation, 4, available at [https://www.swisspeace.ch/fileadmin/user\\_upload/Media/Publications/Deliverable\\_3\\_ConflictSensitiveBusiness\\_InstrumentsandGuidelines.pdf](https://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Deliverable_3_ConflictSensitiveBusiness_InstrumentsandGuidelines.pdf).

<sup>178</sup> Syria Commission Report, Annex XIV, 124. According to the Commission, international standards consist of "independence, impartiality, thoroughness, effectiveness and promptness of investigations and due process."

<sup>179</sup> International Legal Assistance Consortium (ILAC), 'Rule of Law Assessment Report: Syria 2017', available at: <http://www.ilacnet.org/wp-content/uploads/2017/04/Syria2017.pdf>

<sup>180</sup> Report of the International Commission of Jurists on Corporate Complicity in International Crimes, vol. 2 on Criminal Law and International Crimes, (2008), 64, available at: <https://www.icij.org/wp-content/uploads/2012/06/Vol.2-Corporate-legal-accountability-thematic-report-2008.pdf>

<sup>181</sup> A cross-section of both civil law and common law national systems have now incorporated the criminal prohibition of genocide, crimes against humanity and war crimes into their domestic law. These include Argentina, Australia, Belgium, Canada, Germany, the Netherlands, South Africa, Spain and the United Kingdom. France and Norway are going through the process of incorporating the ICC definitions into their domestic laws, however France has pre-existing domestic legislation that criminalises genocide and crimes against humanity and Norway has pre-existing legislation that criminalises crimes against humanity and war crimes. Other states that have not ratified the ICC Statute, such as the United States, India, Indonesia and the Ukraine, have incorporated one or more of the three crimes covered by the ICC in their national criminal legislation.

<sup>182</sup> Dr Jennifer Zerk, 'Corporate liability for gross human rights abuses: Towards a fairer and more effective system of domestic law remedies,' 31, available at: <https://www.ohchr.org/Documents/Issues/Business/DomesticLawRemedies/StudyDomesticLawRemedies.pdf>

<sup>183</sup> Zerk, 'Corporate liability for gross human rights abuses: Towards a fairer and more effective system of domestic law remedies,' 31.

<sup>184</sup> J. Ruggie, 'Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises,' A/HRC/4/35, para. 25, available at: <https://www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx>; JusticeInfo.net, International Crimes: Spotlight on Germany's War Crimes Unit, (10 Jan. 2019), available at: <https://www.justiceinfo.net/en/tribunals/national-tribunals/39936-international-crimes-spotlight-on-germany-s-war-crimes-unit.html>

Germany is one of the few States where the laws allow for ‘pure’ universal jurisdiction, meaning no connection to Germany is required at all.

Some States have set up specialised war crimes units. Germany’s Central Unit for the Fight Against War Crimes,<sup>185</sup> for example, was set up in 2003 and has become a leading institution for the domestic prosecution of grave crimes, including crimes committed in Syria. In the investigations phase, it takes into consideration also reports by CSOs.

### CASE STUDY 1: Indictment of business directors in Sweden for alleged international crimes committed in South Sudan

In late 2018, the Swedish Prosecution served a notice of prosecution to two corporate directors of Swedish oil company Lundin Oil, which allegedly aided and abetted gross international crimes in South Sudan from 1998 to 2003.

The Swedish Penal Code gives national courts jurisdiction over international crimes committed before 2014 (defined as ‘crimes against international law’) regardless of the nationality of the perpetrators or victims, or the place where the crimes were committed.

### CASE STUDY 2: Conviction by the Dutch courts of arms dealer Guus Kouwenhoven for war crimes committed in Liberia

Dutch arms dealer Guus Kouwenhoven was convicted in 2017 in his capacity as director and president of two of the largest timber companies in Liberia by the Appeals Court of the Netherlands as an aider and abettor to war crimes committed in Liberia in the early 2000s. He was sentenced to 17 years in prison.

He was charged under a domestic Dutch act, the Wartime Offences Act (WOS), which grants the Dutch courts universal jurisdiction to rule on international crimes ('violations of the laws and customs of war').

Kouwenhoven was found to have an important role within, and ‘effective control’ of, the Royal Timber Company (RTC) and Oriental Timber Company (OTC), whose interests were intertwined with the political, financial, and private interests of Charles Taylor and his regime from 1999 to 2003. RTC and OTC provided weapons, men and logistical help to Charles Taylor and his regime. Kouwenhoven was found guilty on the basis of that involvement and because of his assumed knowledge of the nature of the conflict and of the probability that war crimes and/or crimes against humanity would be committed.

<sup>185</sup> JusticeInfo.net, International Crimes: Spotlight on Germany’s War Crimes Unit, (10 Jan. 2019), available at: <https://www.justiceinfo.net/en/tribunals/national-tribunals/39936-international-crimes-spotlight-on-germany-s-war-crimes-unit.html>.

## CASE STUDY 2: Conviction by the Dutch courts of arms dealer Guus Kouwenhoven for war crimes committed in Liberia

**The decision sets an important precedent in relation to corporate accountability for war crimes. This is particularly manifest in the words of the Court, which emphasised the importance of preventing future war crimes and noted:** ‘Businessmen like the defendant who operate (internationally) and do not shy away from doing so in cooperation with regimes such as Charles Taylor’s, must be made aware of the possibility of becoming involved in serious (international) crimes (against humanity).’

## B Criminal liability in domestic law (other than Syrian criminal law)

Another way in which businesses can be held to account is through criminal responsibility under domestic public law (for either companies, individual officers or both, depending on the extent to which the concept of corporate criminal responsibility is recognised in the relevant jurisdiction).

It is possible to divide domestic legal systems into two groups: those that do recognise the concept of corporate criminal liability and those that do not.<sup>186</sup> Other varying factors include the theories used to determine the criminal culpability of corporate entities, the allocation of liability between individuals and corporate entities and the standards required to establish liability on the basis of complicity. Such considerable divergence between States’ criminal law has the potential to deliver different legal outcomes in different jurisdictions.<sup>187</sup>

The principle of corporate criminal liability is notably recognised in Austria, Belgium, Denmark, Estonia, Finland, France, Ireland, Norway, the Netherlands, Poland, Portugal, Romania, the United Kingdom, Luxembourg, Canada, the United States, and Spain.<sup>188</sup>

Despite the theoretical possibility in many jurisdictions of corporate criminal responsibility for involvement in gross human rights abuses, in practice, however, domestic criminal law systems are still largely untested as a means of providing legal redress in cases where business enterprises have caused or contributed to gross human rights abuses.<sup>192</sup>

<sup>186</sup> Zerk, ‘Corporate liability for gross human rights abuses: Towards a fairer and more effective system of domestic law remedies,’ 32.

<sup>187</sup> Zerk, ‘Corporate liability for gross human rights abuses: Towards a fairer and more effective system of domestic law remedies,’ 8.

<sup>188</sup> FIDH, ‘Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms,’ 3rd ed., (2016), 312.

<sup>192</sup> Zerk, ‘Corporate liability for gross human rights abuses: Towards a fairer and more effective system of domestic law remedies,’ 40.

Although criminal prosecutions of corporate human rights violations are rare, and successful convictions even more so, such cases are not entirely unheard of. There are examples involving Syria in particular, such as the 2018 investigation into Lafarge by French authorities (see above).

#### CASE STUDY: Case against Ford of complicity with 1976-83 Argentinean military regime in relation to abuse and abductions of Ford workers

Between October 2002 and February 2006, various legal proceedings (criminal and civil) were brought against Ford companies and executives in both Argentinean and US courts alleging complicity by the company and its managers in political repression, mistreatment and abductions of Ford workers during the 1976-86 military regime.

On 11 December 2018 two former Ford executives were convicted under Argentinean law for their complicity in the abduction and torture of a number of Ford union members and sentenced to 10 and 12 years of imprisonment. According to the judgment, their complicity took the form of providing names, ID numbers and home addresses to security forces and that this information was used to identify and arrest workers who were then detained and tortured.

## Civil liability in domestic law (other than Syrian civil law)

'Civil liability' is commonly used to refer to the liability of individuals or companies under private law, including tort-based regimes. A tort is an act or omission that gives rise to injury or harm to another and amounts to a civil wrong for which courts impose liability.<sup>193</sup>

Many jurisdictions allow lawsuits by private claimants against businesses for harm or loss caused, as well as for failure to act with due care. Such civil claims can lead to significant financial loss for business enterprises, as they are often ordered to pay substantial compensation to victims.

There are several advantages to going down the civil liability route.<sup>194</sup> Most poignantly, it is sometimes the only avenue for redress for victims of abuses of their families, as they can initiate a civil claim themselves even where governmental authorities are reluctant to become involved in criminal proceedings or where international bodies cannot, for various reasons, exercise jurisdiction (e.g. the ICC and the fact that Syria is not a State party to the Rome Statute).

<sup>193</sup> Cornell Law School Law Dictionary, Tort.

<sup>194</sup> Report of the International Commission of Jurists on Corporate Complicity in International Crimes, vol. 3 on Civil Remedies, (2008), 16.

There are many complexities surrounding the allocation of liability between members of corporate groups and liability for the acts of third parties that continue to give rise to uncertainties about the nature and scope of civil liability.<sup>195</sup> Nevertheless, the general principles of civil liability might be distilled into the following questions:<sup>196</sup>

Was **harm** inflicted to an interest of the victim that is protected by law?

Did the company's conduct **contribute** to the infliction of the harm?

Did the company **know** (or would a prudent company in the same circumstances have known) that its conduct posed a risk of harm to the victim?

Considering this risk, did the company take the **precautionary measures** a prudent company would have taken in order to prevent the risk from materialising?

Together, these questions help you get to the crux of the matter: did the company breach a duty of care it owed the victim? A company would be liable for breach of its duty of care if it can be shown that the company failed to reasonably exercise human rights due diligence (for example as set forth in the UNGPs and described in Chapter 3). Although the law in this specific area is still in flux, it is a widely accepted international norm of business conduct<sup>197</sup> already. Common law States accepting the business responsibility to exercise human rights due diligence include, not only the UK, but also Australia, Canada, India, the US, Bangladesh, Ghana, Ireland, Israel, Malaysia, New Zealand, Nigeria, Pakistan, Sri Lanka, and Uganda.<sup>198</sup>

One particular judicial trend should be noted by NGOs wishing to use civil liability to bring businesses to account: the increasing use of **parent company liability as a 'hook'**.

In English tort law, liability arises when the defendant has breached a duty of care it owed to the claimant. For such a duty to arise, there must be a 'hook,' a link between the defendant and claimant. The crux of the argument in a lot of the cases decided under English law (discussed below) is whether a UK parent company could be held liable for the actions of its subsidiary. Although the law in this area is still in flux, courts seem increasingly willing to examine documents typically seen as 'corporate documents' (such as **human rights policies**) to determine whether a duty of care is owed.

<sup>195</sup> Zerk, 'Corporate liability for gross human rights abuses: Towards a fairer and more effective system of domestic law remedies,' 8.

<sup>196</sup> Report of the International Commission of Jurists on Corporate Complicity in International Crimes, vol. 3 on Civil Remedies, (2008), 19.

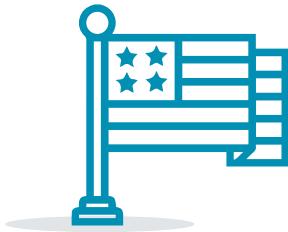
<sup>197</sup> D. Cassel, 'Outlining the Case for a Common Law Duty of Care of Business to Exercise Human Rights Due Diligence,' (2016), 1 Business and Human Rights Journal 179, 180-1.

<sup>198</sup> D. Cassel, 'Outlining the Case for a Common Law Duty of Care of Business to Exercise Human Rights Due Diligence,' 180-1.

Such policies are what their name suggests: policies, i.e. not legally binding documents. However, the courts now seem increasingly ready to scrutinise companies' policies expecting the same rigour applied to other documents from which legal liability can arise.

Advocating for the serious development and implementation of such policies can therefore go hand in hand with using the prospects of civil liability to claim against businesses.

Below are examples of jurisdictions in which civil liability has been used to hold businesses to account for human rights violations.



## UNITED STATES

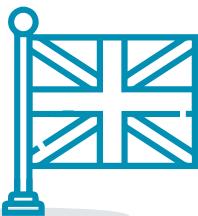
In the *United States*, the Alien Tort Statute ("ATS") has been an important legal tool for holding corporations accountable for human rights violations committed abroad. The ATS enables non-US citizens to sue private actors, including corporations, in US courts for their alleged participation in human rights abuses.

However, the availability of the ATS as a legal tool for holding corporations to account for violations of international law abroad was severely curtailed by the US Supreme Court in two recent cases: the 2013 decision in *Kiobel v Royal Dutch Petroleum (Shell)* and the 2018 decision in *Jesner v Arab Bank*.

In *Kiobel*, the US Supreme Court ruled that claims under the ATS had to "touch and concern" the United States "with sufficient force", excluding the application of the ATS to suits against foreign corporations when all the relevant conduct took place outside the United States.

In *Jesner*, the Supreme Court found that non-US citizens could not bring claims under the ATS against foreign corporations, thereby further limiting the usefulness of the ATS as an effective judicial avenue to hold corporations liable under international law.

Technically, this maintains the possibility of ATS suits against US corporations. However, claimants will now have to show that the US corporation, not just its foreign subsidiary, violated international law and that there was sufficient conduct in the US to satisfy *Kiobel's* 'touch and concern' test.



## UNITED KINGDOM

In the United Kingdom, courts have produced substantial jurisprudence on corporate civil liability for human rights abuses, in particular through the application of the (tort law-based) concept of duty of care to parent companies controlling subsidiaries causing harm overseas.

Parent company liability was explored in 2012 in *Chandler v Cape*, in which a UK-based parent company was considered liable for its UK-based subsidiary's failure to adopt measures that could have prevented employees' occupational disease. The Court of Appeal held that the law may impose a duty of care on a parent company for the health and safety conditions of a subsidiary's employees when certain conditions are met. The Court rejected the existence of an automatic duty of care due by virtue of being a parent company.

In *Lungowe v Vedanta*, the Court of Appeal asserted jurisdiction on the basis that there was a "real issue to be tried" between the claimants and the parent company (something which should normally only be relevant to jurisdiction over the subsidiary). This is a low threshold, which was satisfied in Vedanta by the existence of a global sustainability report which stressed that oversight of the subsidiaries ultimately rested with the parent. Vedanta therefore increases the likelihood that cases will be brought in the English courts against UK domiciled companies in relation to adverse human rights impacts associated with the operations of their overseas subsidiaries.

In *Okpabi and others v Royal Dutch Shell*, the Court of Appeal found that the parent company did not have the requisite relationship of control with the subsidiary company so as to impose a duty of care. The Court cited the formulation for establishing parent company liability adopted in Vedanta, and clarified that the mere existence of health and safety or global human rights policies did not create a duty of care. Okpabi therefore narrows the avenue for accountability through parent company liability.

In *AAA and others v Unilever*, the Court of Appeal dismissed an appeal by victims of the 2007 post-election violence in Kenya. The Court noted that parent company duty of care might arise: i) where the parent has in substance taken over the management of the relevant activity of the subsidiary; and ii) where the parent has given relevant advice to the subsidiary about how it should manage a particular risk. This is a different formulation from the one used in Vedanta, which muddies the water on parent company duty of care.

Although English courts show a certain willingness to impose a duty of care on a UK-based parent company for the actions of its non-UK-based subsidiary, it is worth noting that the current case law is still in flux and further cases are expected which could have a significant impact.



## CANADA

In Canada, there have been civil claims against mining companies, brought by claimants who had been injured by the companies' security personnel.

The lawsuits in *Choc v. Hudbay* allege that between 2007 and 2009, private security personnel employed by [Canadian] company Hudbay at its Fenix nickel mine in Guatemala killed a local community leader, seriously wounded another local resident, and gang-raped eleven women. *Choc* established a precedent with respect to parent company liability. This case was the first case in Canada where foreign claimants alleging to have suffered harm caused by a Canadian company's overseas operations could proceed to trial. The cases are still ongoing.

### CASE STUDY: The Nevsun Resources case, a civil lawsuit filed in Canada for breaches of international law committed in Eritrea

In 2014, three Eritrean men filed a civil lawsuit before the Supreme Court of British Columbia in Vancouver against Nevsun Resources Limited over the use of slave labour at Nevsun's Bisha mine in Eritrea. Additional civil claims, with 86 more plaintiffs, were filed in 2016, 2017 and 2018. The plaintiffs allege that Nevsun engaged two Eritrean state-run contractors and the Eritrean military to build the mine's facilities and that the companies and military deployed forced labour under abhorrent conditions. The case also alleges that Nevsun expressly or implicitly approved the use of conscripted labour, a practice alleged to be so widespread that it constitutes crimes against humanity. Nevsun, which owns a majority share of the Bisha mine, is headquartered in Vancouver and is incorporated under the laws of British Columbia.

The lawsuit, which is still ongoing, has the potential to be ground-breaking on at least three bases:

1 It is a civil lawsuit, but it advances claims based on the international law prohibitions on forced labour, slavery, torture and crimes against humanity.

2 It is one of the first human rights lawsuits in Canada to assert claims based directly on international law.

Although the underlying conduct involves a foreign state, the defendant itself is a private company, which makes the applicability of the state immunity principles uncertain

Should these kinds of claims against Canadian companies for conduct abroad be found viable, this could usher in an era of increased accountability by allowing victims of human rights abuses to have alleged breaches of international law tested in Canadian courtrooms.

## The International, Impartial and Independent Mechanism ('IIIM')

On 21 December 2016, the United Nations General Assembly adopted resolution 71/248,<sup>199</sup> establishing the International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under International Law committed in the Syrian Arab Republic since March 2011. It is more commonly referred to as 'the Mechanism' or 'IIIM.'

### The Mechanism's mandate<sup>200</sup> is to:

Collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses in Syria; and

Prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law.

By pursuing its mandate, the IIIM seeks to support accountability processes aimed at bringing about justice for the victims of serious international crimes committed in Syria since March 2011. The IIIM is neither a prosecutor's office nor a court but collects and analyses information and evidence of international crimes committed in Syria to assist criminal proceedings in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes.

The IIIM engages with various States and national war crimes units. It is also in contact with international and national NGOs, including those involved in the documentation and mapping of violations and abuses in Syria.<sup>201</sup>

In November 2018, the IIIM published an information bulletin<sup>202</sup> addressing how the IIIM could add value to the documenting and analysing work of Syrian civil society, what kind of material gathered by Syrian NGOs is of particularly high value for the IIIM, and the possible frameworks for collaboration between civil society and the IIIM.

<sup>199</sup> UNGA A/RES/71/248, (19 Dec. 2016), available at: [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF%7D/a\\_res\\_71\\_248.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF%7D/a_res_71_248.pdf).

<sup>200</sup> UNGA A/RES/71/248, Para. 4.

<sup>201</sup> IIIM, Engagement with Stakeholders.

<sup>202</sup> Which can be found here: IIIM, Bulletin No. 1–November 2018, available at: <https://iiim.un.org/wp-content/uploads/2019/01/MESASA1.pdf>.

## What kind of evidence is the IIIM particularly interested in?

In addition to evidence about the occurrence of crimes, it is interested in evidence about the overall context in which the crimes were committed and the links between crimes and perpetrators, including those remote from the commission of crimes who may have orchestrated, condoned or otherwise assisted their commission.

Evidence can take many forms, including: documents; photos; videos; records of communications; witness accounts, including victims of crimes, witnesses who have an overview of the events, expert witnesses and witnesses who have knowledge of how structures of power associated with the commission of crimes were functioning.

High value materials are not limited to 'evidence' in a strict sense. 'Lead information' that can help to identify relevant evidentiary sources or information that can assist the analytical process is also highly valuable. You may possess data the evidentiary value of which is not immediately apparent, but, when viewed against other material in the IIIM's possession, can in fact assist the accountability process.

The IIIM invites NGOs willing to collaborate with it to get in touch with its representatives at any time at the following address: [iiimsyria@un.org](mailto:iiimsyria@un.org). It is best to indicate the topic(s) of communication in the subject line of the email in order to help the IIIM prioritise its response.



## 5.1.5 Chapter

### What type of evidence would be needed to bring a successful case?

This section will provide general guidelines on what type of evidence is needed to bring a successful case. The elements to prove are slightly different depending on whether you bring a case for **international crimes** or whether you decide to bring a **civil claim** instead.

# A

## Building a case for international crimes

Although the choice to bring charges against a business (or business executives) for international crimes ultimately rests with a public authority such as a national prosecutor, it is important to note that civil society can play a crucial role by raising awareness and pushing for a prosecution. The decision to bring criminal charges against oil company Lundin (see Case Study above), for example, was explicitly made in response to a 2010 report by the European Coalition on Oil in Sudan,<sup>203</sup> which called on the Swedish government to act.

As a result, any civil society organisation interested in building an international crimes case should be aware of the basic approach to the collection of evidence and the building of the case likely to be taken by a prosecutor.

There are two essential stages in building the case that a business has committed international crimes.

The first one is the **collection of evidence**. In addition to the principles set out in **Chapters 1 and 2**, it is helpful to keep in mind the following guidelines:

**1**  
International crimes cases are made up of a collection of individual cases. Each case needs to be documented individually and in as much detail as possible.

**2**  
Several individual cases can then be used as evidence of a pattern or general statement.

**3**  
The case should construct a narrative, leaving as few gaps as possible, and pre-emptively answering any questions an accountability mechanism might have.

**4**  
Information should be cross-checked thoroughly.

The second stage is the **assessment of the evidence** collected. Does it show actual crimes being committed? Who does it come from? Is it first hand or second hand?

Both steps (collection of evidence and assessment) should be informed by the concepts of 'crime base' evidence (showing the individual acts which make up international crimes and the contextual elements for each individual acts) and 'linkage' evidence (the links that must be shown between individual's actions, the business activities and the crimes).

In addition to considerations in **Chapter 2** regarding the context of crimes and the various ways individuals can be shown to be responsible (e.g. by aiding and abetting, ordering, etc.), it is important to note that international criminal investigations rely on **pattern evidence**,

<sup>203</sup> European Coalition on Oil in Sudan, 'Unpaid Debt: The Legacy of Lundin, Petronas and OMV in Block 5A, Sudan 1997-2003,' (June 2010), available at: [http://www.ecosonline.org/reports/2010/UNPAID\\_DEBT\\_fullreportweb.pdf](http://www.ecosonline.org/reports/2010/UNPAID_DEBT_fullreportweb.pdf).

such as reports from domestic police agencies, public health officials, human rights organizations, statistical data, etc. Any evidence showing a distinct pattern (for example, repeated violations by a same company against the same victim(s) or in the same or different locations) will help you build a strong case.

## B

### Building a civil claim (e.g. based on tort law)

As explained above, the following questions will generally determine whether a civil claim would have a realistic chance of being successful:

**1**

Was harm inflicted to an interest of the victim that is protected by law?

**2**

Did the business' conduct contribute to the infliction of the harm? You will need to show that the conduct caused part or all of the harm suffered by the victims.

**3**

Did the business know that its conduct posed a risk of harm to the victim? Even if the company was not subjectively aware that it was causing harm (or if you have no evidence to show that it knew), you can still argue that it should have known and that a prudent company in the same circumstances would have been aware of its impact.

**4**

Considering this risk, did the business take the precautionary measures a prudent company would have taken in order to prevent the risk from materialising? For a claim to succeed under tort law, for example, the claimant must show that the defendant (e.g. the offending business) failed to do what a 'reasonable person' would have done in the same situation. This will offend include taking certain reasonable precautions to prevent harm from being inflicted. The greater the risk of serious harm, the greater the precautions a defendant will be required to take. Unfortunately, if a company took reasonable steps to prevent harm being caused, it might be difficult to bring a successful claim against them, as there might not have been anything else they could have done. The concept of 'reasonable steps' in civil law is very similar to the steps described in the UNGPs that businesses should take in order to prevent and address human rights abuses (see Chapter 3 above).

A more specific description of each element (**harm, causation, knowledge, mitigation**) is beyond the scope of this guide, but can usually be found in the relevant jurisdiction's case law (i.e. court decisions) and legal texts.

The answers to the above question should give you an indication of whether or not a civil claim can reasonably be brought against the offending business.

In addition to those, it would be helpful to consider the following:

- 1** Is the parent company located in a jurisdiction in which parent company liability could be used as a 'hook' to bring a claim against the parent?
- 2** Does the parent company have any human rights policies, health and safety policies? This could be used to demonstrate that the company owed a duty of care towards the affected individuals or communities.
- 3** Does the jurisdiction in which the offending business is incorporated allow for universal jurisdiction, or extra-territorial application of its laws?
- 4** Does the jurisdiction allow for direct corporate liability (i.e. can a legal entity be held accountable directly) or does it only allow for individual responsibility (i.e. only specific individuals with the strongest ties to the business)?



## 516 Chapter

Guidance on choosing lawyers and who to contact

### A

#### Choosing a lawyer

In the course of your advocacy activities, you might already have encountered lawyers working on the Syrian conflict or on matters of business and human rights. Alternatively, you might find yourself looking for legal counsel to advise you on whether or not to bring a claim and what your options are. The section below provides you with a list of questions to ask yourself in order to help you find the right lawyer(s).

“

## What is their track record? Have they previously worked on contentious matters? Do they have experience in national/international human rights or national/international criminal law? Do they have experience of the Syrian conflict?

Many lawyers work on non-contentious matters, i.e. matters where there is no dispute between parties. To bring businesses to account, however, you will need someone with contentious experience, usually in the form of national or international litigation (i.e. the process of taking legal action or defending such an action) or prosecution (i.e. bringing proceedings under criminal charges).

As we have seen above, holding businesses to account for violations of human rights in Syria will most likely be done before the national courts (as opposed to the International Criminal Court or an international tribunal). It might also involve domestic civil or criminal law. It is therefore important that your lawyer of choice has experience of the domestic legal system. For example, if you decide to bring a claim against the French parent company of a subsidiary operating in Syria and have determined that the claim would likely need to be brought before the French courts through the ‘hook’ of parent company liability, you will need someone with experience of the French legal system and courts.

In addition to domestic experience, however, any international experience would also be important, as the case will almost inevitably involve a cross-border element.

Finally, you should see whether the relevant lawyer(s) worked on matters relating to the Syrian conflict. If not, do they have experience of conflict situations relevant to Syria, i.e. a major internal armed conflict?

“

## Are they qualified to practise before a national court?

You can usually check whether someone is qualified to practise before the courts of their jurisdiction by consulting the relevant registers of qualified lawyers (usually provided through a national/federal/state bar association, or the national law society).<sup>204</sup>

“

## Are they registered with the list of counsel of the International Criminal Court?

The International Criminal Court keeps a publicly available list<sup>205</sup> of practitioners with established competence and substantial experience in international criminal law. All lawyers on that list go through a thorough application procedure and are therefore ‘pre-vetted’ by the Court. It can therefore be a useful starting point when looking for lawyers with expertise in international criminal law.

<sup>204</sup> For example, the Federal German Bar Association offers an online register of all admitted lawyers in Germany. It includes a search option and can be accessed via [www.rechtsanwaltsregister.org](http://www.rechtsanwaltsregister.org). Similarly, the Law Society of England and Wales has a public directory allowing members of the public to find information on qualified solicitors: <http://solicitors.lawsociety.org.uk/>. The Swedish Bar Association offers a similar search function here: <https://www.advokatsamfundet.se/>.

<sup>205</sup> Which can be consulted here: ICC, List of Counsel Before the ICC, available at: <https://www.icc-cpi.int/about/registry/pages/list-of-counsel.aspx>.

## B Contacting specialised war crimes units



More than a dozen countries, including several European countries, Canada, South Africa, and the United States, have specialised police, prosecution, or immigration units dedicated to international crimes.<sup>206</sup>

The following national war crimes units are particularly active and can offer a vast set of experiences and robust expertise:

### 1 France:

the French unit was created in 2013, and counts Syria amongst its top priorities<sup>207</sup>. It acts in collaboration with NGOs and can be reached at [oclch@gendarmerie.interieur.gouv.fr](mailto:oclch@gendarmerie.interieur.gouv.fr)<sup>208</sup>

### 2 Germany:

the German specialised unit, or ZBK<sup>209</sup>, was established in 2003 and established itself as a leading institution for the domestic prosecution in Europe of international crimes abroad, with a focus on Syria<sup>210</sup>. It operates in a way similar to the Prosecutor at the International Criminal Court, and reviews open sources such as blogs, media and NGO reports.

### 3 The Netherlands:

the Dutch specialised unit, or TIM<sup>211</sup>, conducts investigations into war crimes, genocide, torture and crimes against humanity. It explicitly asks anyone with information on war crimes to come forward and can be contacted at [warcrimesunit@klpd.politie.nl](mailto:warcrimesunit@klpd.politie.nl).

### 4 Sweden:

the Swedish unit also looks into the crimes of genocide, crimes against humanity and war crimes. It calls<sup>212</sup> for anyone with information about war crimes to send an email to [registrator.kansli@polisen.se](mailto:registrator.kansli@polisen.se), marked with subject line 'Gruppen for utredning av krisbrott'.

<sup>206</sup> Human Rights Watch, 'The Long Arm of Justice,' available at: <https://www.hrw.org/report/2014/09/16/long-arm-justice/lessons-specialized-war-crimes-units-france-germany-and>.

<sup>207</sup> Franck Petit, 'International Crimes: Spotlight on France's War Crimes Unit,' Justiceinfo.net, (17 Dec. 2018), available at: <https://www.justiceinfo.net/en/tribunals/national-tribunals/39791-international-crimes-spotlight-on-france-s-war-crimes-unit.html>.

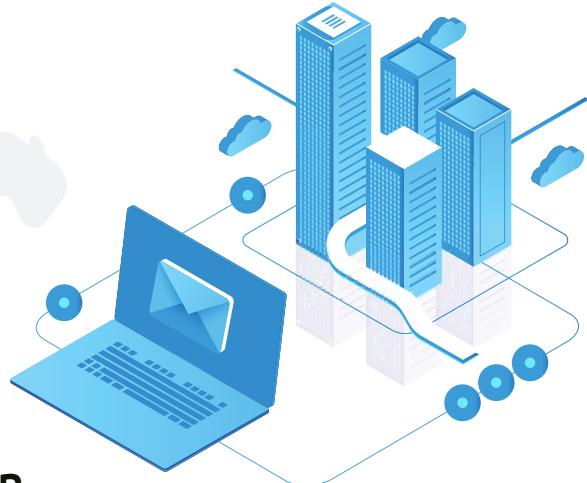
<sup>208</sup> Ministere Des Armees, 'L'Office Central De Lutte Contre Les Crimes Contre L'humanite, Les Genocides, et les Crimes De Guerre (OCLCH)', (11 Aug. 2017), available at: <https://www.defense.gouv.fr/fre/actualites/operations/l-office-central-de-lutte-contre-les-crimes-contre-l-humanite-les-genocides-et-les-crimes-de-guerre-oclc>

<sup>209</sup> The BKA, Central Unit for the Fight Against War Crimes and Further Offences Pursuant to the Code of Crimes Against International Law, available at [https://www.bka.de/EN/OurTasks/Remit/CentralAgency/ZBK/zbk\\_node.html](https://www.bka.de/EN/OurTasks/Remit/CentralAgency/ZBK/zbk_node.html).

<sup>210</sup> Benjamin Duerr, 'International Crimes: Spotlight on Germany's War Crimes Unit,' Justiceinfo.net, available at: <https://www.justiceinfo.net/en/tribunals/national-tribunals/39936-international-crimes-spotlight-on-germany-s-war-crimes-unit.html>.

<sup>211</sup> Openbaar Ministerie, International Crimes, available at: <https://www.om.nl/onderwerpen/international-crimes-0/>.

<sup>212</sup> Polisen, 'Sweden is Not a Safe Haven for War Criminals,' available at: <https://polisen.se/contentassets/ea26853aa7145faa57f200bf7a62c7/affisch-a3-krigsbrott-tryck.pdf>.



## Non-governmental organisations with a focus on strategic litigation

Finally, in order to implement the judicial remedies described above, it might be helpful for you to pair up with one or more organisations who specialise in strategic litigation.

**Below is a non-exhaustive list of suggested organisations:**

**1** European Centre for Constitutional and Human Rights (ECCHR)<sup>213</sup>

**2** Guernica Group<sup>214</sup>

**3** Global Rights Compliance<sup>215</sup>

**4** Trial International<sup>216</sup>

**5** Fédération internationale des ligues des droits de l'Homme (FIDH)<sup>217</sup>

**6** Sherpa<sup>218</sup>

**7** Accountability Counsel (for cases involving internationally financed projects)<sup>219</sup>

## NON-JUDICIAL REMEDIES

State-based judicial mechanisms are not the only means of achieving accountability and access to remedy in cases of business-related human rights abuses. Other tools may include State-based non-judicial mechanisms and non-State grievance mechanisms.

<sup>213</sup> ECCHR, available at: [www.ecchr.eu/en](http://www.ecchr.eu/en).

<sup>214</sup> Guernica Group, available at: [www.guernicagroup.org](http://www.guernicagroup.org).

<sup>215</sup> Global Rights Compliance, available at: <http://www.globalrightscompliance.com/>.

<sup>216</sup> Trial International, available at: [www.trialinternational.org](http://www.trialinternational.org).

<sup>217</sup> FIDH, available at: <https://www.fidh.org/en/issues/litigation/>.

<sup>218</sup> Sherpa, available at: [www.asso-sherpa.org](http://www.asso-sherpa.org).

<sup>219</sup> Accountability Counsel, available at: <https://www.accountabilitycounsel.org/about-us/>.

Below, we look at four types of non-judicial mechanisms that could be used to hold businesses accountable for human rights violations in Syria:

## 5.2.1 Chapter

National human rights institutions (including national ombudsman agencies)

## 5.2.2 Chapter

The Organisation for Economic Co-operation and Development's (OECD) National Contact Points

## 5.2.3 Chapter

Sanctions mechanisms

## 5.2.4 Chapter

World Bank Group complaint mechanisms (Investigations Panel and Compliance Advisor Ombudsman)

Such mechanisms, except for sanctions mechanisms, do not have the same 'teeth' as judicial mechanisms. They cannot determine civil or criminal liability, they do not lead to fines, financial compensation or imprisonment of executives. Nevertheless, they can be powerful tools in raising awareness of an issue, and in opening channels of communications with businesses through mediating parties. They therefore serve an important role in holding companies to account.

# 5.2.1 Chapter 1

## National human rights institutions (including national ombudsman agencies)

National human rights institutions ('NHRIs') are State bodies with a constitutional and/or legislative mandate to protect and promote human rights. A form of State-based non-judicial mechanisms, they form part of the State apparatus and are funded by the State.<sup>220</sup>

NHRIs are different from non-governmental organisations, as they have a statutory legal basis and particular legal responsibilities as part of the State apparatus. The differences between NGOs and NHRIs are perhaps most pronounced with regard to the investigation of complaints. National human rights institutions are neutral fact finders, not advocates for one side or another. An NHRI must be, and be seen to be, independent of the NGO sector, just as it must be independent of the government. In investigation, an NHRI may operate within a legally defined framework and must comply with the general principles of justice and the rule of law.<sup>221</sup>

NHRIs is an umbrella term that covers several types of institutions or roles: human rights commissions, public defenders and ombudsmen. Some NHRIs are set up to deal with specific issues such as discrimination, while others are given very broad responsibilities. Specialised national institutions exist in many countries to protect the rights of a particular vulnerable group such as ethnic and linguistic minorities, indigenous peoples, children, refugees, persons with disabilities or women.

As noted in a recent UN Human Rights Council resolution<sup>222</sup>, NHRIs play an important role in supporting activities to improve accountability and access to remedy for victims of business-related human rights abuse, including through supporting the effective implementation of the UNGPs. They can enhance access to remedy by handling complaints and grievances relating to corporate human right abuses including, where the NHRI's legal mandate allows, through conciliation, mediation, supporting individual cases and legal assistance.<sup>223</sup>

<sup>220</sup> United Nations Publications, National Human Rights Institutions: History, Principles, Roles and Responsibilities, 2010, p. 13, available at [https://www.ohchr.org/Documents/Publications/PTS-4Revi-NHRI\\_en.pdf](https://www.ohchr.org/Documents/Publications/PTS-4Revi-NHRI_en.pdf).

<sup>221</sup> United Nations Publications, 'National Human Rights Institutions: History, Principles, Roles and Responsibilities,' (2010), 13, available at: [https://www.ohchr.org/Documents/Publications/PTS-4Revi-NHRI\\_en.pdf](https://www.ohchr.org/Documents/Publications/PTS-4Revi-NHRI_en.pdf).

<sup>222</sup> Resolution A/HRC/38/L.18, (2 July 2018), available at: <http://undocs.org/A/HRC/38/L.18>.

<sup>223</sup> ICC Working Group on Business and Human Rights, 'Business and Human Rights 101: A National Human Rights Institution Primer,' available at: [https://nhri.ohchr.org/EN/Themes/BusinessHR/Business%20Womens%20and%20Childrens%20Rights/BHR%20101\\_ENG%20PDF.pdf](https://nhri.ohchr.org/EN/Themes/BusinessHR/Business%20Womens%20and%20Childrens%20Rights/BHR%20101_ENG%20PDF.pdf).

Below is a table setting out examples of NHRIs and their mandate.<sup>224</sup>

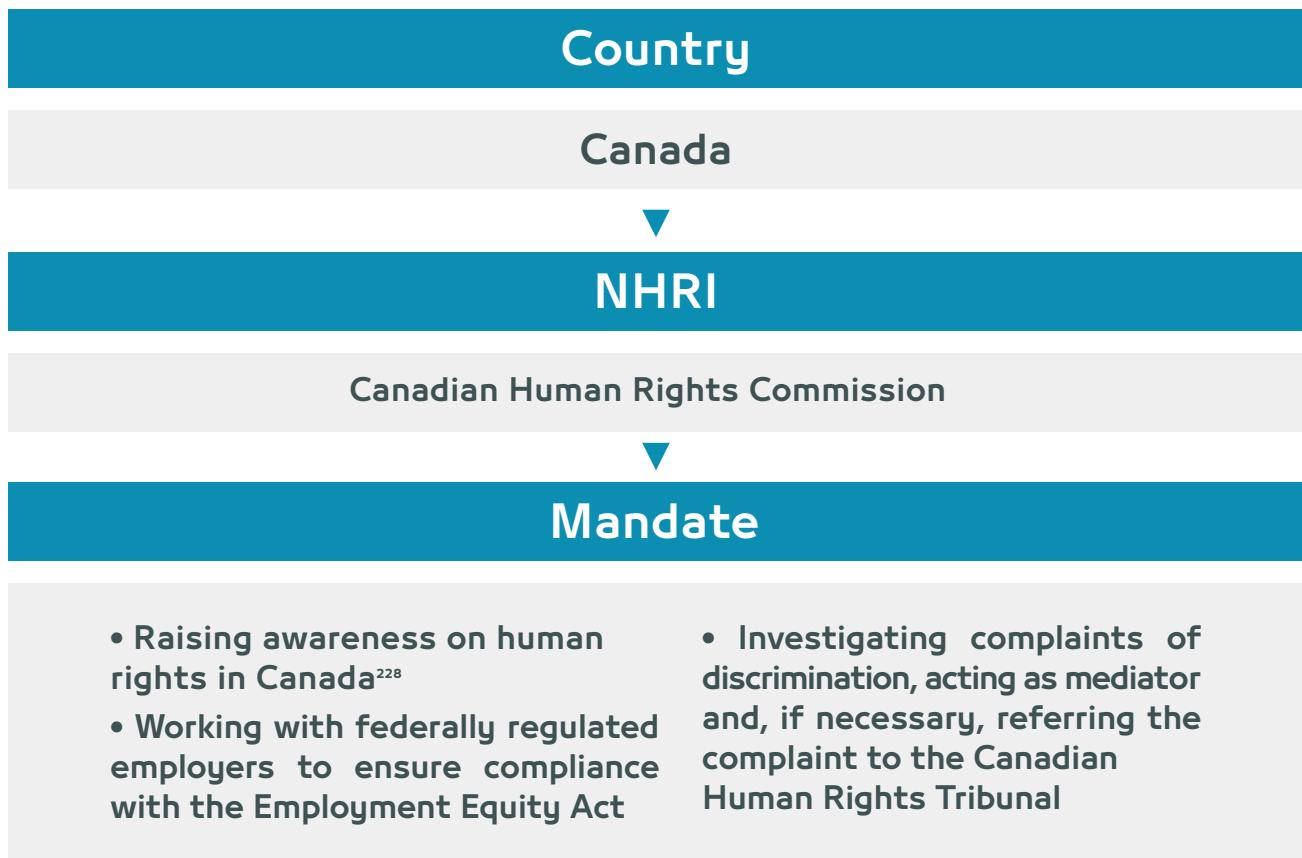
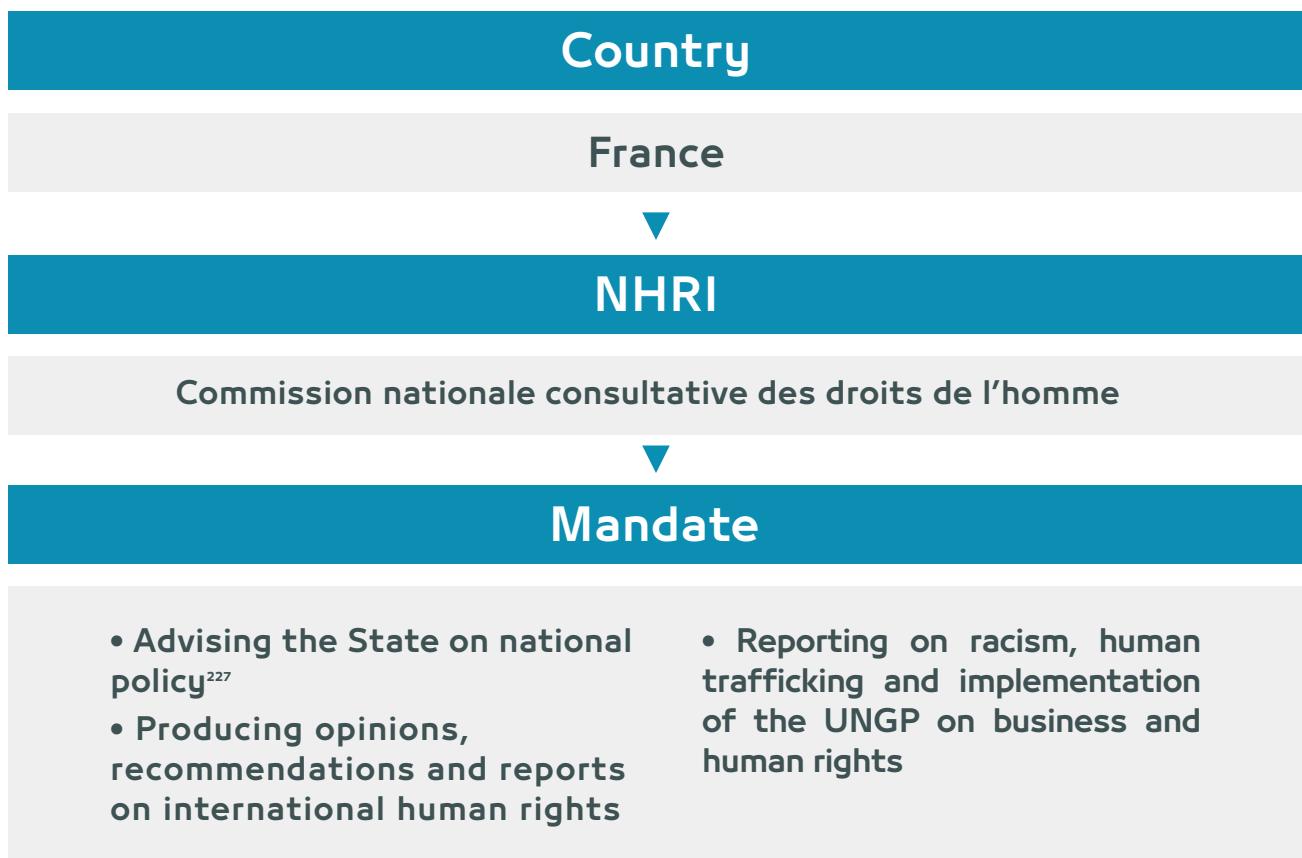
| Country   |   |
|---|---|
| Spain   |   |
| ▼   |   |
| NHRI  |   |
| El Defensor del Pueblo  |   |
| ▼   |   |
| Mandate   |   |
| <ul style="list-style-type: none"> <li>• Supervising the activity of all Government agencies<sup>225</sup></li> <li>• Investigating complaints of violations of human rights by Spanish Government agencies, lodged by any Spanish or foreign national, natural person or body corporate</li> </ul> | <ul style="list-style-type: none"> <li>• Making findings as appropriate</li> <li>• Suggesting corrective measures</li> <li>• Filing appeals of constitutionality before the Constitutional Court</li> <li>• Reporting annually to Parliament</li> </ul> |

| Country  |   |
|--|---|
| Germany  |   |
| ▼  |   |
| NHRI   |   |
| German Institute for Human Rights  |   |
| ▼  |   |
| Mandate  |   |
| <ul style="list-style-type: none"> <li>• Carrying out research on human rights in Germany and the EU<sup>226</sup></li> <li>• Reporting to Parliament and international human rights bodies</li> </ul> | <ul style="list-style-type: none"> <li>• Advising the State, Courts and private actors on implementation of international human rights conventions</li> </ul> |

<sup>224</sup> Chart of the status of national institutions accredits by the Global Alliance of National Human Rights Institutions, as of 8 August 2018, available at <https://nhris.ohchr.org/EN/Documents>Status%20Accreditation%20Chart%20%288%20August%202018.pdf>.

<sup>225</sup> See Defensor Del Pueblo, Role of the Defensor, available at: <https://www.defensordelpueblo.es/en/your-rights/role-of-the-defensor/>.

<sup>226</sup> See Deutsches Institut Fur Menschenrechte, Mandate, available at: <https://www.institut-fuer-menschenrechte.de/en/about-us/mandate/>.



**Some States, such as the United States or China, do not have a NHRI at all. This is also the case for Syria.**

<sup>227</sup> See Commission Nationale Consultative Des Droits De L'Homme, L'Institution, available at: <https://www.cncdh.fr/fr/linstitution>.

<sup>228</sup> See Canadian Human Rights Commission, Our Work, available at: <https://www.chrc-ccdp.gc.ca/eng/content/our-work>.

Although Syria previously expressed plans to establish an independent national human rights institution as far back as 2006<sup>229</sup>, this still hadn't materialised in 2016, when the Working Group on the Universal Periodic Review for Syria noted the Syrian government's promise that it '[was] about to establish a national human rights institution in compliance with principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).'<sup>230</sup>

There is no ombudsman agency in Syria either. Although other national ombudsmen have sometimes draw attention to human rights violations in Syria, it was usually on the basis of specific issues such as calls for the repatriation of Dutch children in Syrian camps by the Dutch Children's ombudsman<sup>231</sup>, concerns from the Human Rights Defender of Armenia regarding Syrian Armenians,<sup>232</sup> or efforts by the Spanish Defensor Del Pueblo to arrange for surgery for a Syrian child refugee in Lebanon.<sup>233</sup>

It is unclear to what extent NHRIs would be willing to investigate violations of human rights that did not take place in the country they are attached to. Arguably, complaints could be made to NHRIs for actions committed in Syria by companies incorporated in the NHRI's State, providing a 'hook' to support the argument that the NHRI should investigate a complaint. Some NHRIs offer forms of quasi-judicial dispute resolution, through a complaints mechanism or public interest litigation, which could then be used to hold companies to account.<sup>234</sup>

**Below are suggested questions to ask yourself if you wish to hold a non-Syrian company to account for human rights violations through a NHRI:**

1 Where is the company incorporated?

2 Does that country have a NHRI?<sup>235</sup>

3 What is that NHRI's mandate?

4 Is it possible to file a complaint? If not, what are other ways of reaching out to the NHRI?

<sup>229</sup> Consideration of Reports submitted by State Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee on the Syrian Arab Republic, (9 Aug. 2005), available at <https://www.refworld.org/country/COI/HRC/SYR,43f2ff770.html>.

<sup>230</sup> Report of the Working Group on the Universal Period Review, Syrian Arab Republic, (27 Dec. 2016), A/HRC/24/5, available at [https://www.upr-info.org/sites/default/files/document/syrian\\_arab\\_republic/session\\_26\\_-\\_november\\_2016/a\\_hrc\\_34\\_5\\_en.pdf](https://www.upr-info.org/sites/default/files/document/syrian_arab_republic/session_26_-_november_2016/a_hrc_34_5_en.pdf).

<sup>231</sup> Children's Ombudsman Margrite Kalverboer is calling on the government to bring Dutch kids stuck in camps in Syria back to the Netherlands.

<sup>232</sup> See Human Rights Defender of the Republic of Armenia, 'Ombudsman Addresses International Organizations on the Issue of Protection of Rights of Syrian Armenians,' (17 Oct. 2016), available at: <http://www.ombuds.am/en/media/siriahayer.html>.

<sup>233</sup> See Defensor Del Pueblo, 'The Ombudsman Appreciates the Efforts Made to Help a Syrian girl,' (16 Aug. 2016), available at: <https://www.defensordelpueblo.es/en/news/the-ombudsman-appreciates-the-efforts-made-to-help-a-syrian-girl>.

<sup>234</sup> SFor a more in-depth discussion of NHRIs and their dispute resolution mechanisms, see 'National Human Rights Institutions in Europe and Dispute Resolution: A Mapping,' (April 2017), University of Essex Human Rights Centre, available at: [https://www.essex.ac.uk/hrc/documents/50642.NHRI\\_Mapping\\_Report\\_web.pdf](https://www.essex.ac.uk/hrc/documents/50642.NHRI_Mapping_Report_web.pdf).

<sup>235</sup> A basic internet search should show whether a specific country has a NHRI and the institution's website. The following guide is also helpful, as it identifies regional networks of NHRIs, which can then identify further national NHRIs: The University of Melbourne, Human Rights Law Research Guide: NHRIs & NGOs, available at: [http://unimelb.libguides.com/human\\_rights\\_law/civil\\_society](http://unimelb.libguides.com/human_rights_law/civil_society).

## CASE STUDY: Complaint to the NHRI of Thailand for alleged human rights violations by a Thai company in the Koh Kong sugar cane plantation in Cambodia

In January 2010, the NHRI of Thailand, the National Human Rights Commission ("NHRC") received a complaint regarding alleged human rights violations in the Koh Kong sugar cane plantation in Cambodia from lawyers at the Community Legal Education Center ("CLEC") representing local community members who had been evicted from their land.

The CLEC alleged that a Thai company, Khon Kaen Sugar Industry Public Company Limited, through Cambodian subsidiaries, had illegally and forcefully confiscated land from local people, killing livestock and threatening locals.

The NHRC explicitly stated that it had jurisdiction and a mandate "to ensure that the Thai state and private companies comply with human rights principles". After investigation, the NHRC concluded that there was a reasonable belief that human rights were violated, in particular the right to life and self-determination, and economic and social rights.

# 5.2 Chapter 2

## The OECD's National Contact Points

The Organisation for Economic Co-Operation and Development ('OECD') Guidelines for Multinational Enterprises (the 'Guidelines') are recommendations addressed by governments to multinational companies operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. They constitute an agreed and comprehensive code of responsible business conduct that governments have committed to promoting.<sup>236</sup>

Adhering governments to the Guidelines are required to set up National Contact Points ("NCPs"), whose main role is to further the effectiveness of the Guidelines by undertaking promotional activities, responding to enquiries, and operating as a mediation and conciliation platform for issues arising from the alleged non-observance of the Guidelines (such issues are known as 'specific instances'). Through their investigation and conciliation functions, NCPs can be used to obtain information from companies, which in turn can support your advocacy efforts (see Chapter 3 above) or can be used to build a case against the companies in question.

<sup>236</sup> OECD website, available at: <http://mneguidelines.oecd.org/mneguidelines/>.

There are currently 48 NCPs<sup>237</sup>. Although Syria has not adhered to the Guidelines and therefore doesn't have an NCP, other NCPs can nevertheless investigate and handle complaints regarding human rights abuses in Syria by companies incorporated in the NCP's country.<sup>238</sup> Since 2000, NCPs have received more than 425 cases relating to company operations in over 100 countries and territories.<sup>239</sup>

## **Below is a step-by-step guide to filing a complaint with an NCP:**

**Identifying what OECD Guideline(s) has/have been violated:** identify which chapters and provisions have been breached (the Chapter dedicated to human rights is Chapter IV). Clearly define the specific violations that took place, and who committed them.

**Identify the companies involved, including any parent company, subsidiary or business partnerships:** make sure you clearly map out how various actors are involved in the issue.

**Identify relevant the relevant NCP(s)<sup>240</sup>:** where are the business actors identified above incorporated? This can provide the 'hook' required to file a complaint with the country's NCP.

**Look at the mandate of the relevant NCP(s):** what are their powers? Are they empowered to investigate complaints, make recommendations, refer to other public bodies? NCPs have varying mandates, and some adhere to good practices (e.g. mediation between the parties, conducting fact-finding missions, etc.) while others have a poor track record (e.g. simply ignoring complaints, taking excessive time to handle complaints, etc.)<sup>241</sup> You should be aware of those varying standards, to adjust and clarify your expectations to the NCP involved in your case.

**Write the complaint:** although the form of a complaint might vary from NCP to NCP (or there not be any mandated form), as a general rule it is good to include the following information:

- Identity of the complainants
- Identity of the businesses involved
- Description of the harm caused by the business(es) and how it constitutes a violation of specific OECD Guidelines
- Outline of the outcome you are seeking from the NCP, i.e. the change you would like to see as a result of the complaint process (e.g. NCP-facilitated mediation, investigation and fact-finding by the NCP, issuance of recommendations, etc.)
- Outline of the outcomes you are seeking from the business(es), i.e. the changes you would like the relevant business(es) to make.

<sup>237</sup> OECD, FAQ on National Contact Points for the OECD Guidelines, available at: [http://www.oecd.org/investment/mne/NCP-FAQ.pdf?\\_ga=2.26117821.1608883094.1547329946-42573705.1546527971](http://www.oecd.org/investment/mne/NCP-FAQ.pdf?_ga=2.26117821.1608883094.1547329946-42573705.1546527971).

<sup>238</sup> For a helpful guide on the structures and procedures of NCPs in various specific countries, see OECD, 'Structures and Procedures of National Contact Points for the OECD Guidelines for Multinational Enterprises,' (2018), available at: <https://mneguidelines.oecd.org/Structures-and-procedures-of-NCPs-for-the-OECD-guidelines-for-multinational-enterprises.pdf>.

<sup>239</sup> OECD, Cases Handled by the National Contact Points for the OECD Guidelines for Multinational Enterprises, available at: <http://mneguidelines.oecd.org/Flyer-OECD-National-Contact-Points.pdf>.

<sup>240</sup> The OECD helpfully provides a list of NCPs and contact details for each NCP: OECD, Contact Details for the National Contact Points of the OECD Guidelines for Multinational Enterprises—September 2018, available at: [http://mneguidelines.oecd.org/NCP%20Contact%20Details\\_MNE-%20September%202018\\_Website.pdf](http://mneguidelines.oecd.org/NCP%20Contact%20Details_MNE-%20September%202018_Website.pdf).

<sup>241</sup> OECD Watch, Other Filing Considerations, available at: <https://www.oecdwatch.org/filing-complaints/instructions-and-templates/good-and-bad-ncp-practices>.

A more detailed template can be found on the website of OECD Watch<sup>242</sup>, a non-governmental organisation advising and supporting other NGOs who wish to make use of the NCP complaint procedure. Its website offers a variety of resources.<sup>243</sup>

### CASE STUDY 1: Complaint to Australian NCP for financing of a project in Cambodia which resulted in human rights abuses

In 2014, a complaint was lodged against the Australia and New Zealand Banking Group ('ANZ') to the Australian NCP. The plaintiffs were two NGOs representing 681 families in Cambodia, who had allegedly been displaced because of ANZ's financing of a Cambodian-based sugar company.

The complaint concerned a loan facility provided in 2011 to Phnom Penh Sugar ("PPS"), a company based in Cambodia, through ANZ's partially-owned Cambodian subsidiary, ANZ Royal Bank. PPS used the loan to finance the development of a sugar plantation and refinery allegedly engaged in forced evictions, arbitrary arrests, child labour and the creation of dangerous working conditions.

The NCP found that 'it was difficult to reconcile ANZ's decision to take on PPS as a client with its own internal policies and procedures ... as the potential risks associated with this decision would likely have been apparent' (as there were public concerns about PPS in 2011 already).

The NCP noted that it was not sufficient for a company to have human rights policies in place – these also had to be consistently applied when establishing new commercial relationships.

### CASE STUDY 2: Complaint to Swiss NCP against football association FIFA for violations of human rights in Qatar

A case handled by the Swiss NCP involved alleged human rights violations of migrant workers related to the construction of facilities for the 2022 World Cup in Qatar. The complaint had been brought by Swiss-based union BWI against FIFA, which is also headquartered in Switzerland.

Through mediation hosted by the Swiss NCP, the parties reached an agreement and developed a detailed action plan for promoting decent and safe working conditions for migrant construction workers. Subsequent to the mediation, FIFA also introduced human rights criteria into its assessment of bids for hosting of the 2026 games.

<sup>242</sup> OECD Watch, Template for Complaint, available at: <https://www.oecdwatch.org/how-to-file-a-complaint/stage-two-preparing-and-filing-the-complaint/template-for-complaint/>.

<sup>243</sup> OECD Website, available at: [www.oecdwatch.org](http://www.oecdwatch.org).

# Chapter 3

## Sanctions mechanisms

International sanctions include economic measures through which a State applies pressure on other States (or on designated individuals) in order to make them comply with demands such as respecting human rights. The idea behind economic sanctions is to 'hit where it hurts' by limiting economic opportunities for the targeted country or individual.

The section below provides an overview of such mechanisms as implemented by two powerful global actors, the United States and the European Union. Although their sanctions programme do not carve out a formal role for civil society organisation to play (e.g. through a formal complaint mechanism), they nevertheless offer a good tool through which you can hold companies to account, including by lobbying the relevant officials for inclusion of certain entities or individuals on the sanctions lists.

### United States: OFAC and the prohibition of almost all dealings by US persons in Syria

The US Office of Foreign Assets Control ('OFAC') operates a State-specific sanctions programme, which applies specifically to Syria in response to the ongoing violence and human rights abuses taking place in the State.<sup>244</sup> It is one of the most comprehensive sanctions programme operated by OFAC.

Although many of the sanctions concern dealings with (or of) the Syrian government as opposed to companies, the programme also prohibits a wide range of transactions, including<sup>245</sup>:

1 Any transaction or dealing by a US person, wherever located, in or related to petroleum (or petroleum products) of Syrian origin;

2 Direct or indirect exportation, re-exportation, sale, or supply of any services to Syria from the United States by a US person, wherever located;

3 The importation into the United States of petroleum (or petroleum products) of Syrian origin; and

4 New investment in Syria by a US person, wherever located.

<sup>244</sup> US Treasury Office of Foreign Assets Control, Syria Sanctions Program, (2 Aug. 2013), available at: <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/syria.pdf>.

<sup>245</sup> Executive Order 13582 Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria, 76 Federal Register, 162, (22 Aug. 2011), available at: [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/syria\\_eo\\_08182011.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/syria_eo_08182011.pdf).

In addition, US persons cannot finance or facilitate any transactions by non-US persons that would otherwise fall under the sanctions programme if done by a US person.

There are a few exceptions, for example allowing for humanitarian aid to be provided to the Syrian people.

Violating the OFAC Syria sanctions programme can have severe consequences. Violations of sanctions can lead to civil monetary penalties of up to \$250,000 or twice the amount of the underlying transaction (whichever is the greater). Criminal punishment could also be imposed in the form of a criminal fine of up to \$1 million can also be imposed, or imprisonment for up to 20 years, or both.<sup>246</sup>

US companies and executives should normally be aware of the wide range of prohibited transactions, but some might not be aware of just how much falls under the sanctions programme or might be unwilling to take a cautious approach to transactions involving Syria. In such cases, it can be helpful to engage with them and remind them of the extensive list of prohibited transactions and severe consequences of a breach.

**OFAC can be contacted by email at [ofac\\_feedback@treasury.gov](mailto:ofac_feedback@treasury.gov) or by post at the address below:**

Office of Foreign Assets Control  
U.S. Department of the Treasury  
Treasury Annex  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220



## United States: The executive branch has the power to pass targeted sanctions on individuals who commit human rights abuses

The Global Magnitsky Act, named in reference to human rights abuses committed against Russian lawyer and auditor Sergei Magnitsky, is a piece of legislation that gives the US executive branch the power to impose targeted sanctions or visa bans on individuals who have committed human rights violations [anywhere in the world](#). It is an important tool that aims to use the threat of sanctions as deterrent for human rights abuses around the world.

The Act is triggered by the chairperson of an appropriate House or Senate committee sending a letter to the President; who has 120 days to determine if the relevant foreign individual has committed a human rights violation. A report is submitted to the committee, explaining whether or not sanctions will be imposed, and if so, what sanctions.

The Act also imposes further due diligence requirement on companies, as they will need to avoid interacting with sanctioned persons and entities or risk substantial compliance costs.

<sup>246</sup> US Treasury Office of Foreign Assets Control, Syria Sanctions Program, (2 Aug. 2013), 6.

## CASE STUDY: Using the Global Magnitsky Act to investigate the killing of Saudi journalist Jamal Khashoggi

On 2 October 2018, Saudi based journalist Jamal Khashoggi was brutally killed at the Consulate of Saudi Arabia in Turkey.

In November 2018, the US Secretary of State announced the imposition of 'Global Magnitsky Sanctions' on 17 named individuals involved in the killing. The individuals occupied positions in the Royal Court and ministries of Saudi Arabia.

Separately, on 10 October 2018, a letter signed by a partisan group of 22 senators was sent to US President Donald Trump, demanding that he investigates any violations committed against Khashoggi and invoking the Global Magnitsky Act. The letter asked the President to make a determination of responsibility for the killing, particularly including involvement by the Saudi royal family.

The 120-days deadline gave President Trump until early February to respond. On 8 February 2019, the Trump administration declined to submit a report determining whether Saudi Arabia's crown prince was personally responsible for the killing of Khashoggi.

## European Union: prohibited dealings with Syria

The European Union started imposing sanctions on Syria in May 2011. They are reviewed on an annual basis, with the next review being due by 1 June 2019. Although not as sweeping as the US sanctions, they nevertheless also prohibit a wide range of actions. For example, the following is prohibited<sup>247</sup>:

1 the granting of financial loan or credit, the acquisition or extension of a participation, or the creation of any joint venture with enterprises in Syria that are engaged in the Syrian oil industry sectors of exploration, production or refining; and to the enterprises in Syria that are engaged in the construction of new power plants for the production of electricity in Syria.

2 the participation in the construction of new power plants for the production of electricity in Syria.

3 the exportation of telecommunications monitoring and interception equipment.

The EU also maintains a list of persons and entities that are targeted by a travel ban and asset freeze. As of January 2019, that list included 270 persons and 72 entities.<sup>248</sup>

<sup>247</sup> EU Sanctions Map, available at: <https://sanctionsmap.eu/#/main/details/32/?search=%7B%22value%22:%7D%22searchType%22:%7B%7D%7D>.

<sup>248</sup> European Council, 'Syria: EU Adds Eleven Businessmen and Five Entities to Sanctions List,' (21 Jan. 2019), available at: <https://www.consilium.europa.eu/en/press/press-releases/2019/01/21/syria-eu-adds-eleven-businessmen-and-five-entities-to-sanctions-list/>.

There is no formal way for NGOs to be involved in the decision-making process for sanctions, as sanctions proposals are made by the High Representative of the Union for Foreign Affairs and Security Policy (currently Federica Mogherini) and then adopted through a Common Foreign and Security Policy (CFSP) Council decision.<sup>249</sup>

Nevertheless, you can raise certain issues and push for sanctions against certain entities and/or persons by contacting EU officials to discuss adding persons (including companies that benefit from human rights violations in Syria) to the EU list of sanctioned entities.

**At the time of writing, two individuals are well-placed to discuss such issues:**

**1** David Geer, member of the EU External Action Service who runs sanctions policy for the EU's diplomatic service<sup>250</sup>; and

**2** Michael Curtis, member of Federica Mogherini's team in charge of sanctions policy.<sup>251</sup>

### CASE STUDY: EU sanctions against businessmen involved in regime-backed projects in Syria

On 21 January 2019, the EU added 11 businessmen and 5 entities to its Syria sanctions list, on the basis that they 'support and/or benefit from the Syrian regime' by being involved in 'luxury estate development and other regime-backed projects' and benefiting from expropriated property.

Many of the individuals sanctioned are known investors in the Marota City project, a controversial reconstruction development in Damascus widely perceived by human rights groups as an obstacle to the return of hundreds of thousands of Syrian refugees and displaced residents. The Marota City project was approved in 2012 under the controversial Decree No. 66.

## Chapter 3

### Complaint mechanisms for projects funded by the World Bank Group

The World Bank Group is an international development bank that aims to reduce poverty and improve living standards for people in developing countries. It is made up of four investment institutions:

**A** The International Bank for Reconstruction and Development;

**B** The International Development Association;

**C** The International Finance Corporation; and

**D** The Multilateral Investment Guarantee Agency.

<sup>249</sup> European Council, Adoption and Review Procedure for EU Sanctions, available at: <https://www.consilium.europa.eu/en/policies/sanctions/adoption-review-procedure/>.

<sup>250</sup> European Union External Action Service, 'EU WhoisWho Official Directory of the European Union,' (1 Mar. 2019), available at [http://europa.eu/whoiswho/pdf/EUWhoiswho\\_269879\\_EN.pdf](http://europa.eu/whoiswho/pdf/EUWhoiswho_269879_EN.pdf).

<sup>251</sup> European Commission, Federica Mogherini's Team, available at: [https://ec.europa.eu/commission/commissioners/2014-2019/mogherini/team\\_en](https://ec.europa.eu/commission/commissioners/2014-2019/mogherini/team_en).

The first two institutions lend to governments around the world. They have a specific complaint mechanism which can be used by NGOs: the World Bank Inspection Panel.

The latter two institutions support the private sector and have their own complaint mechanism: the Compliance Advisor Ombudsman.

## A Complaint to the World Bank Inspection Panel

Part of the work of the World Bank Group is to work with governments around the world through two World Bank agencies which, together, form the 'World Bank' itself:

1 The International Bank for Reconstruction and Development ('IBRD'), which lends to middle-income and low-income countries; and

2 The International Development Agency ('IDA'), which provides free interest-free loans and grants to the world's poorest countries.

However, sometimes IBRD- and IDA- financed projects<sup>252</sup> can cause communities to be harmed, which led to the World Bank Inspection Panel (the 'Investigation Panel') being created. It serves as an independent forum for communities or any group of two or more people who believe they are harmed (or are likely to be harmed) by an IBRD- or IDA-financed project.

The role of the Investigation Panel is to investigate complaints regarding whether the World Bank has followed the 51 operational policies and 47 bank procedures it must comply with when designing a project and overseeing its implementation.

Complaints to the Investigation Panel relate to the adverse impact of World Bank-financed projects on people, their livelihoods and the environment. They often relate to projects relating to power generation, infrastructure, and reforms in land management and land use.

For example, one of the World Bank's mandatory policies covers involuntary resettlement, i.e. any World Bank-financed project must cover the direct economic and social impacts of the project and provide for a resettlement plan or resettlement policy framework if relevant.

Complaining to the Investigation Panel is most effective when combined with other strategies, including media engagement, further awareness raising, and advocacy (see Chapter 4).<sup>253</sup>

<sup>252</sup> You can find more information on current projects on the World Bank's website: <http://projects.worldbank.org/>

<sup>253</sup> SOMO, World Bank Inspection Panel, (8 Oct. 2013), available at [https://www.somo.nl/wp-content/uploads/2018/07/HR-GM\\_WorldBank\\_WEB\\_8-10-2013.pdf](https://www.somo.nl/wp-content/uploads/2018/07/HR-GM_WorldBank_WEB_8-10-2013.pdf).

## Below is a step-by-step guide to filing a complaint with the Investigation Panel:

**Good faith effort to resolve the problem:** the procedure requires complainants to first make a “good faith effort” to resolve the problem informally with World Bank staff.

**Community considerations:** determine the scope of the affected group, ensure that the community fully understands and supports the Investigation Panel process, and decide who will speak on behalf of the community during the process.

**Identifying relevant procedures/policies and breach:** determine which World Bank policies and/or procedures have been breached, and how harm was caused (or how it is likely to be caused).

**Evidence:** make sure that the complaint includes a record of the steps taken to resolve the problem in good faith. Include evidence detailing the harm or expected harm (such as photographs, videos, written notes or witness statements).

**Write the complaint:** the complaint can be written in English or in your local language, and should include the following information:

- Date, name and signature of all the people filing the complaint (or name of the representatives with a signed letter providing proof of authority to represent the people affected)
- Evidence that the people filing the complaint live in the project area
- Information about whether or not you wish the Investigation Panel to keep the complainants’ identity confidential
- Explanation of the IBRD- or IDA-financed project and area affected by it
- Description of the harm caused (or expected to be caused) as a result of the project
- Explanation as to how the harm is caused by the World Bank’s failure to follow its own procedures/policies
- Outline of the outcome you are seeking (i.e. the change you would like to see as a result of the complaint process)

**Submit the complaint to the following address:**

Executive Secretary  
World Bank Inspection Panel  
Mail Stop MC10-1007  
1818 H Street, NW  
Washington, DC 20433  
United States of America

A complaint request form can be downloaded from the World Bank’s website.<sup>254</sup>

<sup>254</sup> The World Bank, Complaint (Request for Inspection) Form, available at: <https://inspectionpanel.org/sites/ip-ms8.extcc.com/files/publications/complaint-form-english.pdf>; Further guidelines for filing a complaint with the Investigation Panel can be found here: World Bank Inspection Panel, ‘How to File a Request for Inspection to the World Bank Inspection Panel General Guidelines,’ available at: [https://inspectionpanel.org/sites/ip-ms8.extcc.com/files/Guidelines\\_How%20to%20File\\_for\\_web.pdf](https://inspectionpanel.org/sites/ip-ms8.extcc.com/files/Guidelines_How%20to%20File_for_web.pdf).

# B

## Complaint to the Compliance Advisor Ombudsman

In addition to loans to governments as described above, the World Bank also supports the private sector in developing States, including banks and corporations, through two other agencies:

A  
the International Finance Corporation ('IFC'), which aims to stimulate the private sector in developing countries; and

D  
the Multilateral Investment Guarantee Agency ('MIGA'), which provides insurance for private businesses investing in the developing world.

The IFC and MIGA provide guidance to their client companies regarding how to identify, evaluate, avoid, mitigate and manage risk of harm caused by IFC and MIGA funded projects. It is not necessary to explicitly argue that an IFC or MIGA rule has been breached in order to bring a complaint before the CAO, although it can help to draft the complaint. The rules most commonly addressed in CAO complaints are the IFC Performance Standards on Environmental and Social Sustainability.<sup>255</sup>

Complaints about IFC and MIGA-funded projects are dealt with by the Office of the Compliance Advisor Ombudsman ("CAO", recently renamed to 'CAO Dispute Resolution'). The CAO is an independent accountability mechanism, which responds to complaints by people affected by the social and environmental impact of IFC/MIGA projects.

<sup>255</sup> SOMO, Compliance Advisor Ombudsman, (8 Oct. 2013), available at [https://www.somo.nl/wp-content/uploads/2018/07/HR-GM\\_CAO\\_WEB\\_8-10-2013-2.pdf](https://www.somo.nl/wp-content/uploads/2018/07/HR-GM_CAO_WEB_8-10-2013-2.pdf).

<sup>256</sup> Compliance Advisor Ombudsman, CAO Dispute Resolution, available at: <http://www.cao-ombudsman.org/howtework/ombudsman/>.

<sup>257</sup> Compliance Advisor Ombudsman, CAO Dispute Resolution.

**Any complaint to the CAO must meet three criteria<sup>256</sup>: i) it must relate to an identified IFC or MIGA project; ii) it must raise social and environmental issues; and iii) it must be filed by an individual and/or community directly affected by the project (or filed by their representatives, e.g. NGO).**

**The steps to file a complaint with the CAO are similar to those outlined for Investigation Panel complaints in the previous sections, except that complaints can be sent by email to [cao-compliance@ifc.org](mailto:cao-compliance@ifc.org) or by mail to the following address:**

Office of the Compliance Advisor Ombudsman (CAO)  
2121 Pennsylvania Avenue, NW  
Washington, DC 20433  
United States of America

**Complaints can be drafted in any languages, and CAO will respect any requests for confidentiality of stakeholders' identities or information communicated to it. CAO will inform complainants of the eligibility of their case within 15 working days of filing it.<sup>257</sup>**

**When a complaint is accepted for further assessment, CAO has approximately 120 working days to conduct an assessment of the conflict and the stakeholders' alternatives for resolving the issues.**

**Further guidance, including a model letter of complaint to CAO, can be found at the CAO website.<sup>258</sup>**

<sup>258</sup> Compliance Advisor Ombudsman, CAO Operational Guidelines, (2013), available at: [http://www.cao-ombudsman.org/howwe-work/documents/CAOOperationalGuidelines2013\\_ENGLISH.pdf](http://www.cao-ombudsman.org/howwe-work/documents/CAOOperationalGuidelines2013_ENGLISH.pdf).

# 1 ANNEX

## Guidance on where to find the information needed to establish whether a business is complying with the UNGPs.<sup>259</sup>

**The business' website.** If the company is a subsidiary of another company, it is worth checking the parent's company website since the policies developed by the parent company tend to apply to its subsidiaries (for information on how to identify parent companies see Annex 2). The company's human rights policies are often included in documents called "Sustainability Report" or "Annual Report". Relevant information may also be found under "Terms and Conditions" or "Legal Notes". The internal policies of non-for profit organisations and of multilateral organisations are usually available on their websites.

**The UN Global Compact website.** The UN Global Compact requires participating companies to submit every year a report called Communication on Progress, which between other things, should detail the steps taken to ensure that they respect human rights. The documents submitted by the participating companies can be found in the UN Global Compact database of participating company (<https://www.unglobalcompact.org/what-is-gc/participants> ).

**The UN Guiding Principles Reporting Framework website.** The website has a database of the information made available by the largest companies in the world about their implementation of the UNGPs. (<https://www.ungreporting.org/database-analysis/explore-disclosures/> ).

**The Business and Human Rights Resource Centre website** has a database about the policies and practices on human rights of more than 100 of the largest companies in the world. (<https://www.business-humanrights.org/en/company-action-platform> )

**Request information directly from the business** or the parent company through email, phone calls or requests for interviews. It may be worth previously identifying which persons within the company may be able to provide the information you are looking for. Companies may be reticent to disclose the information you require.

<sup>259</sup> The content of this Annex is partially drawn from SOMO, How to use the UNGP, 16-17.

<sup>260</sup> OECD Guidelines, Chapter III, 3 (a), (b). <sup>261</sup> [https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting\\_en](https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en).

If companies are unwilling to disclose the information you require, in your interaction with the company you should refer to Principle 21 of the UNGPs which requires companies to communicate externally how they address human rights impacts especially when requested by or on behalf of affected stakeholders. In addition, if the company is incorporated in an OECD member state, you should refer to the OECD Guidelines, which encourage companies to communicate “policies and other codes of conduct to which the enterprise subscribes”.<sup>260</sup> Finally, if the company is a large company based in the European Union (EU), you should refer to the EU Directive 2014/95/EU, which obliges such companies to publicly report on their policies concerning their responsibility to respect human rights.<sup>261</sup>

**Consult with employees** that may have relevant information on the business' operations.

**Consult with companies** that are in a business relationship with the business.

**Consult with other local NGOs** with expertise in a specific area or international NGOs with expertise on business and human rights.

**Consult with individuals and communities** affected or potentially affected by the business' operations.

**Request information from local journalists.**

**Request information from official entities** such as the National Human Rights Institution (NHR) of the state where the business/parent company is based.

**Request information from the government and/or the parliament** of the state where the business/parent company is based.

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<sup>260</sup> OECD Guidelines, Chapter III, 3 (a), (b).

<sup>261</sup> [https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting\\_en](https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en).

# ANNEX

## Guidance on how to identify the corporate structure of a company

**Identifying the companies' part of the same corporate group of a company operating in Syria is crucial to your activity for a number of reasons:**

**1** It helps you to identify the entities you can engage with;

**2** If you are planning to bring a case against the company, identifying the parent company and the state in which it is incorporated will assist you in the determination of whether there is a court with jurisdiction over the company involved in the human rights violations (see Chapter 5);

**3** It may help linking the company to certain operations that have a negative human rights impact (such as buying land) that are not immediately attributable to the company. Companies often use complicated corporate structures to avoid being linked to certain illegal or harmful operations.<sup>262</sup>

### Useful tip

The fact that one or more individuals appear as members of the board or as legal representative in two or more companies that are not publicly part of the same corporate structure may be an indication that the relationship between the companies is closer than declared and may require further investigation.<sup>263</sup> Similarly, the fact that seemingly unrelated companies share the same address may be another indication that their relationship requires further investigation.<sup>264</sup>

<sup>262</sup> SOMO, INDEPAZ, The case of Poligrow, 2017, 55.

<sup>263</sup> SOMO, INDEPAZ, The case of Poligrow, 2017, 55-57.

<sup>264</sup> SOMO, INDEPAZ, The case of Poligrow, 2017, 55-57.

**Below is a list of sources that you can use to identify the corporate structure of a company:**

## A **The company's website**

In some cases, information about the corporate structure of a company is easily accessible on the company's website (see example below).

### Example

Konkola Copper Mines PLC is a Zambia based company producing copper.

The homepage of the company's website clearly states that Konkola is "a subsidiary of Vedanta Resources Plc".

Under the "corporate profile" section the website further explains that "Vedanta Resources holds 79.4% of the [...] shares of the Company. The remaining 20.6% interest in the Company is held by ZCCM-IH, a [...] company that is 87.6% owned by the Zambian Government and 12.4% owned by public shareholders."

The company was accused by the inhabitants of a neighbouring village of personal injury deriving from the pollution of the surrounding rivers caused by the company's discharge of waste. The victims were able to easily identify the company's shareholders and to bring a case against the parent company in the state of incorporation.<sup>265</sup>

## B **The company's Annual Reports**

The annual reports published by companies at the end of the financial year are often available on the companies' website and usually identify the other companies part of the same corporate group.

<sup>265</sup> Business & Human Rights Resource Centre, Vedanta Resources Lawsuit (re Water Contamination, Zambia), available at: <https://www.business-humanrights.org/en/vedanta-resources-lawsuit-re-water-contamination-zambia>.

## **D**irect inquiries

If information about a company's corporate structure is not available on the website or in the annual reports released by the company, or if the information available is incomplete, you should inquire directly with the company or with its legal representatives. Companies incorporated in countries that are parties to the Organisation for Economic Cooperation and Development<sup>266</sup> have a responsibility to disclose accurate information relating to their corporate structure and ownership.<sup>267</sup> The responsibility to disclose such information applies also in relation to their subsidiaries incorporated in states other than the OECD member states.

## **D**atabases

There are a number of databases you can use when researching corporate information about a company. Some examples:

### **■ Open Corporates** <sup>268</sup>

Open Corporates is a freely accessible database with corporate information about over 160 million companies worldwide. The information immediately available by searching on the website's browser is fairly basic. However, Open Corporates offers more advanced information on corporate structures free of charge to NGOs that request it.<sup>269</sup>

### **■ Orbis Database** <sup>270</sup>

Orbis is a database owned by a Dutch company called Bureau Van Dijk. The company offers a number of services including information about the corporate structure of companies that are not publicly available. This service is not free.

### **■ Globe Newswire** <sup>271</sup>

Globe Newswire is a database of company's press releases and financial disclosures. The database allows to search for all the news concerning a specific company.

## **C**hambers of commerce and registration offices of the state of incorporation.

Chambers of commerce and other official registries can usually provide useful information about the corporate structure of companies registered in the State. However, the information is not always publicly available and may require the submission of a specific request. Furthermore, the information is usually only available in the official language of the State. Some examples:

### **■ Companies registered in Syria**

The following information about companies incorporated in Syria can be obtained from the Corporate Register:

- Articles of Association/incorporation;
- names of the owners/partners;
- the company's capital;
- sales and purchases of the company shares;
- any judicial proceedings concerning the company (if any).

<sup>266</sup> To date 36 states are members of the OECD. They are mainly western states. States members of the OECD include Canada, the US, the UK, Germany, Australia, France, Turkey and Japan. For a complete list see: OECD, List of OECD Member Countries—Ratification of the convention on the OECD, available at: <http://www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm>.

<sup>267</sup> OECD Guidelines, Chapter III, 1.

<sup>268</sup> Open Corporates, Working for the Public Good, available at: [https://opencorporates.com/info/working\\_for\\_the\\_public\\_good](https://opencorporates.com/info/working_for_the_public_good)

<sup>270</sup> Bureau Van Dijk, Orbis Overview, available at: <https://www.bvdinfo.com/en-gb/our-products/data/international/orbis#secondaryMenuAnchor0>.

<sup>271</sup> GlobeNewswire, available at: <https://globenewswire.com/NewsRoom>.

This information is available to anyone presenting a request to the Register. However, only the company's representatives or shareholders can obtain it in writing. Everyone else may only obtain verbal information about it.<sup>272</sup>

## Parent companies registered in the EU

Certain information about companies registered in the following states can be accessed in the websites listed below:

- Parent companies registered in the UK<sup>273</sup>
- Parent companies registered in Germany<sup>274</sup>
- Parent companies registered in France<sup>275</sup>
- Parent companies registered in the European Union<sup>276</sup>

## Syria's Official Journal

The Syrian State's Official Journal includes information about foreign companies registered in Syria and about companies listed in the stock exchange.<sup>277</sup>

## The Syria Report

The Syria Report website has a directory with relevant information about the corporate structure of companies operating in Syria.<sup>278</sup>

<sup>272</sup> Information obtained during an interview with a Syrian lawyer, 24/01/2019.

<sup>273</sup> Companies House, available at: <https://beta.companieshouse.gov.uk/>.

<sup>274</sup> Handel Register, Common Register Portal of the German Federal States, available at [https://www.handelsregister.de/rp\\_web/mask.do?Typ=n](https://www.handelsregister.de/rp_web/mask.do?Typ=n).

<sup>275</sup> Infogreffe, available at <https://www.infogreffe.fr/documents-officiels/demande-kbis.html>.

<sup>276</sup> Additional information can be found at: European Company Information Online, available at: <https://www.ebr.org/>.

<sup>277</sup> Information obtained during an interview with a Syrian lawyer, 07/03/2019.

<sup>278</sup> The Syria Report, Directory, available at: <https://www.syria-report.com/directory>.



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