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The journey of multi national enterprises into Business and Human Rights

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INTRODUCTION

This work systematizes the research I have carried out over the past three years, both during the PhD course in “Quality, innovation and sustainability” and in the company I work for, Eni SpA, where I am in charge to coordinate the activities related to Business and Human Rights.

My PhD research has focussed on Corporate Social Responsibility, with in depth analysis on specific subjects such as stakeholder engagement, social license to operate and community investment. The work in Eni was entirely devoted to the subject of Business and Human Rights (hereinafter BHR), where I had the opportunity to coordinate an internal working group aimed at systematizing the internal actions into a more organic approach.

The topic of BHR is gaining its autonomy in the CSR debate since the globalization has made evident the existence of direct impacts of business activities on the specific rights of individual and communities. This work considers the concept of globalization as the increasing internationalization of markets for producing and selling goods and services, and as the undermined capacity of sovereign governments to intervene with appropriate laws to regulate these entities.

Since the second half of the XX century in fact, business has proven to be likely to impact on human rights (hereinafter HR) enjoyment in several situations. The Bhopal disaster in India in the 80s, the killing of Ken Saro Wiwa in Nigeria in 90s, just to mention a few of them, were macroscopic examples of these implications.

Business is likely to impact on civil and political rights, but also on economic, social and cultural rights. The recognition of the “third-generation human rights” in a growing number of international declarations expands further the perimeter of BHR. Moreover, migration and climate change, phenomena that are linked only indirectly to business activities, are contributing to enlarge further this perimeter and to scale this topic to a higher magnitude.

HR are identified and regulated by a complex body of international treaties, formally endorsed by the States. The same States are the final recipients of the HR obligations

introduced by these treaties, even if their concrete enforceability is sometimes weak (Nolan, 2013). Among business ethics scholars there was a heated debate to establish whether business do have a proper responsibility to respect international recognized HR, irrespective of the country where they operate, or if business should respect only the local HR standards.

The responses of governments and international organizations to these issues have been nuanced over years and, only in 2011 with the approval of the United Nations Guiding Principles on Business and Human Rights (hereinafter UNGPs), this subject landed to a clear definition, with the adoption of a framework for companies to evaluate and manage their HR risks.

The UNGPs have introduced a clear-cut approach to BHR, acknowledging the existence of *“a company’s responsibility from its being involved with an adverse HR impact. The nature of the responsibility depends on how the company is involved”* (Ruggie and Sherman, 2017). This business responsibility then has been carefully declined in a number of principles, centered on the concept of HR Due Diligence (hereinafter HRDD), which is a *“comprehensive, proactive, attempt to cover HR risks, actual and potential, over the entire life cycle of a project or of a business activity, with the aim of avoiding and mitigating those risks”* (Ruggie and Sherman, 2017). The adoption of this framework by companies is not mandatory and, to some, this notion of the responsibility to respect rights based on social expectation appeared inadequate (Nolan, 2013).

Today, after seven years since their official endorsement, the UNGPs are still the standard in place, and more and more companies - especially multi national enterprises (MNEs) - declare their commitment to respect the UNGPs and to operationalize them in their processes. Nevertheless, HR violations directly linked to business activities still happen in several contexts and MNEs are often involved in these violations (Bloomer, 2014).

This apparent discrepancy leads to the scope of this work. Indeed, as observed by some authors, little actual evidence is available so far on the tangible impacts of the

UNGPs (Wettstein, 2015). There is limited information as to how companies are actually conducting HRDD consistent with their responsibility to respect HR under the UNGPs (Mc Corquodale et al., 2017). Moreover, since HRDD is both a standard of conduct to discharge a responsibility and a process to manage HR risks, companies could consider HRDD only as a best practices and effectively ignore their responsibility to provide remedy (Bonnitcha et al., 2017).

Building on these premises, this study will try to assess the effectiveness of the UNGPs and HRDD in preventing HR violations, by searching for a direct relation between HR performances of MNEs and their commitment to respect HR following the UNGPs. While other authors investigated specifically how the UNGPs and HRDD work, carrying out studies based on the companies' point of view (Mc Corquodale et al., 2017; Kamminga, 2015), in this research area there is a lack of investigations on the concrete and tangible impacts of the UNGPs and HRDD on companies' HR performances, starting from the HR violations ascribable to business actors. To this aim, this research will compare alleged HR involving MNEs, with the extent to which MNEs have embedded the UNGPs in their processes.

Two prominent sources of data have informed this research: the database of the Business and Human Rights Resource Centre (hereinafter Resource Centre), which collects the allegations of HR violations committed by companies and publishes their eventual replies, and the Corporate Human Rights Benchmark (hereinafter CHRB), which have assessed and given a score to the way 98 MNEs have complied with the UNGPs.

Limitations in the methodology applied by the Resource Centre to take in charge allegations of human rights violations, and in the methodology applied by the CHRB to assess the company compliance to UNGPs, are out of the scope of this work.

This research is organized in four chapters.

The first Chapter gives a historical perspective on BHR and on the debate concerning the admissibility of HR obligations for companies, in line with the expectations set by international treaties. This debate is grounded on the assumption that respecting HR

is a duty assigned to the States only and not to other actors. Then, this Chapter introduces the UNGPs Framework, explaining its disruptive role with respect the previous attempts to regulate this topic at international level, although it remains a voluntary standard. Finally, this Chapter highlights the main trends in the field of BHR, focussing on the growing normative initiative that have been taking place at national (e.g. the UK Modern Slavery Act), international (Comprehensive Treaty on BHR) and supranational (EU Directive on non-financial information) level.

The second Chapter describes the main features of the UNGPs. In particular, this Chapter analyses the structure, the goals, and the innovativeness of the UNGPs. Here a focus is made on the concepts of commitment, due diligence and access to remedy, which are the cornerstones of the responsibility of companies to respect HR, according to the UNGPs. Moreover this Chapter will tackle also the limitations emerged in authors' debate, essentially referred to the voluntaristic, soft-law nature of the UNGPs and the fact that their introduction has implied the loss of a concrete chance to achieve an agreement for a mandatory treaty on BHR, at least in the short term.

The third Chapter describes the different actors involved in assessing corporations' conduct and the role they play in pushing companies to embed Social Responsible principles in their practices and, focussing on BHR, to adopt the UNGPs prescriptions in their internal processes. To this aim, this Chapter introduces the CHRB, an initiative that has systematically analysed the websites and public information of 98 MNEs, in order to assess and give a score on the way they have embedded UNGPs in their policies and practices. The results of this initiative are the inputs of the analysis carried out in Chapter four.

Chapter Four makes a comprehensive mapping and analysis of the main allegations against these 98 companies to have violated HR, based on the data collected by the Resource Centre, an eminent initiative in the BHR movement. These alleged HR violations are interpolated with the CHRB of these companies, in order to verify if to CHRB best performers have corresponded better HR performances. At the end of the

day, this will allow to understand if the UNGPs Framework and its HRDD demonstrated to be an effective tool for companies to improve on HR, irrespecting of its voluntary nature.

Conclusions and inputs for future research on this topic end this work.

CHAPTER I

1.1 Business and Human Rights (BHR) in historical perspective

In the last few decades the impact of business on HR of communities and individuals was object of a closer scrutiny, together with the role MNEs can play to improve HR protection, in light of their preminent position in our globalized society.

At the same time allegations concerning HR violations committed by MNEs are becoming more and more frequent and known.

1.1.1 Corporate Social Responsibility and BHR

Until the 1990s, the impact of business on the social conditions of their stakeholders was confined within the boundaries of the Corporate Social Responsibility (CSR), whose BHR was often considered linked with and, in some cases, believed identical because of their common engagement in responsible and socially beneficial activities. But CSR and BHR are two different subjects, with meaningful differences and distinct origins.

According to the European Union (EU), CSR is *“a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with stakeholders on a voluntary basis”*¹. Therefore CSR puts emphasis on self-guided decision process and the adoption of a responsible behavior, deemed important to the competitiveness of enterprises and likely to bring benefits in terms of risk management, cost savings, access to capital, customer relationships, human resource management, and innovation capacity (Porter and Kramer, 2006).

On the other hand, BHR is the result of *“a quest for corporate accountability to mitigate or prevent the adverse impacts of business activity on individuals and communities and out of expectations grounded in a specific core set of human rights obligations”* (Ramasastry, 2015). Therefore BHR aims at keeping corporations accountable for any harm caused from their operations, with the focus shifted from promoting and protecting to the role they should play in respecting HR.

¹ European Commission, Green Paper *“Promoting a European Framework for Corporate Social Responsibility”*, July 2001.

Historically, HR implications for business were the consequence of a more general HR accountability gap between states. After the WWII in fact, the United Nations gave birth to the modern ideal of HR without establishing an institutional framework for holding member states accountable for HR violations against their own citizens. This gap had been filled somehow by bilateral and multilateral state-to-state economic sanctions (Santoro, 2015).

On this regard, before proceeding ahead, it is helpful to give a comprehensive definition of HR and mention the most relevant international references on this field.

According to the United Nations Human Rights Office of the High Commissioner², *“Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible”*. Such rights are identified and regulated in the following body of international declarations and covenants, constituting the International Bill of Human Rights:

- the Universal Declaration on Human Rights (UDHR): the UDHR³ is a milestone document in the history of HR. Drafted by representatives with different legal and

² The Office of the United Nations High Commissioner for Human Rights (OHCHR), headed by the High Commissioner for Human Rights, is the principal human rights official of the United Nations. It is part of the United Nations Secretariat, headquartered in Geneva. Within the UN HR system, its role is to strengthen international human rights mechanisms; enhance equality and counter discrimination; combat impunity and strengthen accountability and the rule of law; integrate human rights in development and in the economic sphere; wide the democratic space; and early warn and protect of human rights in situations of conflict, violence and insecurity (<http://www.ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx>)

³ The Universal Declaration was adopted by the General Assembly as Resolution n. 217 on 10 th December 1948. Of the then 58 members of the United Nations, 48 voted in favor, none against, eight abstained and Honduras and Yemen failed to vote or abstain. The Declaration consists of a preamble and thirty articles:

- The preamble sets out the historical and social causes that led to the necessity of drafting the Declaration.
- Articles 1—2 established the basic concepts of dignity, liberty, equality, and brotherhood.
- Articles 3—11 established other individual rights, such as the right to life and the prohibition of slavery.
- Articles 6—11 refer to the fundamental legality of human rights with specific remedies cited for their defence when violated.
- Articles 12—17 established the rights of the individual towards the community (including such things as freedom of movement).

cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10th December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, the fundamental HR to be universally protected and it has been translated into over 500 languages;

- the International Covenant on Civil and Political Rights (ICCPR): the ICCPR is a multilateral treaty adopted by the United Nations General Assembly with resolution 2200A (XXI) on 19th December 1966, and in force from 23rd March 1976. The Covenant commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of January 2018, the Covenant has 169 parties and six more signatories without ratification;

- the International Covenant on Economic, Social and Cultural Rights (ICESCR): the ICESCR is a multilateral treaty adopted by the United Nations General Assembly on 16th December 1966, and in force from 3rd January 1976. It commits its parties to work toward the granting of economic, social, and cultural rights (ESCR) to the Non-Self-Governing and Trust Territories and individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living. As of January 2018, the Covenant has 166 parties.

It is out of the scope of this research to elaborate on these covenants and their achievements but, despite their general adoption, HR violations by States are still largely diffused. Moreover, quite often, States are not alone while committing HR violations against their citizens, being these crimes perpetrated with the silent complicity or in the interest of MNEs with operations in “host” states, whose governments are authoritative and oppressive (Backer, 2017; Bloomer, 2014; Nienhe, 2015).

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- Articles 18–21 sanctioned the so-called "constitutional liberties", and with spiritual, public, and political freedoms, such as freedom of thought, opinion, religion and conscience, word, and peaceful association of the individual.
 - Articles 22–27 sanctioned an individual's economic, social and cultural rights, including healthcare.
 - Articles 28–30 established the general ways of using these rights, the areas in which these rights of the individual cannot be applied, and that they cannot be overcome against the individual.

1.1.2 Origins of the BHR's movement: MNEs violations, lawsuits and initiatives

Starting from the 1970s, several high profile cases of businesses responsible for human rights violations came to the fore, especially in newly emerging postcolonial states (Santoro, 2015).

The gas leak at Union Carbide's pesticide plant in Bhopal⁴, India, which caused death and permanent injuries to thousands of people, or the killing of the poet and activist Ken Saro Wiwa⁵, in Nigeria, were macroscopic example of this phenomenon.

⁴ The Bhopal gas tragedy happened at a Union Carbide subsidiary pesticide plant in the city of Bhopal, India. On the night of 2-3 December 1984, the plant released approximately 40 tonnes of toxic methyl isocyanate (MIC) gas, exposing more than 500,000 people to toxic gases.

A mixture of poisonous gases flooded the city, causing great panic as people woke up with a burning sensation in their lungs. The first official immediate death toll was 2,259. Another estimate is that 8,000 died within two weeks, that an additional 8,000 have since died from gas-related diseases. The Bhopal disaster is frequently cited as the worst industrial disaster. The negative effect caused by technical problems and misconducts were worsened by the plant's location near a densely populated area, non-existent catastrophe plans and shortcomings in health care and socio-economic rehabilitation. Analysis shows that the parties responsible for the magnitude of the disaster were the two owners, Union Carbide Corporation and the Government of India, and to some extent, the Government of Madhya Pradesh (Eckerman, 2001).

⁵ Kenule Beeson "Ken" Saro-Wiwa (10 October 1941 – 10 November 1995) was a Nigerian writer, television producer, environmental activist. He was a member of the Ogoni people, an ethnic minority in Nigeria whose homeland, Ogoniland, in the Niger Delta has been targeted for crude oil extraction since the 1950s and which has suffered extreme environmental damage from decades of indiscriminate petroleum waste dumping. Initially as spokesperson, and then as president, of the Movement for the Survival of the Ogoni People (MOSOP), Saro-Wiwa led a nonviolent campaign against environmental degradation of the land and waters of Ogoniland by the operations of the multinational petroleum industry, especially the Royal Dutch Shell company. He was also an outspoken critic of the Nigerian government, which he viewed as reluctant to enforce environmental regulations on the foreign petroleum companies operating in the area. At the peak of his non-violent campaign, he was arrested and tried by a special military tribunal for allegedly masterminding the murder of Ogoni chiefs at a pro-government meeting, and hanged in 1995 by the military dictatorship of General Sani Abacha. His execution provoked international outrage and resulted in Nigeria's suspension from the Commonwealth of Nations for over three years.

The execution of Ken Saro-Wiwa was brought under the Alien Tort Statute, a 1978 statute giving non-US citizens the right to file suits in US courts for international human rights violations, and the Torture Victim Protection Act, which allows individuals to seek damages in the US for torture or extrajudicial killing, regardless of where the violations take place.

The United States District Court for the Southern District of New York set a trial date of June 2009. On 9 June 2009 Shell agreed to an out-of-court settlement of US\$15.5 million to victims' families. However, the company denied any liability for the deaths, stating that the payment was part of a reconciliation process. In a statement given after the settlement, Shell suggested that the money was being provided to the relatives of Saro-Wiwa and the eight other victims, to cover the legal costs of the case and also in recognition of the events that took place in the region. The settlement was made just days before

Before the 1990s anyway, the topic of corporate power and transnational corporations was mainly tackled in terms of benefits of transnational investment going to companies from the North and the adverse impact supported from the South (Ramasastry, 2015).

In the 1976 for example, member governments of the Organization for Economic Cooperation and Development (OECD) created the non-binding OECD Guidelines for Multinational Enterprises, focussed on fair investment activities and without addressing – at least in their first inception - human rights broadly but, instead, exclusively labor protections.

In 1977, thanks to the growing concerns of developing countries, the UN created a Center on Transnational Corporations having the main task to draft a code of conduct for MNEs that should have focussed on responsible and equitable investment practices. Despite this mandate, the debate centered more around investment and economic development and not on human rights. Indeed, this initiative caused the concern of home-state governments and MNEs that, finally, led to the demise of the center and the abandonment of the code project in the early 1990s.

Simply put, historical attempts to set forth binding comprehensive international frameworks to regulate MNEs did not see success (Hedley, 1999).

But in the 1990s the role of corporate power in international trade and investment was object of a renewed interest, *“reflecting the dramatic worldwide expansion of the private sector at that time, coupled with a corresponding rise in transnational economic activity”*⁶. The business and human rights movement acquired new relevance through a series of related events that occurred in the late 1990s. This happened during a period when “globalization” and critiques of globalization became central to political and economic discourse (Stiglitz, 2002).

In 1998 during the World Trade Organization (WTO) Ministerial meeting in Seattle,

the trial, which had been brought by Ken Saro-Wiwa's son, was due to begin in New York (Doron & Falola 2016).

⁶ Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. Human Rights Council, Seventeenth Session, 21st March 2011.

aimed at launching a new millennial round of trade negotiations, the discontent of different groups towards globalization and the role of states in promoting trade at the perceived expense of labor, social, and environmental rights, caused the so called “Battle in Seattle”.

In the late 1990s, HR and civil rights lawyers started to allege corporate involvement in HR violations, using the federal Alien Tort Statute to mount cases in US courts, challenging the conduct of MNEs in their overseas investments (Ramasastri 2002).

Three key lawsuits were brought against relevant extractive firms: Royal-Dutch Shell, Unocal, and Texaco (Gallagher, 2010). Each lawsuit alleged that these MNEs had been involved in HR abuses committed by governments, partners in their key investment. Similar cases were carried out in the United Kingdom, where a private law firm used a theory of direct parent liability and traditional tort claims (Ramasastri 2002).

These lawsuits highlighted *“the challenge of access to remedy for victims of human rights abuses in states that were either unwilling or unable to protect their citizens and provide them with a viable avenue for access to a judicial remedy”* (Meeran, 2000).

Besides, other contemporary HR problems were taken in charge by lawyers, resulting in claims against Swiss banks and German corporations with respect to their involvement in World War II (Bazylar 2000, 2003). Holocaust victims and heirs of those who were killed sought restitution for their labor, compensation for unpaid insurance claims, or access to dormant Swiss bank accounts. These cases were significant because they highlighted the role of corporations in World War II. While individuals were prosecuted at Nuremberg, this reminded the public that the individuals included German industrialists (Ramasastri, 2002).

Together with lawyers, nongovernmental organizations (NGOs) advocating for HR highlighted the role of companies in conflict zones. Global Witness and Amnesty International, for example, drew attention to the role of the diamond industry in – indirectly - fueling the conflict in Sierra Leone through the purchase of so-called conflict diamonds (UN General Assembly 2001). This led to the creation of the

Kimberley Process, a multistakeholder initiative involving governments and the diamond industry in order to create clean supply chains.

The garment industry was also interested by this dynamique, with world known brands, such as Nike and Wal-Mart, found to employ children throughout their supply chains. Nike was also reported to use factories in Southeast Asia with very poor health and safety conditions (Greenhouse 1997). The GAP, a notorious apparel corporation, was revealed to have sub contractors based in the Mariana Islands applying form of modern slavery to their workers (E. G. Smith 2004). After these findings, and the consequent public and political debate, the Fair Labor Association (FLA) was created to monitor factory standards and worker rights. The FLA was yet another multistakeholder initiative, bringing together industry and HR groups to administer a code of conduct relating to worker health and safety in factories in the supply chain (O'Rourke 2003).

The NASDAQ corporations were under scrutiny too, with Yahoo for example revealed to be linked to HR abuses in China after having transferred data on its subscribers to the Chinese government, causing the imprisonment and torture of prominent Chinese dissidents (Poe, 2009). After these scandals, another multistakeholder initiative was launched, the Global Network Initiative (GNI), to favour dialogue between members of civil society and industry with the aim to write down a code of conduct focused on how companies should address government requests for customer data or censorship that violate HR, including rights of privacy and free expression (Brown and Korff, 2012).

None of these actions by itself was the catalyst of the BHR movement but each of these events contribute in providing a consistent picture: victims in the Global South suffering as a result of corporate involvement with repressive regimes, conflict zones, or States with weak governance. In many of these cases, the US government or the EU encouraged companies and HR organizations to form a sector-specific multistakeholder initiative to address a particular HR dilemma, in lieu of government regulation (Utting, 2002).

But BHR struggled to become a "movement" itself because the emerging of all of

these cases caused the need for companies to respond and overcome the problem by taking punctual actions, such as the multistakeholder initiatives described above. Each crisis produced a partial, bespoke, solution, rather than a larger effort to address the issue of business impact on HR (Ramasastry, 2002).

In Chapter IV this research has updated the information regarding these MNEs, discovering that, quite surprisingly, the violations patterns tend to remain similar over time, even if these companies have showed an increased awareness on HR⁷.

1.1.3 The Global Compact (2000)

A fundamental milestone in the path of shaping a BHR movement was the speech⁸ made by former Secretary-General Kofi Annan at the World Economic Forum in 1999, who urged the business leaders gathered in Davos to initiate – together with the United Nations - a global compact of shared values and principles to shape the global market on ethics, respect of human rights, labour standards and environment. This speech was a call to business for leading the change in the paradigm of globalization, before its effect on society would become unbearable for many, resulting in restrictions and protectionist measures (Cirigli, 2016).

The UN Global Compact, initiated by Kofi Annan, was the first initiative trying to

⁷ On this regards, see results of the CHRB 2016 analyzed in Chapter III of this work.

⁸ *"I propose that you, the business leaders gathered in Davos, and we, the United Nations, initiate a global compact of shared values and principles, which will give a human face to the global market. [...] Specifically, I call on you - individually through your firms, and collectively through your business associations - to embrace, support and enact a set of core values in the areas of human rights, labour standards, and environmental practices. [...]"*

There is enormous pressure from various interest groups to load the trade regime and investment agreements with restrictions aimed at preserving standards in the three areas I have just mentioned. These are legitimate concerns. But restrictions on trade and investment are not the right means to use when tackling them. Instead, we should find a way to achieve our proclaimed standards by other means. And that is precisely what the compact I am proposing to you is meant to do. [...] Many of you are big investors, employers and producers in dozens of different countries across the world. That power brings with it great opportunities -- and great responsibilities. You can uphold human rights and decent labour and environmental standards directly, by your own conduct of your own business. [...] I believe what I am proposing to you is a genuine compact, because neither side of it can succeed without the other. Without your active commitment and support, there is a danger that universal values will remain little more than fine words -- documents whose anniversaries we can celebrate and make speeches about, but with limited impact on the lives of ordinary people. And unless those values are really seen to be taking hold, I fear we may find it increasingly difficult to make a persuasive case for the open global market. [...]"

address corporate responsibility in a broader context, being a concrete move in response to critiques of globalization and corporate influence in international markets.

The UN Global Compact, composed by nine (currently ten) principles⁹, asks companies to measure their conduct against key international HR laws¹⁰. In particular, via Principle 1, companies are asked to avoid being complicit in HR violations.

Periodically, by filing an annual Communications on Progress (COP) report, companies are also asked to report on their progress and alignment to the Global Compact principles. As part of a COP, participating companies must self-report on their adherence to various best practices, but these reports are not audited.

But beyond that, the Global Compact is not binding and companies are not expelled if sued, found liable or, in other ways, implicated in HR violations. They could be delisted for failing to submit a COP, but they can easily be re-admitted by filing it. Nonetheless, the Global Compact has shifted the normative landscape in a significant way by creating a universal measurement tool for corporate conduct. As such, it is integral part of the history of BHR (Cirlig, 2016).

1.1.4 The Draft Norms (2003)

At the same time that the UN launched the Global Compact, Professor David Weissbrodt, a known HR professor from the University of Minnesota, led a separate

⁹ The Ten principles of the Global Compact refer to four macro areas: Human Rights (1 and 2), Labour (3, 4, 5 and 6), Environment (7, 8 and 9) and Anti- Corruption (10). They are:

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights;

Principle 2: make sure that they are not complicit in human rights abuses.

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labour;

Principle 5: the effective abolition of child labour; and

Principle 6: the elimination of discrimination in respect of employment and occupation.

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

¹⁰ The Universal Declaration of Human Rights, International Labor Organization (ILO) Core Labor Standards, and the two major covenants—the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Cultural and Social Rights (ICECSR).

effort at the UN Human Rights Commission to create a set of “Norms” that would govern the conduct of transnational corporations with respect to HR. In 2003, the UN Sub-Commission on the Promotion and Protection of HR (the precursor to the UN Human Rights Council) issued for comment its *Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (hereinafter Draft Norms).

Essentially, the aim of these Draft Norms was to impose on companies, directly under international law, the same range of HR duties that States have accepted for themselves under treaties they have ratified: “to promote, secure the fulfilment of, respect, ensure respect of and protect human rights”.

Since this proposal triggered a deeply divisive debate between the business community and HR advocacy groups, evoking little support from Governments, the Commission declined to act on the proposal. Instead, in 2005 the Commission established a mandate for a Special Representative of the Secretary-General “on the issue of human rights and transnational corporations and other business enterprises”¹¹ (hereinafter SRSG) to undertake a new process, and requested the Secretary-General to appoint the mandate holder (Ruggie, 2016).

All these initiatives, described above and summarized in the Table 1 at the end of this Chapter, were linked by a common *fil rouge*: the attempts to shift the responsibility for HR violations from governments to business, in light of the HR accountability gap that began to take shape as early as the founding of the United Nations in 1945.

Indeed, except in rare instances where HR violations constitute a threat to or breach of peace or an act of aggression, the UN Charter does not provide any mechanisms for preventing or redressing HR violations by member states. Even after the adoption by the UN General Assembly of the Universal Declaration of Human Rights, the

¹¹ At the time of his appointment, John G. Ruggie was Kirkpatrick Professor of International Affairs and Director for Business and Government at the John F. Kennedy School of Government, Harvard University. He had also previously held the post of Assistant Secretary-General and senior adviser for strategic planning to the then UN Secretary-General, Kofi Annan. Additionally, in 2000, he helped to establish the UN Global Compact, which has encouraged thousands of companies to work together to promote business respect for human rights.

Covenant on Civil and Political Rights, and the Covenant on Economic, Social and Cultural Rights, there were not, and currently there are not, authoritative institutions that effectively monitor, prevent and remedy member-State violations of HR (Nolan, 2013).

1.2 The debate on the existence of BHR obligations

At academic level, these attempts to shift the responsibility for HR violations from governments to business led to the need to give an answer to a crucial point, that is whether and on what basis, business actors have proper HR obligations, which go beyond the moral responsibilities associated to their activities (Donaldson 1989; Werhane 1985; Wettstein 2009, Nien-he Hsieh 2015).

1.2.1 Business cannot have human rights obligations

One objection against assigning HR obligations to corporations has been raised by John Bishop (2012). Bishop begins with the claim that if corporations have HR obligations, then they must have the rights required to fulfill those obligations. For example, he argues, if corporations have an obligation to prevent HR abuses by third parties, as States do, this entails that corporations have a right to hire armed security personnel. Bishop concludes *“because corporations have entirely private purposes, extending to corporations the right to organize social systems poses a high risk of corporate human rights violations”* (Bishop, 2012). Therefore, on Bishop’s view, corporations have different obligations from States with respect to HR because attributing to corporations the same HR obligations is likely to result in reduced fulfillment of HR, given the way in which they are likely to exercise those rights (Nien-he Hsieh, 2015).

Another objection to the assumption that MNEs have HR obligations was grounded on the ideal of *status egalitarianism*, deemed as central to HR (Buchanan, 2013). Status egalitarianism is the ideal that all members of society stand as moral equals in relation to one another and that the state has a duty to recognize and protect that equal standing, not only in terms of its dealings with citizens but also in their dealings with one another. To assign HR obligations to MNEs and their managers, involves attributing to them a certain status that is in contrast with the position that MNEs

occupy in society as private, profit-seeking entities. As Waheed (2012) points out, *“Implicit in our commonsense view is the idea that the corporation is a private association. People establish corporations in order to pursue their own ends, where these ends should also contribute in some broad way to the public good”* (Waheed, 2012). In the context of economic activity, members of society are permitted a degree of partiality in pursuit of their private ends. This is at odds with what is required to states in their role of upholding the ideal of status egalitarianism. Even if MNEs are able to discharge specific HR obligations effectively, to assign HR obligations to MNEs means to ask them the adoption of a perspective of impartiality and equal treatment, which seems not only overly demanding but also incompatible with what is required to private actors in the sphere of their economic activity. Indeed, to assign HR obligations to MNEs and their managers implies the elevation of their status with respect to other members of society, well beyond what is associated with their standing as economic actors. Therefore, assigning HR obligations to MNEs and their managers results in undermining an ideal central to HR, which is the status egalitarianism (Nien-he Hsieh, 2015).

1.2.2 Business do have human rights obligations

On the other way around some authors helped in outlining sound argumentations for assigning HR obligations to MNEs. In particular Sorrell and Santoro tried to answer to the question if BHR is a distinctive area of inquiry and not simply an extension of the moral responsibilities of MNEs and their managers. To this aim, three criteria were identified to capture what can distinguish claims grounded in the general moral responsibilities of MNEs and their managers from claims to bear against MNEs and their managers on the grounds of HR.

To introduce these criteria, Sorrell uses the analogy of tourists driving by a roadside accident to motivate his argument. He writes, *“even the fact that the country the tourists are visiting has emergency services charged with seeing to accident victims does not mean that the tourists should drive by without a thought if they are in a position to benefit the accident victims. (..) In some places, companies are like tourists who find themselves in a position to help in an emergency”* (Sorrell, 2004). In response

to those who argue against making such an analogy, Sorrell answers, *“the dissimilarities between companies and tourists tend to add weight to the argument for company involvement in human rights”* (Sorrell, 2004). Given the length of their involvement in countries, for example, companies are less like tourists and more like “permanent residents”. Companies also may be connected to the places and communities where HR abuses occur. In addition, unlike random accidents, HR abuses are often systematic, and it is difficult for companies to claim they did not know about them given that they are likely to have considered the risks of operating in countries where HR abuses occur (Sorrell, 2004). According to Sorrell, *“companies have some human rights obligations—obligations to try and stop torture, killing and slavery—because every agent, corporate or private, does”* (Sorrell, 2004).

In this analogy Sorrell does not take in consideration features that serve to distinguish MNEs from other actors, such as their role in economic production or their influence in developing economies. *“Not even tiny businesses”* he writes, for example, *“can blamelessly neglect the safety of [their] workers”* (Sorrell, 2004).

Another author (Santoro, 2010) developed further this assumption providing three criteria to clearly assign a HR responsibility to businesses, especially large-scale MNEs, in light of features that are unique to them:

- the first is how close the MNE is to the victim of the HR violation: the closer the relationship, the stronger the correlative duty;
- the second concerns the potential effectiveness of the MNE in promoting HR;
- the third is the capacity to withstand economic retaliation or to absorb the costs of an action.

According to Santoro and Sorrell HR obligations *“are a sub-class of moral obligations”* (Sorrell, 2004). HR obligations exist prior to the treaties, laws, and practices that comprise the contemporary international HR regime. According to this interpretation, *“the human rights regime serves the function to provide legal and political ways to enforce moral rights that all persons have. Human rights, on this view, are a way to refer to basic universal moral rights”* (Nien-he Hsieh, 2015). This view is coherent with

the “mirroring view” introduced by Buchanan (Buchanan, 2013). In the mirroring view, *“what is typically necessary for justifying the inclusion of a particular right in the system of international legal human rights [is] that there must be a corresponding, antecedently existing moral human right”* (Buchanan 2013).

Finally, as noted by Weissbrodt (2005), the Universal Declaration of Human Rights, while principally focusing on nation-states, does not exclude other institutions as duty-bearers, on the contrary it states that it applies to “every individual and every organ of society” (Weissbrodt 2005). Moreover, in regard to the basic respect of HR, it is acknowledged¹² that *“not only States, but any person or group must resist from performing any action that might pose a threat to human rights”* (Frey, 1997; Wettstein, 2012).

1.2.3 Positive role of business to promoting human rights

Another author, Cragg, assigns to MNEs also a positive role regarding HR. Since globalization is *“undermining the capacity of sovereign governments to intervene with laws and regulations designed to ensure that expectations of public benefits from corporate activity are met”* (Cragg, 2004), this implies the risk that people might lose trust in globalization and the legal framework that enables it. To avoid this risk, which could impact on the MNE’s ability to operate, Cragg calls companies to assume *“some responsibility in order to contribute with their activities to achieve goals that people expects the legal framework to generate, which include promoting human rights”* (Cragg, 2004).

In light of the different positions represented above and to go beyond the question if business, namely MNEs, do or do not have HR obligations, it will be helpful to introduce here the “Protect, Respect and Remedy” Framework, launched by the SRSG, John Ruggie, in 2008.

¹² Articles 29 and 30 of the Universal Declaration, as well as the corresponding article 5 in the two Covenants.

This Framework, carefully analyzed in Chapter II, rationalises the role assigned to governments and the role assigned to business, providing a fundamental contribution to answer to this point.

According to the “Protect, Respect and Remedy” Framework, *“the primary role in preventing and addressing corporate-related human rights abuses”* belongs to States. They have a duty to protect HR.

At the same time, the UN Framework recognizes to business enterprises a responsibility to respect HR, which *“means acting with due diligence to avoid infringing on the rights of others, and addressing harms that do occur”* (UN, 2010). This responsibility encompasses all *“actual or potential adverse human rights impacts by an enterprise’s own activities or through the business relationships connected to those activities”* (Ruggie, 2013)¹³.

As for Ruggie explanation, the Framework does not use the term “duty” or “obligation” in association to business, mainly because the responsibility to respect HR is not a legal duty. This allowed him to emphasize also the difference existing between the social role of governments and the role of business companies. At the same time, Ruggie recognizes that this official recognition of a HR responsibility to business in the “Protect, Respect and Remedy” Framework is the first step to go beyond the concept of social expectation from which it has emerged (Ruggie, 2013). In this view, responsibility means not only to respond of direct HR violations, but also for the indirect ones and cases of complicity, such as cases in which corporations are not the primary perpetrators, but rather abet and allow HR abuses committed by

¹³ According to Ruggie (2010), *“the use of the term “responsibility” to respect, rather than “duty”, is meant “to indicate that respecting rights is not an obligation that current international HR law generally imposes directly on companies, although – as explained ahead in Chapter I - elements may be reflected in domestic laws. At the international level, the corporate responsibility to respect is a standard of expected conduct acknowledged in virtually every voluntary and soft-law instrument related to corporate responsibility, and now affirmed by the Council itself”* (Report of the SRSG on the issue of HR and transnational corporations and the other business enterprises, 2010, A/HRC/14/27/2010).

third parties, such as host governments or suppliers and contractors throughout the company's value chain (Wettstein, 2012).

Therefore *"in the "post-Ruggie" era, it is not those who support corporate human rights obligations who must defend their views, but those who do not. We are not asking anymore whether or not corporations have human rights responsibilities at all, but rather how extensive they are. It is an era in which the burden of proof has shifted squarely onto the shoulders of the skeptics"* (Wettstein, 2015).

1.3 Corporate Responsibility to respect HR: from "name and shame" to "know and show"

In the previous part of this Chapter I have described how, starting from the 70's, the BHR movement was crossed by important changes, shaping a new approach to this subject. In 2005, after several attempts to finalize an international legal framework aimed at regulating the responsibility of MNEs, the appointment of John G. Ruggie, Harvard professor and former architect of the UN Global Compact, as SRSG was a turning point for the entire BHR discipline.

In 2010, after the introduction of the "Protect, Respect and Remedy" Framework (2008) and while working to set an international standard for businesses in relations to HR, the SRGS declared *"the time has come for the private sector and its activist stakeholders to move from "name and shame" to "know and show, it's a game changer"*.

The fulcrum of this change in the approach was based on the fact that, in the last quarter of the XX century, environmental and HR activist groups had been increasingly targeting private sector businesses - particularly large MNEs - as the focus for their campaigns.

In most cases, this was causally linked to allegations moved to a single corporation, multiple corporations, or a particular industry of being, directly or indirectly, responsible of HR abuses. These allegations resulted in public *"name, shame and blame"* campaigns against the alleged wrongdoers.

In other cases, attributing the responsibility of HR or environmental rights abuses to corporations was a pragmatic approach chosen by activists in order to avoid directly

challenging the role of the governments involved. A corporation or industry could not arrest group leaders or ban their operations. But, at the same time, corporations did have power and could exert influence on governments to improve HR conditions (Terzieff, 2010).

At the center of each campaign, whether explicitly stated or not, was the quest to define business responsibilities and duties related to their own operations, as well as in relation to the communities in which they were working and the markets where they were selling their products.

But, as above described, an accepted international norm for the role of businesses with respect to HR was still missing. All of the existing international standards, like the Universal Declaration on Human Rights, addressed government responsibility while MNEs were only claimed to respect HR.

In this context the 3-pillar approach to BHR, grounded on the state's duty to protect, the corporate responsibility to respect, and stakeholders' access to remedy, was born. *"If a company doesn't know, then they can't show. A claim to respect human rights is just that, a claim, not a fact,"* Ruggie said. *"Human rights is social sustainability, and companies have to demonstrate that"* (Ruggie, 2010). This 3-pillar approach will be introduced in the next paragraph, in order to be investigated in Chapter II.

1.3.1 The UNGP: State's duty to protect and a corporate responsibility to respect

Ruggie's Principles are built on the three pillars framework (Protect, Respect and Remedy), and were designed to provide a global standard in preventing and addressing negative impacts of business activities on HR. The three pillars are:

1. States' existing obligations to respect, protect and fulfil HR and fundamental freedoms;
2. The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect HR;
3. The need for rights and obligations to be matched to appropriate and

effective remedies when breached.

Therefore, the UNGPs set forth concrete actions for States to meet their duty to protect HR, including to enact and enforce laws that require businesses to respect HR; to create a regulatory environment that facilitates business respect for HR; and to provide guidance to companies on their responsibilities.

Moreover, states should provide access to effective and appropriate judicial and non-judicial grievance mechanisms for human rights abuses.

With respect to the responsibility of business enterprises to respect HR, the Guiding Principles set forth three components: i) instituting a policy commitment, ii) undertaking ongoing HRDD to identify, prevent, mitigate and account for their HR impacts, and iii) putting in place processes to enable remediation for any adverse HR impacts they cause or contribute to.

The concept of HRDD is therefore the hearth of the framework. Besides requiring a policy-level commitment to respect HR, UNGPs require companies to periodic assess the actual and potential impacts of business operations on HR, and integrating the process into decision-making and the tracking of performances.

A company should carry out this analysis both in respect of its activities, as well as those ones of its suppliers, prior to entering into a contract with them, and during the entire life of the contract.

The UNGPs and the way companies are expected to operationalize them in their processes will be the object of the second Chapter of this research.

1.4 Global trends of BHR

Despite the most prominent instruments in the field of BHR remain the UN Global Compact, the UNGP, and the OECD Guidelines for Multinational Enterprises¹⁴, all of

¹⁴ The OECD Guidelines on Multinational Enterprises were first adopted in 1976. They have been updated five times, with the last update in 2011, to include a new human rights chapter, aligned with the UNGPs. The OECD Guidelines is a body of recommendations on responsible business conduct across different topics, such as labour, human rights, environment, transparency, anti-corruption, taxation, and competition. The Guidelines apply to all enterprises headquartered or with operations in any of the signatory states, even if the enterprises operate in non-signatory states.

them falling in the soft law¹⁵ premises, various additional initiatives were launched at national level, in the European Union and at international level.

These initiatives are believed to express *“the tendency to move from soft law to hard law, to leave the realm of voluntary corporate responsibility in favour of pure accountability”* (Cirlig, 2016).

At national level, the actions taken so far range from mere recommendations, whose lack of compliance exposes the companies to bad publicity, to some others imposing clear reporting obligations. The most relevant initiatives are the US Business Supply Chain Transparency on Trafficking and Slavery Act, the UK Modern Slavery Act and the French bill on corporate due diligence, which will be described below.

At supranational level, the European Union adopted the Directive on non-financial reporting in 2014, whose effects are visible in the financial year starting on 1 January 2017.

At international level, pressure increased for advancing towards an international binding instrument regarding BHR, to give a grip to the soft law instruments created so far. Various solutions were put forward: a UN Treaty, a Model Law, incorporating business and HR provisions into international investment agreement¹⁶. None of them achieved a clear multilateral understanding so far.

1.4.1 National legislation on Business and HR

National legislative initiatives on BHR have their lowest common denominator in the country request to their resident enterprises to operate – or at least to state of operating - avoiding HR abuses, especially throughout their supply chain. Each of these initiative was the reaction to gross HR violations by MNEs, which caused a sentiment of public outrage towards companies involved of such violations,

¹⁵ According to Shelton (2006), in the context of international law, soft law might commonly include an “international instrument other than a treaty that contains principles, norms, standards or other statements of expected behaviour” (Shelton, 2006).

¹⁶ According to Cirlig (2016), it would be easier to implement such solution than a treaty, since adapting international investment agreements in order to include human rights obligations for investors involves the consent of fewer states. Moreover it would mean to promote at the same time investors’ rights and their obligations concerning human rights protection. States are required to protect and promote foreign investments, and investors would be required to protect and promote human rights (Cirlig, 2016).

confirming a reactive rather than a proactive attitude to BHR by governments.

1.4.1.1 California Transparency in Supply Chain Act (2010) and the Alien Tort Claims Act (1789)

The Business Supply Chain Transparency on Trafficking and Slavery Act was introduced in 2010, in order to empower the Securities and Exchange Commission (hereinafter SEC) to issue regulations requiring any listed company, with annual worldwide receipts exceeding 100 million USD, to include in its mandatory annual report a disclosure of whether it has taken any measures during the year to identify and address conditions of forced labor, slavery, human trafficking and child labor within its supply chains.

According to the law, such information should be available on the company's website *"through a conspicuous and easily understandable link to the relevant information labeled Global Supply Chain Transparency"*. Moreover, the SEC should make available on its website, in a searchable form, a list of the companies required to disclose such information, together with the information disclosed. The Business Supply Chain Transparency on Trafficking and Slavery Act aims to provide consumers with *"information on products that are tainted by child labor, forced labor, slavery, and human trafficking in the supply chains, enabling them to sanction these crimes through purchase decisions"* (Cirlig, 2016).

It is worth mentioning that, in addition, the United States are already famous in the area of BHR for their Alien Tort Claims Act which provides that *"The Federal District Courts will have the power to try in first instance any action formulated by a foreigner regarding a tort liability for an act committed in violation of the laws of nations or of a treaty in which the US are a party"*. Even if the Alien Tort Claims Act dates back to 1789, its importance has grown in recent years when the focus moved from individuals to MNEs (Gómez Isa; Koen de Feyter, 2009). On this regard, it is worth to highlight that in 2013 the Supreme Court ruled that the Act does not apply to serious HR violations committed on foreign territory, in case a sufficient connection with the USA is missing. Therefore the mere presence of a corporation on US territory is not anymore deemed sufficient to create such a link, resulting in a significant reduction of Alien Tort Claims Act application to HR violations committed by MNEs.

1.4.1.2 The UK Modern Slavery Act (2015)

In 2015 the UK Parliament passed the Modern Slavery Act which faces the issue of transparency in supply chains, requiring companies, wherever incorporated, which carry on business in the United Kingdom with a turnover exceeding 36 million GBP, to prepare a slavery and human trafficking statement for each financial year. Such statement would comprise the steps the organisation has taken during the year 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. Alternatively, companies are required to issue a statement that the organisation has taken no such steps¹⁷.

1.4.1.3 The French Law on Duty of Care (2016)

France introduced the French bill on corporate due diligence in 2016. During its iter of adoption, the final text was interested by meaningful changes resulting in a remote relative of the first two courageous versions, promoted in the aftermath of the Rana Plaza disaster¹⁸ and Erika oil spill case¹⁹. The first version of the bill was thought to introduce a *“companies’ obligation to prevent damages deriving from human rights violations, as well as from sanitary and environmental matters. In case a damage did occur from the operations of the mother company, its subsidiaries or its subcontractors, there was a presumption of responsibility for the company, which could be overturned only by proving that the company took all the necessary and reasonable measures to prevent the damage. Therefore reversing the burden of proof in favour of potential claimants”* (Cirlig 2016).

The second version did no longer provide for companies’ obligation to prevent

¹⁷ The Statement may also include information about: the organisation's structure, its business and its supply chains, its policies in relation to slavery and human trafficking, its due diligence processes in relation to slavery and human trafficking in its business and supply chains, the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk, its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate, the training about slavery and human trafficking available to its staff.

¹⁸ On 24 April 2013, Rana Plaza, a factory building in Bangladesh, producing clothing for European and American brands, collapsed, killing more than 1000 workers, and injuring over 2000 workers.

¹⁹ In 1999 the 24 years old tanker Erika split apart in a storm off the northwest coast of France provoking oil spill of 22,046 tons of crude oil. On September 2012, the decision of the France's Cour de Cassation to uphold a 2008 ruling against Total SA caused a sentiment of indignation.

damages, but only for an obligation to publish a due diligence report, mandatory for companies over a certain size, which should present the measures adopted by the company to identify and prevent HR and environmental risks deriving from its activities, as well as the activities of its subsidiaries. The subcontractors and the suppliers were supposed to be included in the report only in case they had an established commercial relationship with the company.

In the final version, the law mostly transposed the EU Directive on non-financial reporting. There was nothing left in the bill about corporate liability for HR violations or remedies for their victims.

1.4.2 The EU Directive on non-financial and diversity information (2016)

The European Union (hereinafter EU) adopted the Directive on non-financial and diversity information (2014/95/EU) in 2014, amending the Directive 2013/34/EU referred to the disclosure of non-financial and diversity information by certain large enterprises and groups (*“Directive on non-financial reporting”*). The assumption behind this Directive is the believing that *“disclosure of non-financial information is vital for managing change towards a sustainable global economy by combining long-term profitability with social justice and environmental protection”*²⁰.

The Directive on non-financial reporting provides that enterprises should prepare a non-financial report containing information relating to at least environmental matters, social and employee-related matters, respect for HR, anti-corruption and bribery matters²¹.

This obligation is mandatory only for large enterprises, being public-interest entities and public-interest entities which are parent companies of a large group, in each case having an average number of employees in excess of 500, in the case of a group on a

²⁰ Directive 2014/95/EU.

²¹ It should include:

“(a) a brief description of the undertaking's business model; (b) a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented; (c) the outcome of those policies; (d) the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks; (e) non-financial key performance indicators relevant to the particular business.”

consolidated basis.

Member States²². were requested to adopt the transposition of the Directive on non-financial reporting by December 2016, and the companies to issue their non-financial reports for the financial year starting on 1 January 2017 or during the calendar year 2017.

It is worth mentioning that, beside this EU Directive, the European Commission issued three Sector Guides on Implementing the UNGPs: for employment and recruitment agencies, for ICT companies, and for oil and gas companies. Each Guide offers practical step- by-step guidance on how to ensure respect for HR in day-to-day business operations. At each step, they explain what the UNGP expect, and offer examples for how to put them into practice.

1.4.3 Initiative at international level concerning BHR

At international level other initiatives have been launched in the last few years, in the realm of international organizations, such as the UN and the Organisation for Economic Co-operation and Development (hereinafter OECD).

1.4.3.1 The National Action Plans on BHR introduced by the OECD Guidelines for Multinational Enterprises

The OECD Guidelines²³ require adopting countries to establish a dedicated body, the National Contact Point (hereinafter NCP), in charge of handling enquiries and contribute to the resolution of issues arising from the alleged non-observance by companies of the Guidelines in specific instances. NCP could be a government department, or a multistakeholder structure composed by government officials, trade unions, and, in few circumstances, non-governmental organisations (NGOs).

The main task of a NCP consists to manage these specific instances of alleged misconducts, raised by stakeholders, and to provide a platform for discussion and assistance in finding a resolution such violations of the Guidelines. Complaints may be submitted to the NCP by individuals or communities affected by company's activities or, more frequently, by NGOs acting on their behalf. These complaints may

²² The Italian Decree n. 254/2016 has adopted the EU Directive and the Italian companies were required to issue their first Relation from 2018, concerning the financial year 2017.

²³ Make reference to the Note 14 concerning the OECD Guidelines for Multinational Enterprises.

be submitted either in the enterprises home country or any country in which the enterprise operates and which adheres to the Guidelines.

NCP are not judicial bodies. They can only offer good offices and promote consensual procedures (e.g. conciliation or mediation), being the instances not legal cases. Since 2000, more than three hundred specific instances have been considered. Since the introduction of the HR chapter in 2011, the number of HR-related claims filed and deemed admissible has been gradually rising²⁴.

1.4.3.2 International legislation: the attempt for a comprehensive Treaty on BHR

For some States and HR advocates, the quest for business accountability on HR is a journey not yet completed. As a result, further to the dissatisfaction expressed by some states and by NGOs on the UNGPs, and the pressure for an international binding instrument, in 2014, the UN Human Rights Council established an Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises (hereinafter IGWG) whose mission was to *“elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.”*

The main promoters of this initiative were Ecuador and South Africa. From the 47 member States of the Council, 20 States voted in favour, 14 States opposed and 13 States abstained. The European States in the Council, as well as the United States, Japan and Korea opposed.

Discussions within the IGWG had take place during 2015, 2016 and they are currently still ongoing but, due the binding nature of the tentative treaty, the achievement of an agreement will be reached on its content is believed unlikely. This scenario it is in fact dramatically similar to that one around the discussion for the Draft Norms in 2003. Even if finally there will be a treaty, it will be probably weak, lacking of ratification from developed countries where most multinational corporations have their headquarters, or a treaty empty of any content, where obligations are seriously diminished in order to gain widespread approval (Ramasastry, 2016).

²⁴ On December 2017, 19 NCPs have been establishes in 17 countries (2014: United Kingdom, Netherlands, Finland, Denmark; 2015: Lithuania, Finland, Sweden, Norway, Colombia; 2016: USA, Switzerland, Germany, Italy, France, Poland; 2017: Indonesia, Spain, Chile, Belgium, Ireland).

The Table 1 below summarizes all the initiatives listed so far.

Initiative	Promoter/Target	Year	Nature²⁵	Finalized/Active
OECD Guidelines for Multinational Enterprises	OECD Members/Companies of each member State	1976	Soft Law	Yes/Yes
Fair Labor Association (FLA)	Private sector/ Apparel companies	1999	Soft Law	Yes/Yes
Kimberly Process	Private sector/ Jewelry companies	2000	Soft Law	Yes/Yes
The Global Compact	UN/All	2000		Yes/Yes
Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (Draft Norms)	UN/All	2003	Hard Law	No/No
Global Network Initiative	Private sector/ICT companies	2008	Soft Law	Yes/Yes
California Transparency in Supply Chain Act	State of California (USA)/ All California based companies	2010	Hard Law	Yes/Yes
United Nations Guiding Principles on Business and Human Rights	UN/ Companies of each member State	2011	Soft Law	Yes/Yes
National Action Plans on BHR introduced by the OECD Guidelines for Multinational Enterprises	OECD Members/ Companies of each member State	2011	Soft Law	Yes/Yes
EU Directive on non-financial and diversity information (2014)	European Union/All EU based companies	2014	Hard Law	Yes/Yes
Working Group on Transnational Corporations and Other Business Enterprises	UN/ Companies of each member State	2014	Hard Law	No/No
UK Modern Slavery Act	UK/All UK base companies	2015	Hard Law	Yes/Yes
French Law on Duty of Care (2016)	France/All France based companies	2016	Hard Law	Yes/Yes

Table 1 – National and International Initiatives on BHR

It is interesting to note, again, that the UNGPs marked a turning point on BHR, inspiring all the following initiatives, irrespecting if they were addresses to specific

²⁵ Make reference to the note 15 regarding the concept of Soft Law.

sector only. Indeed all of them were centered on the concept of HRDD introduced by the UNGPs²⁶.

Finally, as from Table 1, it is evident that any international initiative concerning the acknowledging the business responsibility to respect HR has soft law nature, including the UNGPs, at least for those initiatives finalized so far. To some authors this notion of responsibility to respect HR based on social expectation, appeared inadequate (Nolan, 2013). Moreover, focusing on the UNGP Framework, its inherent non-mandatory character is believed likely to interfere on its concrete capability to reduce HR violations (Bonnitcha et al., 2017). In the following chapter, this study will verify this assumption, through an empirical research on the effectiveness of the UNGPs Framework and its HRDD to improve companies' performances on HR.

²⁶ Some of these initiatives (the UK Modern Slavery Act, the France Law on Duty of Care, etc.) ask the company to release an official statement, representing all the actions taken by the company to prevent HR violations. Even if they do not actually require expressly to carry out a HRDD, the UNGPs are the main reference and the HRDD is expected to be at the centre of the Statement, as foreseen in the application Guides accompanying the initiatives.

CHAPTER II

2.1 The UNGPs Framework: protect, respect and remedy: generalities

As described in Chapter I, in the last few decades the international community has witnessed a plethora of approaches aiming at regulating the relationship between BHR.

As highlighted in the previous Chapter, these approaches were the responses to the growing role MSEs were playing in the world economic landscape, being able to horizon the choises and conditionate the development of a number of countries in a dynamique, later named as globalization.

This trend was accompanied by the occurrence of several cases of HR violations caused by the same MNEs or happened with their complicity or in their interest.

Despite these efforts, the proposed solutions were not able to effectively guarantee the corporate accountability for HR violations and provide effective remedies for those having their HR infringed.

In a move to effectively address this governance gap, in July 2005, the Secretary General of the United Nations, Kofi Annan, appointed John Ruggie, as SRSG. After a series of initial reports, in 2008, Ruggie proposed a conceptual and policy framework named *Protect, Respect and Remedy: a Framework for Business and Human Rights* (hereinafter 2008 Framework), which was unanimously adopted by the UN Human Rights Council (hereinafter HRC). The HRC then extended Ruggie's mandate for a further three years to operationalize the 2008 Framework so that governments, businesses and other social actors could have practical and concrete guidance on the HR responsibilities expected from businesses²⁷. In April 2011, Ruggie issued the *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (hereinafter UNGPs Framework or UNGPs), which was endorsed by the HRC on 16th June 2011.

²⁷ UN Human Rights Council *Mandate of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises* UN Doc A/HRC/RES/8/7 (18 June 2008).

It is worth mentioning that these two crucial works, the 2008 Framework and the UNGPs, are essentially two sides of the same coin, which together constitute the UN Framework, while fulfilling different objectives.

The 2008 Framework addresses *“the “what” question: that is, what do States and businesses need to do in order to ensure respect for human rights? On the other hand, the GPs address the “how” question: that is, how can States and businesses demonstrate that they are indeed respecting human rights?”* (Ruggie, 2011).

In other words, the 2008 Framework provides the conceptual milestones of the UN Framework (the *foundational* principles) whereas the UNGPs Framework, provides guidance on practical steps to be taken in order to foster business respect for HR (the *operational* principles).

The aim of this Chapter II is to analyze the UN Framework as a whole, examining its main innovative features in the BHR debate. Moreover this Chapter will briefly tackle also the limitations emerged in authors’ debate, essentially referred to the voluntaristic, soft-law nature of the UNGPs and the fact that their introduction has implied the loss of a concrete chance to achieve an agreement for a mandatory treaty on BHR, at least in the short term.

2.1.1 The SRSG mandate

Since the UN Framework was the result of a pluriannual work carried out by the SRSG and his team during his two mandates, before focussing on the analysis of the Framework itself this work will describe the main stages of the process which led to this result.

2.1.1 The First Mandate (2005-2008)

Ruggie’s initial mandate was only for a period of two years, intended mainly to “identify and clarify” existing standards and practices. So, his SRSG was to identify controversial issues of corporate responsibility and accountability for HR and clarifying the respective roles of States and corporations²⁸.

²⁸ According to the document *UN Commission on Human Rights Human Rights and Transnational Corporations and other Business Enterprises* UN Doc E/CN.4//RES/2005/69 (15 April 2005), this wide mandate was defined in the following terms:

In 2005, there was poor shared knowledge across different stakeholder groups in the BHR domain. Thus the SRSR started an extensive programme of systematic research²⁹, whose results were actively disseminated, including to the Council itself. Consultations with interested parties, including governments, MNEs, labour unions, HR activists and NGOs, victims of corporate abuse, local communities and international law firms were involved in this research, *“in order to try to build a body of information and expertise on which to advance understanding on these complex issues”* (Bilchitz, 2012)

In the first Report presented by the SRSR to the Commission on HR³⁰, in 2006, was argued that *“the governance gaps created by globalisation - between the scope and impact of economic forces and actors on the one hand and the capacity of States to manage their adverse consequences on the other - had led to a permissive environment in which companies could negatively impact human rights without adequate sanction or reparation”*³¹. At the same time, the SRSR Ruggie decided not to follow the approach attempted by the Draft Norms of imposing direct HR obligations on corporations citing their *“exaggerated legal claims and conceptual ambiguities”*.

-
- To identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights;
 - To elaborate on the role of States in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, including through international cooperation;
 - To research and clarify the implications for transnational corporations and other business enterprises of concepts such as “complicity” and “sphere of influence”;
 - To develop materials and methodologies for undertaking human rights impact assessments of the activities of transnational corporations and other business enterprises;
 - To compile a compendium of best practices of States and transnational corporations and other business enterprises.

²⁹ According to the final Report released by the SRSR (UN Doc No A/HRC/17/31) this research included *“Mapping patterns of alleged human rights abuses by business enterprises; evolving standards of international human rights law and international criminal law; emerging practices by States and companies; commentaries of United Nations treaty bodies on State obligations concerning business-related human rights abuses; the impact of investment agreements and corporate law and securities regulation on both States’ and enterprises’ human rights policies; and related subjects”*.

³⁰ Since then the Commission was replaced by the HRC.

³¹ Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises *Interim Report E/CN.4/2006/97* (22 February 2006) (the “2006 Report”).

The second report³² to the HRC was presented by the SRSG in 2007, highlighting that MNEs are not bound by international law³³. The same year the HRC renewed Ruggie's mandate for an additional year inviting him to submit his views and recommendations on the future regulation of the business and human rights field. In June 2008, the SRSG proposed his three-pillars 2008 Framework³⁴ as a coherent and "*authoritative focal point around which different stakeholders' expectations could converge*" (Ruggie, 2008), recommending the HRC to support it. The HRC unanimously adopted the 2008 Framework, marking this the first time that a UN intergovernmental body has endorsed a substantive policy position on this issue.

2.1.2 The Second Mandate (2008-2011)

The SRSG's mandate to Ruggie was extended until 2011 with the expectation to make the Framework operative, as a "concrete guidance" for States, businesses and other social parts on CSR and HR accountability.

In April 2011 the SRSG submitted the final report³⁵, drafting the UNGPs. The text of the UNGPs got considerable feedbacks from the extensive consultations carried out during their drafting³⁶ and their final text was therefore the product of this extensive

³² Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises *Human Rights Impact Assessments - Resolving Key Methodological Questions* A/HRC/4/74 (5 February 2007) (the "2007 Report").

³³ Moreover, the Report presented an in-depth analysis on how HR impact assessments could be used by companies as diagnostic tools to determine the impact of their activities on HR.

³⁴ As said earlier, this framework, briefly, consists of the State "duty to protect" against HR violations by third parties, including business; the corporate "responsibility to respect" HR, which means that businesses should avoid infringing on the rights of others and address adverse impacts with which they are involved; and greater access by victims to "effective remedy", both judicial and non-judicial.

³⁵ Report of the Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and other Business Enterprises: *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* UN Doc No A/HRC/17/31 (21 March 2011).

³⁶ In October 2010, the outline of the UNGPs was discussed in separate day-long sessions with Human Rights Council delegations, business enterprises and associations, and civil society groups. The same document was also presented at the annual meeting of the International Coordinating Committee of National Human Rights Institutions. Taking into account the diverse views expressed, the SRSG produced a full draft of the Guiding Principles and Commentary, sent to all Member States on November 2010 and then posted online for public comment until January 2011. According to the final Report released by the SRSG (UN Doc No A/HRC/17/31) "the online consultation attracted 3,576 unique visitors from 120 countries and territories. Some 100 written submissions were sent directly to the Special Representative, including by Governments. In addition, the draft Guiding Principles were

and inclusive process. On 16th June 2011 the HRC³⁷, unanimously endorsed the UNGPs for implementing the 2008 Framework, providing – for the first time – a global standard for preventing and addressing the risk of adverse impacts on HR linked to business activity.

Contestually, the second mandate of the SRSG expired and the UN established a five person interregional expert group to oversee the implementation and further operationalisation of the UN Framework, particularly the UNPs.

2.2 The 2008 Framework and the UNGPs

As introduced earlier in this Chapter, the two main outputs of the pluriannual work of the SRSG, the 2008 Framework and the UNGPs, are complementary one another: with the former aimed at explaining what States and businesses need to do in order to ensure respect for HR and, the latter, to respond on how States and businesses can demonstrate that they are respecting HR. Together, with the declared mission not to create new international law obligations but to elaborate *“the implications of existing standards and practices for States and businesses; integrating them within a single, logically coherent and comprehensive template; and identifying where the current regime falls short and how it should be improved”*³⁸.

The Table 4 below summarizes the concepts detailed above, which are the cornerstones of the whole UN Framework Protect, Respect and Remedy.

discussed at an expert multi-stakeholder meeting, and then at a session with Council delegations, both held in January 2011”.

Besides being interested by extensive consultations, some of the UNGPs were object of trial tests, carried out involving different stakeholders in specific pilot projects. More in detail:

- human rights due diligence provisions were tested internally by 10 companies, and the results of this trials were discussed and analysed by law professionals from more than 20 countries with expertise in over 40 jurisdictions;

- criteria for non-judicial grievance mechanisms were tested in five different sectors, each in a different country, thanks to the support of business enterprises and host communities.

³⁷ Resolution A/HRC/RES/17/4.

³⁸ Report of the Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and other Business Enterprises: Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework UN Doc No A/HRC/17/31 (21 March 2011).

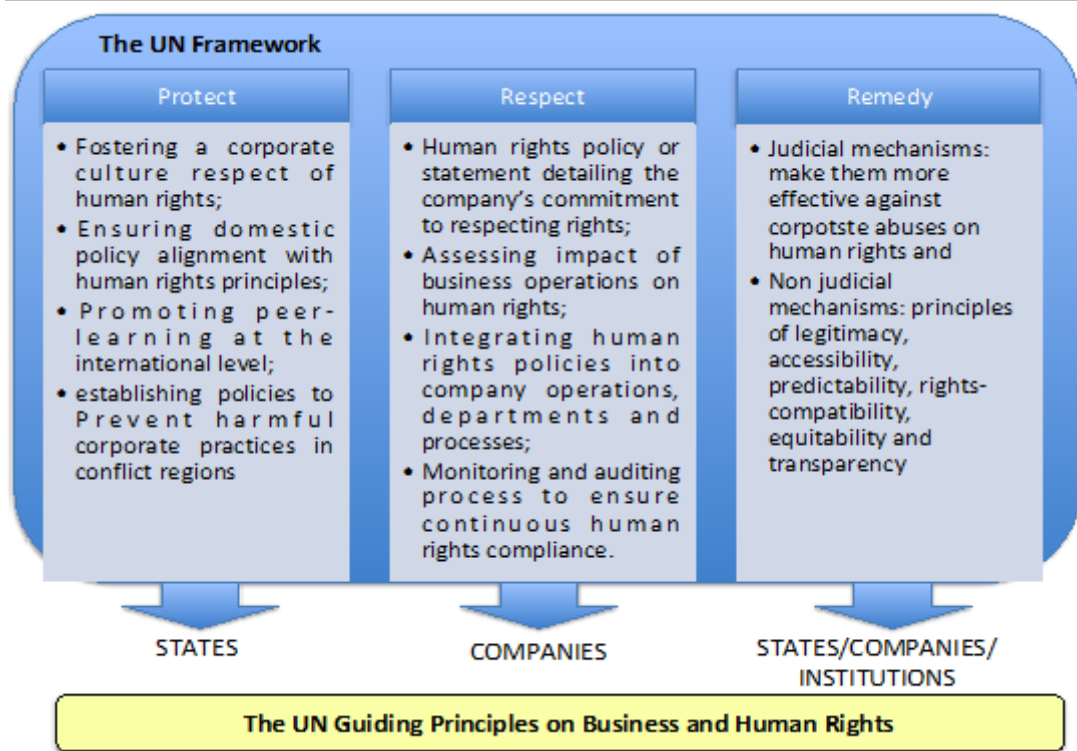


Table 4 – The UN Framework at a glance

2.2.1 The foundational principles of the UN Framework

The main objective of the work of the SRGS was inspired to a sound pragmatism since it was aimed at achieving *“the maximum reduction in corporate-related human rights harm in the shortest possible period of time (..) by establishing a common platform for action, on which cumulative progress can be built, without foreclosing any promising longer-term developments”*. To make it works the HR policy rhetoric must be *“in step with field realities (..) so that it does not remain impotent in the face of new (..) challenges”* (Ruggie, 2011).

Three assumptions were posed by the SRS at the foundations of this doctrine, founded on pragmatism:

- first, international law is severely limited as it, currently, does not establish direct legal obligations for businesses to respect HR.
- second, corporate liability for HR abuses is a critical element that must be addressed in its own right but it is not the only feature to look at. The reality is that, often, HR harms suffered are the sum of multiple factors and the actions of businesses is just on of them;

- third, in light of the lack of binding HR norms on corporate behaviour, corporate ethics remains crucial for an effective strategy.

These assumptions resulted in the acknowledgment that any successful regulatory initiative must imply the availability of civil society not to count only on strict legal compliance but also on some other factors, such as moral, social, and economic ones that can address corporate behaviour towards positive changes.

To sum up the doctrine of principled pragmatism, the SRSB *“seeks to provide an effective normative framework that is consistent with the law ‘as it is’ rather than the law ‘as it should be’, while still drawing on international human rights law in creative ways to develop stronger standards for corporate behaviour”* (Kapesa, 2012).

2.2.1 Considerations on the principled pragmatism

As said the SRSB opted not to follow the approach attempted by the Draft Norms of imposing direct HR obligations on corporations and preferred for the UNGPs to be the latest in a long line of soft regulatory techniques used to encourage, but not require, a corporation to comply with HR.

Even if, *“soft law is not necessarily commensurate with soft results”* because, *“achieving something, even if not perfect, can be preferable to achieving nothing”* However, some authors argued that *“for the UNGPs to be an effective and sustainable rights protection mechanism, (..) there is a need for a more intimate connection to ‘hard’ - that is legally binding – law”* (Nolan, 2013).

On this regards, Ruggie noted that the UNGPs, were intentionally conceived on the basis of a polycentric transnational governance model because, in this case, the traditional public governance alone (legislation and regulation, judicial and non-judicial remediation, international law and institutions), was not able to work without involving the corporate governance (separate legal personality and limited liability, but integrated business strategy, operations and risk management systems) and the civil governance (through social compliance mechanisms as campaigns, lawsuits, other forms of pressure, and also partnering) (Ruggie et al., 2017). All these dimensions could not be fitted into the traditional international HR scheme, being conscious that *“situational complexities and ambiguities in different business sectors*

and operatin environment will always exist” (Ruggie et al., 2017).

It is out of the scope of this study to judge the adequacy of the approach followed by the SRSB but it is worth to highlight that international HR treaties are not renowned for their enforceability and the path to a treaty requires political commitment that is not currently on the horizon in this field. Therefore in this field soft law solution could serve as a precursor to the introduction of hard law or to a mix of the two solution.

What this research is intend to answer instead is the question if, irrespecting of their voluntary or social mandatory nature, the UNGPs are effectively supporting businesses, to prevent and address involvement in adverse HR impacts, for which conducting human rights due diligence is prescribed.

2.2.3 The State Duty to Protect

According to the first pillar, the States have a primary role in preventing and addressing HR abuses by non-State actors, including national and foreign-based business entities, within their jurisdictions. This role has its ground in the international law that imposes a duty on States to *“take all necessary steps to protect against corporate-related human rights abuses, including to prevent, investigate, and punish the abuse, and to provide access to redress”* (Ruggie, 2008) through effective policies, legislation, regulations and adjudication (UNGP 1)³⁹.

To succesfully fulfill this duty to respect HR, States should first set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction must respect HR throughout their operations and, secondly, they should take legal and policy actions both at domestic and international level.

At domestic level, the UNGP 3 affirms that States should:

- enforce laws that are aimed at, or have the effect of, requiring business

³⁹ Therefore, as the SRSB argues in the coomentary to the UNGP 1, *“States are not per se responsible for human rights abuse by private actors. However, States may breach their international human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors’ abuse. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures, including policies, legislation, regulations and adjudication”*.

Moreover, States also have the duty to protect and promote the rule of law, including by taking measures to ensure equality before the law, fairness in its application, and by providing for adequate accountability, legal certainty, and procedural and legal transparency”.

enterprises to respect HR, and periodically to assess the adequacy of such laws and address any gaps (UNGP 3). As specified in the commentary, it is therefore essential for States *“to review whether these laws provide the necessary coverage in light of evolving circumstances and whether, together with relevant policies, they provide an environment conducive to business respect for human rights. For example, greater clarity in some areas of law and policy, such as those governing access to land, including entitlements in relation to ownership or use of land, is often necessary to protect both rights-holders and business enterprises”*⁴⁰;

- 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 HR. On this regard, the SRDG argues that *“laws and policies that govern the creation and ongoing operation of business enterprises, such as corporate and securities laws, directly shape business behaviour. Yet their implications for human rights remain poorly understood. (...) Laws and policies in this area should provide sufficient guidance to enable enterprises to respect human rights, with due regard to the role of existing governance structures such as corporate boards”*⁴¹;
- provide effective guidance to business enterprises on how to respect HR throughout their operations. According to the SRSR *“States should not assume*

⁴⁰ Commentary to the UNGP 3, “Implementing the United Nations “Protect, Respect and Remedy Framework”, published by the United Nations Human Rights Office of the High Commissioner (2011).

⁴¹ Commentary to the UNGP 3, “Implementing the United Nations “Protect, Respect and Remedy Framework”, published by the United Nations Human Rights Office of the High Commissioner (2011). On this regard, *“national human rights institutions that comply with the Paris Principles⁴¹ have an important role to play in helping States identify whether relevant laws are aligned with their human rights obligations and are being effectively enforced, and in providing guidance on human rights also to business enterprises and other non-State actors”*. The United Nations Paris Principles provide the international benchmarks against which national human rights institutions (NHRIs) can be accredited by the Global Alliance of National Human Rights Institutions (GANHRI). Adopted in 1993 by the United Nations General Assembly, the Paris Principles require NHRIs to:

- Protect human rights, including by receiving, investigating and resolving complaints, mediating conflicts and monitoring activities; and
- Promote human rights, through education, outreach, the media, publications, training and capacity building, as well as advising and assisting the Government.

The Paris Principles set out six main criteria that NHRIs require to meet: Mandate and competence, Autonomy from Government, Independence, Pluralism, Adequate resources and Adequate powers of investigation.

that businesses invariably prefer, or benefit from, State inaction, and they should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights. (...). Guidance to business enterprises on respecting human rights should indicate expected outcomes and help share best practices. It should advise on appropriate methods, including human rights due diligence, and how to consider effectively issues of gender, vulnerability and/or marginalization, recognizing the specific challenges that may be faced by indigenous peoples, women, national or ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families”⁴²;

- encourage, and where appropriate require, business enterprises to communicate how they address their HR impacts. On this point the SRSB highlights that *“Communication by business enterprises on how they address their human rights impacts can range from informal engagement with affected stakeholders to formal public reporting. State encouragement of, or where appropriate requirements for, such communication are important in fostering respect for human rights by business enterprises. Incentives to communicate adequate information could include provisions to give weight to such self-reporting in the event of any judicial or administrative proceeding. A requirement to communicate can be particularly appropriate where the nature of business operations or operating contexts pose a significant risk to human rights. Policies or laws in this area can usefully clarify what and how businesses should communicate, helping to ensure both the accessibility and accuracy of communications”^{43 44}.*

⁴² Commentary to the UNGP 3, “Implementing the United Nations “Protect, Respect and Remedy Framework”, published by the United Nations Human Rights Office of the High Commissioner (2011).

⁴³ Commentary to the UNGP 3, “Implementing the United Nations “Protect, Respect and Remedy Framework”, published by the United Nations Human Rights Office of the High Commissioner (2011).

⁴⁴ As highlighted in Chapter I, some legislative initiatives have been adopting in European countries in the last few years, such as the the EU Directive on Non-financial and diversity information (2014), the UK Modern Slavery Act (2015), the French Law on Duty of Care (2016), the Legislative Decree nr. 254, implementing the EU Directive on Non-financial and diversity information in Italy (2016). All of them require company to report on non-financial information, including on human rights. On this topic all of them ask the companies to report on the measures they took in order to prevent human rights violations in specific processes (e.g. throughout the supply chain) or in the company as whole.

Therefore, according to the SRSG, at national level the main problem is that, although a State has several interactions with corporations, its action is often fragmented and lacks of an overall coordination for effectively managing the complex business and HR agenda.

As a consequence of this fragmentation, which determines legal and policy incoherence, departments and agencies which directly shape business practices – including corporate law, trade, securities regulation, investment, export credit and insurance – typically work without any coordination with the efforts that the same State is tackling to fulfill its HR obligations.

To address these gaps, the SRSG proposes two approaches. At first, governments should promote a corporate culture centered on HR respect, as a founding part of conducting businesses. To this aim a State should require all businesses to frequently submit sustainability reports, for example. States should also put emphasis on the tone at the top requested to business and, ideally, this should be considered when determining criminal liability and punishment of companies in case of HR abuses, instead of merely looking to the individual acts of employees and officers. This approach should provide an incentive to companies to have in place appropriate compliance systems and policies.

Secondly, States should have their policies, including their commercial, investment and corporate governance policies, aligned with their international HR commitments. Host States⁴⁵ in particular should work for a better balance between investor interests and their HR obligations, where the commitment to HR must be reflected in the policies that their internal departments apply when dealing with businesses.

At international level, although States are not generally required under international HR law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction, “States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect HR throughout their operations” (UNGP 2), so as some HR treaty bodies recommend that

⁴⁵ In here, the Host State is considered the state where a company carries out its operations, while the Home State is considered the state where the company has its headquarters.

Home States take steps to prevent abuse abroad by business enterprises within their jurisdiction.

*“There are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses. The reasons include ensuring predictability for business enterprises by providing coherent and consistent messages, and preserving the State’s own reputation”*⁴⁶. Therefore, for example, when financing the investments of resident companies abroad in regions that are considered too risky for the private sector alone because of serious HR concerns, Home States should keep a HR awareness, requiring their clients to perform preliminary HR impact assessments⁴⁷.

According to Ruggie, international treaties should make recommendations to States on the best way to implement HR obligations while dealing with companies. Peer learning among States, to share best practices and information about challenges, together with technical and financial resources, is also crucial to allow weaker States to strengthen their HR standards.

Specific attention is then paid by the SRSB to the “State – Business Nexus”, that is all that circumstances where a State has direct connections with enterprises. The tighter is the relation and the strongest should be the actions taken by the State to protect

⁴⁶ Commentary to the UNGP 2, *“Implementing the United Nations “Protect, Respect and Remedy Framework”, published by the United Nations Human Rights Office of the High Commissioner (2011).*

⁴⁷ *On this regard, “States have adopted a range of approaches. Some are domestic measures with extraterritorial implications. Examples include requirements on “parent” companies to report on the global operations of the entire enterprise; multilateral soft-law instruments such as the Guidelines for Multinational Enterprises of the Organisation for Economic Cooperation and Development; and performance standards required by institutions that support overseas investments.*

Other approaches amount to direct extraterritorial legislation and enforcement. This includes criminal regimes that allow for prosecutions based on the nationality of the perpetrator no matter where the offence occurs. Various factors may contribute to the perceived and actual reasonableness of States’ actions, for example whether they are grounded in multilateral agreement”, commentary to the UNGP 2, “Implementing the United Nations “Protect, Respect and Remedy Framework”, published by the United Nations Human Rights Office of the High Commissioner (2011).

Looking at the Italian context, the Decree 231/2001 on the Administrative Responsibility of the Enterprises, containing some references to human rights obligations for businesses, is another valuable example on how a parent company could be asked to respond in case of misconducts committed by its subsidiaries abroad.

against HR abuses committed by companies. In particular:

- in case of business enterprises that are owned or controlled by the State itself, or that receive substantial support and services from State agencies, such as export credit agencies and official investment insurance or guarantee agencies, “States should take additional steps to protect against (their) human rights abuses (..) including, where appropriate, by requiring human rights due diligence”⁴⁸ (UNGP 4);
- “States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights”⁴⁹ (UNGP 5);

⁴⁸ Regarding this Principle the commentary specifies that “States individually are the primary duty-bearers under international human rights law, and collectively they are the trustees of the international human rights regime. Where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State’s own international law obligations. Moreover, the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State’s policy rationale becomes for ensuring that the enterprise respects human rights.

Where States own or control business enterprises, they have greatest means within their powers to ensure that relevant policies, legislation and regulations regarding respect for human rights are implemented. Senior management typically reports to State agencies, and associated government departments have greater scope for scrutiny and oversight, including ensuring that effective human rights due diligence is implemented. (These enterprises are also subject to the corporate responsibility to respect human rights, addressed in chapter II.)

A range of agencies linked formally or informally to the State may provide support and services to business activities. These include export credit agencies, official investment insurance or guarantee agencies, development agencies and development finance institutions. Where these agencies do not explicitly consider the actual and potential adverse impacts on human rights of beneficiary enterprises, they put themselves at risk – in reputational, financial, political and potentially legal terms – for supporting any such harm, and they may add to the human rights challenges faced by the recipient State.

Given these risks, States should encourage and, where appropriate, require human rights due diligence by the agencies themselves and by those business enterprises or projects receiving their support. 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”.

⁴⁹ Regarding this Principle the commentary specifies that “States do not relinquish their international human rights law obligations when they privatize the delivery of services that may impact upon the enjoyment of human rights. Failure by States to ensure that business enterprises performing such services operate in a manner consistent with the State’s human rights obligations may entail both reputational and legal consequences for the State itself. As a necessary step, the relevant service contracts or enabling legislation should clarify the State’s expectations that these enterprises respect

- “States should promote respect for human rights by business enterprises with which they conduct commercial transactions”⁵⁰ (UNGP 6).

Finally, concerning conflict zones, where tight violations are mostly likely to take place, Ruggies sees a role not only for the Host States, which have the primary duty to protect against corporate abuses within their jurisdictions⁵¹, but also for Home States that, in addition to States’ obligations under international humanitarian law in situations of armed conflict, and under international criminal law, should provide businesses with all the information to make them aware of HR risks and to act appropriately when conducting their business activities⁵².

2.2.3 The Corporate Responsibility to Respect Human Rights

This second pillar of the 2008 Framework asks businesses not to infringe on the HR of individuals, or “to do no harm”. This requirement, which sounded to some authors

human rights. States should ensure that they can effectively oversee the enterprises’ activities, including through the provision of adequate independent monitoring and accountability mechanisms”.

⁵⁰ Regarding this Principle the commentary specifies that “States conduct a variety of commercial transactions with business enterprises, not least through their procurement activities. This provides States – individually and collectively – with unique opportunities to promote awareness of and respect for human rights by those enterprises, including through the terms of contracts, with due regard to States’ relevant obligations under national and international law”.

⁵¹ “Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

- (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;
- (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;
- (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;
- (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses” UNGP 7.

⁵² “Home” States therefore have roles to play in assisting both those corporations and host States to ensure that businesses are not involved with human rights abuse, while neighboring States can provide important additional support.

To achieve greater policy coherence and assist business enterprises adequately in such situations, home States should foster closer cooperation among their development assistance agencies, foreign and trade ministries, and export nance institutions in their capitals and within their embassies, as well as between these agencies and host Government actors; develop early-warning indicators to alert government agencies and business enterprises to problems; and attach appropriate consequences to any failure by enterprises to cooperate in these contexts, including by denying or withdrawing existing public support or services, or where that is not possible, denying their future provision”.

(Wettstein, 2016) as only a passive role requested to companies, is grounded on the assumption that corporations are *“specialized economic organs, not democratic public interest institutions ... [therefore] their responsibilities cannot and should not mirror the duties of States”*, moreover, while the duty of State to protect HR finds its justification in international law, the behaviour requested to companies is part of the *“broader scope of the responsibility to respect (..) defined by social expectations - as part of what is sometimes called a company’s social licence to operate”* (Ruggie, 2008)⁵³.

Therefore the second pillar acknowledges a corporate responsibility to respect HR, meaning that *“they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved”* (UNGP 11). The entire spectrum of internationally recognized HR is interested by this assumption because, according to the SRS, *“there are few if any internationally recognized rights businesses cannot impact - or be perceived to impact - in some manner”*⁵⁴. The UNGP 12 strengthens this concept further, specifying that internationally recognized rights should be intended as, at a minimum, those expressed in the International Bill of Human Rights⁵⁵ and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work⁵⁶. *“These are the benchmarks against which other social actors assess*

⁵³ On this regard, the SRS specifies anyway that *“The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights”*.

⁵⁴ Previous attempts to regulate the subject of business and human rights, the Draft Norms (2003) in particular, applied this responsibility only to a limited group of human right, not to the entire spectrum of internationally recognized human rights.

⁵⁵ The International Bill of Rights consists of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

⁵⁶ Regarding this Principle the SRS specifies in the commentary that *“Because business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights. In practice, some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention. However, situations may change, so all human rights should be the subject of periodic review”*.

the human rights impacts of business enterprises” (Ruggie, 2011).

Moreover, depending on circumstances, business enterprises may need to consider additional standards. For instance, according to the SRS, enterprises should respect the HR of individuals belonging to specific groups or vulnerable populations, where they may have adverse HR impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families. Finally, in situations of armed conflict, enterprises should respect the standards of international humanitarian law. This responsibility to respect HR has two main implications for companies:

- avoid causing or contributing to adverse HR impacts through their own activities⁵⁷, and address such impacts when they occur;
- seek to prevent or mitigate adverse HR impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts⁵⁸.

The UNGPs Framework assigns this responsibility to respect HR to all enterprises regardless of their size, sector, operational context, ownership and structure. Undoubtedly, these factors are likely to influence the severity of the enterprise’s adverse HR impacts, as well as the scale and complexity of the means through which enterprises meet that responsibility. Therefore, even if the responsibility to respect HR applies fully and equally to all business enterprise, small and medium-sized enterprises may have less capacity as well as more informal processes and management structures than larger companies, so their respective policies and processes will take on different forms. This makes the large companies and - in

⁵⁷ For the purpose of the Guiding Principles a business enterprise’s “activities” are understood to include both actions and omissions.

⁵⁸ Therefore, under the Guiding Principles’ view, business enterprises can be involved with adverse human rights impacts not only in case these impacts are directly linked to their operations, but also as a result of their business relationships with other parties. In the Guiding Principles, business relationships are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.

particular - the MNEs, the main target for the Guiding Principles' prescriptions⁵⁹ and the main character of this research.

Side by this responsibility to respect HR, companies are requested to adopt a policy commitment and carry out due diligence processes so as *“to become aware of, prevent and address adverse human rights impacts”*.

Therefore the purpose of the following part of the work is to analyze more in detail these two main tools and provide examples for a better understanding of their translation into corporate practices.

2.2.3.1 Policy Commitment

The policy commitment is the cornerstone of the company self acknowledge and awareness of its responsibility to respect HR. According to existing best practices⁶⁰, this should composed by the feature in the Table 2 below.

<p>A company statement approved at the most senior level of the business enterprise</p>	<p>This level normally coincides with the CEO of the company, who signs the statement, or the Board of Directors who approves the statement. A statement is intended as the mean that the company will use to declare its commitment, responsibility and expectation.</p>
<p>Publicly available</p>	<p>This statement should be made available to every stakeholders of the company, and easily accessible on its website.</p>

⁵⁹ On this regards it is worth to highlight that, sometimes, some small and medium-sized enterprises can have severe human rights impacts (e.g. a small enterprise producing applications for the intelligence units of countries, likely to be applied in authoritarian countries against civil activists), which will require corresponding measures regardless of their size. Severity of impacts will be judged by their scale, scope and irremediable character.

⁶⁰ Starting from the UNGPs, several best practices were identified for the most impacting and human rights sensitive industry clusters, such as the O&G sector and the ITC sector and, often, reflected in dedicated Guidelines (e.g. the Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights, the Employment and Recruitment Agencies Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights and the Information and Communication Technology Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights, published by the European Commission in 2013). Chapter IV will offer a comparison from companies practices and best practices within a sample of 98 companies.

Informed by relevant internal and/or external expertise	The choice to rely on external or internal expertises depends on several factors, such as, for example, availability of financial resources, internal awareness on HR challenges for the company, etc.
An explicitation of the enterprise's HR expectations on personnel, business partners and other parties directly linked to its operations, products or services	<p>Moreover this statement should state the explicit expectations that the company has on its internal and external stakeholders, having contractual relationships with the company, such as employees, suppliers, but also State security forces whose the company relies on for security services, investors, joint venture partners, etc.</p> <p>It is also essential that this commitment to respect HR is communicated actively to each of these entities.</p>
Mirrored in operational policies and procedures necessary to embed it throughout the business enterprise	In order to make this commitment operative, it is necessary that companies align and make their internal processes and procedures coherent with this responsibility to respect HR. It means that the concept expressed in the policy commitment must be embedded in the procedures which regulate and set the rules for carrying out the business activity, especially in those processes deemed more exposed to HR violations.

Table 2 – Fundamental features of the Policy Commitment, according to the UNGPs

The HR policy committed in Annex A, issued by the Australian British company Rio Tinto, one of the world largest mining operator, is a good example of an effective translation into practice of these UNGPs prescriptions.

2.2.3.2 The Human Rights Due Diligence

The HRDD is the fulcrum of the entire UNGPs Framework and helps the company to respond to the need of translating the policy commitment into processes and practices.

Both, the commitment to respect and actions taken to this aim, need, in fact, to stay focus on the most salient issues of the company, that is the areas where it will face the biggest challenges from a HR perspective. Only through a full understanding of its actual and potential impacts on the HR of single individuals or communities, a company will be able to know and show and to act effectively to mitigate these impacts.

There are three factors that a company should consider while approaching a due diligence process:

- the first concerns the country contexts in which their business activities take place, with the scope to highlight any specific HR challenges they may pose. For example, this analysis should take account *“of the public sector’s institutional capacity, ethnic tensions, migration patterns, scarcity of critical resources like water”* (Ruggie, 2009);
- the second factor pertains the understanding of which HR will be most likely to be impacted by their own activities and how. On this regard, it has been clarified that a company’s *“sphere of influence”* is determined by *“the potential and actual human rights impacts resulting from a company’s business activities and the relationships connected to those businesses”* (Ruggie, 2009);
- the third factor is whether companies might contribute to abuse HR through those relationships that they will activate in connection to their activities, such as with business partners, suppliers, State agencies, and other non-State actors.

The depth and width of the analysis will depend on circumstances.

The UNGPs Framework also identifies the core elements that should be comprised in a HRDD, which are:

- identifying impacts of business operations on HR;
- preventing and mitigating impacts with the integration of its HR policies into

company operations, departments and processes;

- tracking the ongoing developments through monitoring and auditing process, and ensuring adequate communication on how the company is addressing its adverse HR impacts linked to high risk circumstances⁶¹, which are the situations with the greatest likelihood of these severe HR impacts.

Therefore, the HRDD consists of the processes that help businesses to become aware of the actual and potential HR impacts on people associated with their business and to take appropriate actions to prevent and address those impacts.

The Table 3 below summarizes the most important features of a HRDD, together with concrete examples of application.

IDENTIFYING	
<p>It should cover not only HR impacts that the business enterprise may cause through its own activities, but also those impacts caused by its business relationships if directly linked to its operations, products or services (UNGP 17)⁶²</p>	<ul style="list-style-type: none"> • A company selling ITC devices (smartphones) should carefully consider the potential HR impacts caused by its suppliers when applying inadequate working conditions (Impacted Human Rights: right to decent working conditions, etc.)

⁶¹ The Principle 17 defines the parameters for HRDD, while Principles 18 - 21 elaborate its essential components. According to the commentary to the UNGP 17 “*Human rights risks are understood to be the business enterprise’s potential adverse human rights impacts. Potential impacts should be addressed through prevention or mitigation, while actual impacts – those that have already occurred – should be a subject for remediation (Principle 22)*”.

⁶² *Human Rights violations committed by business partners pose questions of complicity, arising when the business enterprise contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties. Complicity has both non-legal and legal dimensions. According to the commentary to the UNGP 17, “as a non-legal matter, business enterprises may be perceived as being “complicit” in the acts of another party where, for example, they are seen to benefit from an abuse committed by that party. As a legal matter, most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases. Typically, civil actions can also be based on an enterprise’s alleged contribution to a harm, although these may not be framed in human rights terms. The weight of international criminal law jurisprudence*

<p>It should be periodically update, because the HR risks may change over time as the business enterprise’s operations and operating context evolve (UNGP 17)</p>	<ul style="list-style-type: none"> • A company entering in a new country should assess the existing HR conditions, such as the respect of the freedom of association and collective bargaining, and understand if they are acceptable for its standards (Impacted Human Rights: right to collective bargaining, right to freedom of association, etc.) • A company that decides to build a plant in a rural area where plantations insist should understand first how this project will impact on the livelihood of the communities around (Impacted Human Rights: right to food, right to work, etc.)
<p>It should be initiated as early as possible in the development of a new activity or relationship, given that HR risks can be increased or mitigated already at the stage of structuring contracts or other agreements, and may be inherited through mergers or acquisitions⁶³</p>	<ul style="list-style-type: none"> • A company, before becoming part of an existing Joint Venture with operations in a conflict areas (e.g. in North Kivu, République démocratique du Congo), in a biodiversity sanctuary (e.g. Virunga Park, République démocratique du Congo) or in an occupied area (Israeli settlements in the West Bank) should carefully assess if the JV’s operations are in line with its HR policy commitment, also considering potential reputational implications and shareholders

indicates that the relevant standard for aiding and abetting is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime.

Conducting appropriate human rights due diligence should help business enterprises address the risk of legal claims against them by showing that they took every reasonable step to avoid involvement with an alleged human rights abuse. However, business enterprises conducting such due diligence should not assume that, by itself, this will automatically and fully absolve them from liability for causing or contributing to human rights abuses”.

⁶³ Commentary to the UNGP 17, “Implementing the United Nations “Protect, Respect and Remedy Framework”, published by the United Nations Human Rights Office of the High Commissioner (2011).

	activism ⁶⁴ (Impacted Human Rights: right to a standard of living adequate (..) etc.)
It should focus on the areas where the risk of adverse HR impacts is most significant, especially for large business enterprises, such as the MNEs which are the target of this study, that have large numbers of operations and deal with several entities in their value chains. In this case companies are asked to prioritize for HRDD (UNGP 17)⁶⁵	<ul style="list-style-type: none"> • A company with a wide range of suppliers, from engineering consultant to cleaning services should focus its HRDD on those suppliers employing low skilled personnel. This category of employees (or subcontractors) are more exposed to poor working conditions (Impacted Human Rights: right to decent working conditions, right to collective bargaining, right to freedom of association, etc.) • An O&G company with operations both in a remote areas offshore and onshore, in a populated area, should prioritize accordingly and focus on the latter to identify potential impacts on HR (Impacted Human Rights: right to life, etc.)
It should involve potential affected groups and other relevant stakeholders (UNGP 18)	<ul style="list-style-type: none"> • A company starting operations in a region where several villages insist should organize free and accessible consultations in each village. During these consultations the company should explain when and how the activity will start. In doing so

⁶⁴ Shareholder activism is the way in which shareholders can assert their power as owners of the company to influence its behaviour. Activism covers a broad spectrum of activities. Activism includes “voting with ones feet” (exit), private discussion or public communication with corporate boards and management, press campaigns, blogging and other e-ways of public “naming and shaming”, openly talking to other shareholders, putting forward shareholder resolutions, calling shareholder meetings and – ultimately - seeking to replace individual directors or the entire board. In some cases shareholder activism is directed against other large shareholders, not against directors. Shareholder activism can be collaborative, in particular when it is conducted in private.

⁶⁵ This approach is not dissimilar from the approach applied by the Risk Management system and, virtually, a HRDD can be effectively included within broader enterprise risk- management systems, provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders.

	<p>it is essential to use interpreters for translating the explanations in the local language ⁶⁶ . Moreover the company should consider concerns and comments from villagers in order to gather information and identifying the proper impacts⁶⁷. Dedicate sessions should be reserved to vulnerable groups⁶⁸, such as the indigenous people ⁶⁹ (Impacted Human Rights: right to information etc.)</p> <ul style="list-style-type: none"> • A company starting new operations in a country could meet the local union of associations or NGOs in order to get feedbacks on the existing challenges and how to establish better working
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⁶⁶ According to the commentary to the UNGP 18 reported in the document “Implementing the United Nations “Protect, Respect and Remedy Framework”, published by the United Nations Human Rights Office of the High Commissioner (2011), “to enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society”.

⁶⁷ This kind of analysis, technically part of a proper Human Rights Impact Assessment, should be carried out with external human rights professionals/assessors due to the i) necessary independence required in this analysis, ii) the knowledge of specific know-how and methodologies (e.g. the organization and management of focus groups, etc.) and iii) the need not to obtain more spontaneous comments and concerns.

⁶⁸ Any group or sector of society that is at higher risk of being subjected to discriminatory practices, violence, natural or environmental disasters, or economic hardship than other groups within the state; any group or sector of society (such as women, children or the elderly) that is at higher risk in periods of conflict and crisis (source: U.S. Agency for International Development).

⁶⁹ Indigenous peoples are inheritors and practitioners of unique cultures and ways of relating to people and the environment. They have retained social, cultural, economic and political characteristics that are distinct from those of the dominant societies in which they live. Despite their cultural differences, indigenous peoples from around the world share common problems related to the protection of their rights as distinct peoples. Indigenous peoples have sought recognition of their identities, way of life and their right to traditional lands, territories and natural resources for years, yet throughout history, their rights have always been violated. Indigenous peoples today, are arguably among the most disadvantaged and vulnerable groups of people in the world. The international community now recognizes that special measures are required to protect their rights and maintain their distinct cultures and way of life (source: UN).

	conditions (Impacted Human Rights: right to information etc.)
It should cover all internationally recognized HR as a reference point, since enterprises may potentially impact virtually any of these rights⁷⁰	<ul style="list-style-type: none"> • A company can incorporate processes for assessing human rights impacts within other processes, such as risk assessments or environmental and social impact assessments, which focus on human rights related issues. The object of an Environmental Impacts Assessment (EIA), as an example, is to verify how company operations will impact on air, water, etc. By using a human rights view, the object of an EIA can be easily translated as the impacts on the right to live in healthy environment or, basically, as the right to life of individuals and communities (Impacted Human Rights: right to water, etc.)
PREVENTING AND MITIGATING	
Findings from HRDD should be integrated across relevant internal functions and processes, taking appropriate actions (UNGP 19)	<ul style="list-style-type: none"> • <i>A company, after the identification of significant potential human rights risks associated to works assigned to its suppliers, should implement adequate measures in its procurement process in order to invite to tenders only those companies in line with certain human rights standards (e.g. respect of the 8 fundamental ILO Conventions⁷¹, etc.)</i>

⁷⁰ Make reference to the Note 3 concerning internationally recognized HR.

⁷¹ The ILO's Governing Body has identified eight conventions as "fundamental", covering subjects that are considered as fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. The eight fundamental Conventions are: 1. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), 2. Right to Organise and Collective Bargaining Convention, 1949 (No. 98), 3. Forced Labour Convention, 1930 (No. 29), 4. Abolition of Forced Labour Convention, 1957 (No. 105), 5. Minimum Age Convention, 1973 (No. 138), 6. Worst

	<ul style="list-style-type: none"> • A company involved in the manufacture of consumer electronics, such as mobile phones, laptops, etc, whose production requires the use of specific minerals (e.g. coltan, cassiterite, etc.) extracted in conflict zones should apply a tracking system throughout its entire supply chain to avoid financing war lords (e.g. Conflict Minerals Due Diligence required by the Dodd Frank Act in the U.S., 2011⁷²)
<p>Responsibility for addressing such impacts should be assigned to the appropriate level and function within the business enterprise (UNGP 19)⁷³</p>	<ul style="list-style-type: none"> • A company should have appropriate measures in place to prevent and mitigate impacts on human rights linked to its operations. These measures should be embedded in the relevant process and their application and effectiveness should be part of the process owner’s responsibility and reflected in his/her MBOs
<p>The appropriate actions to take depend on</p> <ul style="list-style-type: none"> • whether the business enterprise causes directly an adverse impact or whether it is involved solely because the impact is directly 	<ul style="list-style-type: none"> • In case a company’s operation requires the permanent acquisition of lands belonging to villagers, the company is directly causing an adverse impacts on their human rights (Impacted Human Rights: right to work, right to property, etc.) and the appropriate action will be

Forms of Child Labour Convention, 1999 (No. 182), 7. Equal Remuneration Convention, 1951 (No. 100), 8. Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (source: ILO).

⁷² Make reference to the Note 127 concerning the Conflict Minerals.

⁷³ According to the commentary to the UNGP 19 reported in the document “Implementing the United Nations “Protect, Respect and Remedy Framework”, published by the United Nations Human Rights Office of the High Commissioner (2011), “the horizontal integration across the business enterprise of specific findings from assessing human rights impacts can only be effective if its human rights policy commitment has been embedded into all relevant business functions. This is required to ensure that the assessment findings are properly understood, given due weight, and acted upon”.

<p>linked to its operations, products/services by a business relationship</p> <ul style="list-style-type: none"> • The extent of its leverage⁷⁴ in addressing the adverse impact (UNGP 19) 	<p>to apply high standards for land management (such as the IFC Performance Standards⁷⁵)</p> <ul style="list-style-type: none"> • A company entering in a contract with a supplier has the opportunity to exercise leverage, that is its negotial power to set clearer rules regarding human rights obligations in charge to the supplier, as an example by requiring that salaries given to supplier's employees are over the minimum wage⁷⁶
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⁷⁴ According to the commentary to the UNGP 19 reported in the document "Implementing the United Nations "Protect, Respect and Remedy Framework", published by the United Nations Human Rights Office of the High Commissioner (2011), "leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm.

Where a business enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity, the situation is more complex. Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise's leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences.

The more complex the situation and its implications for human rights, the stronger is the case for the enterprise to draw on independent expert advice in deciding how to respond.

If the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it. And if it lacks leverage there may be ways for the enterprise to increase it. Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors.

There are situations in which the enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage. Here, the enterprise should consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so.

Where the relationship is "crucial" to the enterprise, ending it raises further challenges. A relationship could be deemed as crucial if it provides a product or service that is essential to the enterprise's business, and for which no reasonable alternative source exists. Here the severity of the adverse human rights impact must also be considered: the more severe the abuse, the more quickly the enterprise will need to see change before it takes a decision on whether it should end the relationship. In any case, for as long as the abuse continues and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, nancial or legal – of the continuing connection".

⁷⁵ IFC's Environmental and Social Performance Standards are the standards defined by the International Finance Organization (World Bank) with respect to its clients' responsibilities for managing their environmental and social risks.

⁷⁶ The minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract (source: ILO).

	<ul style="list-style-type: none"> • A company entering in a Joint Venture Agreement can exercise its leverage by requiring that its partners adopt similar standards in terms of HR obligations, as an example to respect the IFC Performance Standard ⁷⁷ on land management issues
TRACKING AND COMMUNICATING	
<p>The effectiveness of the actions taken should be verified and tracked by adopting qualitative and quantitative indicators (UNGP 20)</p>	<ul style="list-style-type: none"> • A company adopting SA8000⁷⁸ audits in order to check whether its suppliers are respecting the labour standards set by the ILO Conventions should periodically monitor the related quantitative KPIs (such as the number on non-compliances by category) and qualitative information (such as the observed trends on non-compliances). This will allow the company to analyze the lessons learned and tracking⁷⁹ the improvements of actions' effectiveness
<p>Feedbacks from both internal and external sources, including affected stakeholders are essential to improve the effectiveness of the actions (UNGP 20)</p>	<ul style="list-style-type: none"> • After the conclusion of operations on a land plot where many villages insist, a company should carry out a follow-up with villagers in order to verify if the preventive actions taken to mitigate impacts on HR were effective. The use of external expertise during for this follow-up is a key feature in order to have more reliable results

⁷⁷Make reference to the Note 75 on IFC Performance Standards.

⁷⁸ Audit SA8000 are carried out on the basis of an international workplace-quality standard based on the concept of social accountability, its major objective is to ensure application of ethical practices in hiring and treatment of employees and in production of goods and services.

⁷⁹ Tracking should be integrated into relevant internal reporting processes of the company. Business enterprises might employ tools they already use in relation to other issues. This could include performance contracts and reviews as well as surveys and audits, using gender-disaggregated data where relevant.

	<p>and a trusty environment during consultations⁸⁰. Particular efforts should be made to track the effectiveness of their responses to impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization.</p>
<p>The actions taken by companies to mitigate HR impacts need to be communicated externally to all stakeholders and, especially, to the affected ones⁸¹. In all instances, communication should: (a) be enough frequent to reflect an enterprise’s HR impacts and accessible to its intended audiences⁸²;</p>	<ul style="list-style-type: none"> • A company responsible for oil spills in water or lands should provide all the relevant information to let stakeholders and experts evaluate whether the actions taken are effective. This will result in providing data on the technical reasons behind the oil spills, the results of peiodical surveys carried out on water and lands, measures in use to remedy, number of spills cleaned, etc • While taking severe measures against a suppliers found not to have in place adequate safety measure, a company should keep confidential

⁸⁰ According to the commentary to the UNGP 20 reported in the document “Implementing the United Nations “Protect, Respect and Remedy Framework”, published by the United Nations Human Rights Office of the High Commissioner (2011), “operational-level grievance mechanisms can also provide important feedback on the effectiveness of the business enterprise’s human rights due diligence from those directly affected (see Principle 29)”.

⁸¹ This is a crucial passage of the responsibility of company to respect. The UNGPs are centered around the “know and show” approach. In fact, as the SRSB highlighted in the commentary to the UNGP 21, the responsibility to respect human rights requires that business enterprises have in place policies and processes through which they can both know and show that they respect human rights in practice. Showing involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors.

⁸² Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholders, and formal public reports. Formal reporting is itself evolving, from traditional annual reports and corporate responsibility/sustainability reports, to include online updates and integrated financial and non-financial reports.

In case risks of severe human rights impacts do exist, whether this is due to the nature of the business operations or operating contexts, communication should be organized as a formal reporting. The reporting should cover topics and indicators concerning how enterprises identify and address adverse

<p>(b) provide information that is sufficient to evaluate the adequacy of an enterprise’s response to the particular HR impact involved;</p> <p>(c) not to pose risks to affected stakeholders, respecting confidentiality (UNGP 21)</p>	<p>the name of the supplier’s employee who reported the misconduct</p>
<p>It is necessary to prioritize actions to address actual and potential adverse HR impacts in order to prevent and mitigate those that are most severe or where delayed response would make them irremediable⁸³ (UNGP 24).</p>	<ul style="list-style-type: none"> • While implementing actions identified through an impact analysis a company should understand which actions need priority. Actions aimed at mitigating impacts linked to earlier stages of operations should be handled earlier than others, unless other priorities are identified
<p>In case companies identify, whether through its HRDD process or other means, that they have caused or contributed to adverse impacts, they should</p>	<ul style="list-style-type: none"> • An active engagement in remediation, by itself or in cooperation with other actors, is part of the company responsibility to respect human rights. Implementing operational-level grievance mechanisms is an effective means of enabling remediation when are legitimate, accessible,

impacts on human rights. Independent verification of human rights reporting can strengthen its content and credibility. Sector-specific indicators can provide helpful additional detail.

⁸³ The commentary of the SRSG to this Principle specifies that “*while business enterprises should address all their adverse human rights impacts, it may not always be possible to address them simultaneously. In the absence of specific legal guidance, if prioritization is necessary business enterprises should begin with those human rights impacts that would be most severe, recognizing that a delayed response may affect remediability. Severity is not an absolute concept in this context, but is relative to the other human rights impacts the business enterprise has identified*”.

<p>provide for or cooperate in their remediation through legitimate processes (UNGP 22)</p>	<p>predictable, equitable, transparent, rights compatible, a source of continuous learning and based on engagement and dialogue, as set out in Principle 31</p> <ul style="list-style-type: none"> • If the company did not cause or contribute to the adverse impacts occurred, even if they are directly linked to its operations, products or services by a business relationship, the enterprise is not requested to provide for remediation, but it should assume anyway a role in the related remediation
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Table 3 – The features of a HRDD and concrete examples of application

2.2.4 Access to Remedies

The third pillar of the UNGPs Framework is the access to remedy, intended to be the tool which put in practice part of the requirements of the two previous pillars. In fact the prescriptions that a State impose to businesses, with respect to its duty to protect, need to be accompanied by adequate mechanism to investigate, punish, and redress corporate abuses or crimes because *“even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent”*⁸⁴.

At the same time an effective grievance mechanism⁸⁵ is necessary for individuals and

⁸⁴Implementing the United Nations “Protect, Respect and Remedy” Framework, ohchr 2011.

⁸⁵ After the approval of the Protect, Respect and Remedy Framework, the grievance mechanism was identified as the most critical tool for give an effective access to remedy to victims. The International Finance Corporation (IFC, expression of the World Bank) carried out extensive research on this topic within its Good Practice Note “Addressing Grievances from Project-Affected Communities”, a guidance for projects and companies on designing grievance mechanisms issued in 2009. In here the grievance mechanism was defined as *“a process for receiving, evaluating, and addressing project-related grievances from affected communities at the level of the company, or project. In the context of relatively large projects, this mechanism may also address grievances against contractors and subcontractors. Project-level grievance mechanisms offer companies and affected communities an alternative to external dispute resolution processes (legal or administrative systems or other public or civic mechanisms). These grievance mechanisms differ from other forms of dispute resolution in that they offer the advantage of a locally based, simplified, and mutually beneficial way to settle issues within the framework of the company–community relationship, while recognizing the right of*

communities who have been harmed by corporate's activities in order to make it known to the company itself and find remediation, without prejudicing the use of other legal channels that may be available.

According to the SRSR, remedy is intended as *"a range of substantive forms the aim of which, generally speaking, will be to counteract or make good any human rights harms that have occurred. Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome"*⁸⁶.

Since forms of grievance mechanism were already available in the practice, both through judicial and non-judicial mechanisms, the SRSR carried out an extensive research aimed at advising improvements, whose results are depicted below.

Firstly, he classified grievances as *"all those perceived injustices evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities"*

He then found that the term grievance mechanism is *"used to indicate any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought"*⁸⁷, which differ each other. In particular:

- State-based judicial mechanisms may be administered by a branch or agency of the State, or by an independent body on a statutory or constitutional basis

complainants to take their grievances to a formal dispute body or other external dispute-resolution mechanisms".

⁸⁶ Commentary to the UNGP 25, "Implementing the United Nations "Protect, Respect and Remedy Framework", published by the United Nations Human Rights Office of the High Commissioner (2011).

⁸⁷ It is worth mentioning that these mechanisms do not necessarily require that a complaint or grievance refers to an alleged human rights abuse already committed, but they actually aim at identifying any legitimate concerns of those who may be adversely impacted. If those concerns are not identified and addressed timely, they may over time escalate into more major disputes and human rights abuses.

(examples include the courts, for both criminal and civil actions, labour tribunals, national HR institutions). They were often found under-equipped and unlikely to provide effective redress for corporate victims to seek remedies in the company's Home State. Victims faced significant obstacles such as legal costs, lack of legal standing and statutes of limitation.

As part of their duty to protect against business-related HR abuse, Ruggie's suggestion to States on them was therefore primarily to take appropriate steps:

- *“to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy”* (UNGP 25) and to *“strengthen judicial capacity to hear complaints and enforce remedies against all corporations operating or based in their territory”* including addressing obstacles that prevent foreign victims from accessing justice locally;
- *“to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy”* (UNGP 26)⁸⁸. It is therefore crucial that States do not erect barriers

⁸⁸ These barriers could be legal, practical and social.

- Legal barriers: preventing legitimate cases involving business-related human rights abuse from being addressed can arise where, for example:

- The way in which legal responsibility is attributed among members of a corporate group under domestic criminal and civil laws facilitates the avoidance of appropriate accountability.
- Where claimants face a denial of justice in a host State and cannot access home State courts regardless of the merits of the claim.
- Where certain groups, such as indigenous peoples and migrants, are excluded from the same level of legal protection of their human rights that applies to the wider population.

- Practical and procedural barriers to accessing judicial remedy can arise where, for example:

- The costs of bringing claims go beyond being an appropriate deterrent to unmeritorious cases and/or cannot be reduced to reasonable levels through Government support, "market-based" mechanisms (such as litigation insurance and legal fee structures), or other means.
- Claimants experience difficulty in securing legal representation, due to a lack of resources or of other incentives for lawyers to advise claimants in this area.
- There are inadequate options for aggregating claims or enabling representative proceedings (such as class actions and other collective action procedures), and this prevents effective remedy for individual claimants.
 - State prosecutors lack adequate resources, expertise and support to meet the State's own obligations to investigate individual and business involvement in human rights-related crimes.

likely to prevent legitimate cases from being brought before the courts, especially in situations where alternative sources of effective remedies are unavailable.

- State-based non-judicial mechanisms were found operated by different actors, such as agencies with oversight duties on particular standards, publicly funded mediation services and national HR institutions. The SRSB highlighted the crucial role of this channel in providing an access to remedy for rightholders, and observed that *“States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse (UNGP 27). This because “non-judicial mechanisms play an essential role in complementing and supplementing judicial mechanisms. In fact, even where judicial systems are effective and well-resourced, they cannot carry the burden of addressing all alleged abuses, judicial remedy is not always required, nor is it always the favoured approach for all claimants”*. As observed for judicial mechanisms, States should reduce barriers to access faced by individuals from groups or populations at heightened risk of vulnerability or marginalization and address any imbalances between the parties to business related HR claims.

In the realm of these State-based non judicial mechanisms, the SRSB gave much emphasis to the potential role of National HR Institutions and National Contact Points under the OCSE Guidelines for Multinational Enterprises⁸⁹ to handle grievances, in light of their cultural appropriateness, accessibility and readiness.

- Social Barriers result from the frequent imbalances between the parties to business-related human rights claims, such as in their financial resources, access to information and expertise. Moreover, whether through active discrimination or as the unintended consequences of the way judicial mechanisms are designed and operate, individuals from groups or populations at heightened risk of vulnerability or marginalization often face additional cultural, social, physical and nancial impediments to accessing, using and bene ting from these mechanisms. Particular attention should be given to the rights and specific needs of such groups or populations at each stage of the remedial process: access, procedures and outcome. Commentary to the UNGP 25, “Implementing the United Nations “Protect, Respect and Remedy Framework”, published by the United Nations Human Rights Office of the High Commissioner (2011).

⁸⁹ The institution of National Contact Points in requested by the OECD Guidelines for Multinational Enterprises. Make reference to the Paragraph 1.4.3.1, Chapter I.

Other examples of State-based non-judicial mechanisms are the ombudsperson offices, and Government-run complaints offices.

Finally, while acknowledging their potential for granting victims with a prompt access to remedy, Ruggie highlighted the need to inspire these mechanisms to principles of legitimacy, accessibility, predictability, rights-compatibility, equitability and transparency, in order for them to be credible and effective.

- Company based grievance mechanisms, could belong to different categories:
 - non-State-based grievance mechanisms administered by a company alone. These grievance mechanisms, established in the premises of the corporate operations, are proper operational-level grievance mechanisms. They were found to cover two distinct key functions regarding the responsibility of business enterprises to respect HR. Firstly, they support the identification of adverse HR impacts and they are substantial part of an enterprise's HRDD⁹⁰. Since they allow a channel for communities and individuals directly impacted by the enterprise's operations to raise concerns when they believe they are being or will be adversely impacted, they are an important source of information for companies to analyse trends and patterns in complaints, to identify systemic problems and adapt their practices as needed. Secondly, these mechanisms should allow companies to address and to remediate – directly and earlier - the adverse impacts raised in the grievances, therefore preventing harms and grievances from escalating and becoming proper HR violations.
 - Non-State-based grievance mechanisms administered by stakeholders are, generally speaking, less focussed on HR implications or concerns linked to stand alone company operations or plants, while they are more centered on ethics and compliance. Indeed they aim to let emerge eventual corporate

⁹⁰ As observed by the SRSB in the Commentary to the UNGP 29, *“Operational-level grievance mechanisms can be important complements to wider stakeholder engagement and collective bargaining processes, but cannot substitute for either. They should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access to judicial or other non-judicial grievance mechanisms”*.

practices which are misaligned with the ethical standards agreed by, for example, industry associations. Therefore they confirm the trend under which HR-related standards are more and more reflected in commitments undertaken by industry bodies, multi-stakeholder and other collaborative initiatives, by means of codes of conduct, performance standards, global framework agreements between trade unions and transnational corporations or with stakeholders, by an industry association or a multi-stakeholder group⁹¹.

- Regional and international HR bodies. Most likely, these bodies have dealt with alleged violations by States of their obligations to respect HR. However, some have also dealt with the failure of a State to meet its duty to protect against HR abuse by business enterprises.

Even if non-judicial, company based grievance mechanisms are able to offer particular benefits such as speed of access and remediation and reduced costs, which are crucial features of an effective grievance mechanism. Therefore, turning at the States, the SRSG recommends that “*they should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms*” (UNGP 28) and observes the need that these mechanisms focus on mediation and dialogue, avoiding to be the company itself to be the final judge of its actions.

Since a non-judicial grievance, both State-based and non-State-based, can achieve its goals if the people it is addressed “*know about it, trust it and are able to use it*”, the UNGPs finally identify the fundamental features it needs to be effective, to be considered as benchmark for its design. Indeed, according to the SRSG, an effective non-judicial grievance mechanism should be:

- legitimate: enabling trust from the stakeholder groups for whose use it is intended, and being accountable for the fair conduct of grievance processes

⁹¹ With respect to multi-stakeholder and industry initiatives, the SRSG found that these provide an important check on company performance and that they have a role to play in promoting compliance to human rights standards, especially for financial institutions.

especially ensuring that the involved parties cannot interfere with its fair conduct;

- accessible: being known to all stakeholder groups for whose use it is intended, and providing adequate assistance for those who may face particular barriers to access, such as lack of awareness of the mechanism, language, literacy, costs, physical location and fears of reprisal;
- 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. This feature is strictly linked with that one linked to transparency;
- 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. This requirement is grounded on the observation that *“when disputes between companies and affected stakeholders occur, the latter often have much less access to information and skilled resources and they frequently lack the financial resources to pay for them; if this imbalance is not redressed, it can reduce both the achievement and perception of a fair process and make it harder to arrive at durable solutions”*⁹²;
- transparent: it means to keep parties involved in a grievance informed about its progress, providing enough information about the mechanism’s performances so to build confidence in its effectiveness. This implies to communicate regularly with parties about the progress of individual grievances, disclosing statistics, case studies or more detailed information about the handling of certain cases. At the same time, confidentiality on individuals’ identities and the object of the discussions held with companies must be provided where necessary;

⁹² Commentary to the UNGP 31, “Implementing the United Nations “Protect, Respect and Remedy Framework”, published by the United Nations Human Rights Office of the High Commissioner (2011).

- rights-compatible: to ensure that outcomes and remedies are aligned with internationally recognized HR. For handling grievances in line with internationally recognized HR, grievances should be translated in the HR language even when they are not originally framed in these terms;
- a source of continuous learning: improving the mechanism in light of the lesson learned in order to prevent future grievances and harms. To this aim a regular analysis of the frequency, patterns and causes of grievances can enable the institution administering the mechanism to improve policies and practices accordingly.

Concerning operational-level mechanisms, the SRSG argued that they should also be based on engagement and dialogue, foreseeing to engage with affected stakeholder groups about its design and performance as a mean to ensure that it really meets their needs. It will result in a shared interest in ensuring its success. Moreover, since a company cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, *“these mechanisms should focus on reaching agreed solutions through dialogue. Where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism”*⁹³.

2.3 The implications of the UNGPs on companies

The endorsement received in June 2011 by the HRC for implementing the UNGPs Framework resulted in a significant turnaround in the approach assumed by each actor involved in the BHR discussion.

Indeed not only companies and States received a new standard against which to organize their overall HR strategy, but it implied as well a change in the way the Civil Society Organizations started to look at the MNEs and their conduct. The paradigmatic *“Name and Shame”* formula, aimed at offering to the general public egregious cases of HR violations committed by well known companies in order to provoke consumers’ indignation and a consequent reaction to repair and put in place forms of remedy, was progressively overlapped by the *“Know and Show”* formula. This change was

⁹³ Ibid.

grounded on the HRDD provision introduced by the UNGPs, requiring companies to assess their actual and potential HR impacts (know), integrating and acting upon the findings, tracking responses, and communicating (show) how impacts were addressed.

At the same time, in the realm of the State duty to protect, the UNGPs solicited States to encourage, and where appropriate require, business enterprises to communicate how they address their HR impacts. This resulted in the recent legislative initiatives, already tackled in Chapter I, adopted in the European Union, UK, France and Italy, which require company to make a public disclosure on policies, risks and mitigations actions taken within their overall HR approach or on specific, related, topics (such as the modern slavery or human trafficking in the supply chain). Moreover, these same legislations require companies to track their performances on HR with the adoption of Key Performance Indicators (hereinafter KPIs).

It is worth mentioning that, although these legislative initiatives nor establish clear rules that companies must follow while reporting on their HR approach neither they expressly mention the UNGPs as terms of reference for their reporting, it is becoming increasingly clear that the UNGPs are the standards against companies must inspire their approach on HR.

Last, but not least, while States are still reluctant to expressly endorse the UNGPs within their brand new legislations covering Environmental, Social and Governance (ESG) topics, investors have assumed a much sounder position by assessing HR companies' performances according to the UNGPs prescriptions.

2.3.1 The UNGP Reporting Framework

The UNGP Reporting Framework came to light in 2015, in response to the increasing request to companies, raised by regulators and investors as well as civil society, media and consumers, not only to doing business with respect for HR, but also to be transparent and accountable about their efforts.

The UNGP Reporting Framework was launched by Shift⁹⁴ and Mazars⁹⁵, as a comprehensive guidance for companies to report on how they respect HR, and received strong backing from UN experts, governments, stock exchanges, investors and civil society organizations.

This document can be defined as the first comprehensive guidance for companies to report on their HRs performance according to the UNGPs (McPhail and al., 2016). It involves companies “to know and to show” how they are implementing their HRs responsibilities, with the main aim to provide a vehicle to address the growing demand for transparency. It was studied to help companies to provide a single, coherent narrative on their progresses in implementing respect for HR that gets them ahead of these growing regulatory requirements.

Indeed, as argued earlier in this Chapter, regulations from the UK’s Modern Slavery Act to the French ‘plan de vigilance’ law to the California Transparency in Supply Chains Act and the EU non-financial reporting Directive were all calling for the same kind of disclosure on HR: disclosure that aligned with the UNGPs and its expectations for HRDD.

More specifically, its Guidance requires to company to issue a statement on the main HRs issues, to make disclosure about the identification and recognition of these issues, and to the manageof these issues through policies, stakeholder engagement and tracking performance.

The reason why, since its introduction, this standard has been adopted by an increasing number of companies are diverse:

- it is at the moment the unique reporting framework for companies on HR to be fully aligned with the the UNGPs, assumed as the authoritative global standard on this subject. Therefore companies reporting in line with the UNGP Reporting

⁹⁴ Shift is a US-registered non-profit organization, funded primarily by governments, both for advisory work with individual government departments under our Government Engagement program as well as bigger projects under our International Partnerships program.

⁹⁵ Mazars is an international, integrated and independent organisation, specialising in audit, accountancy, tax, legal and advisory services.

Framework are confident to focus their disclosure on the most relevant and meaningful information that meets global expectations;

- it is aligned to the UNGPs, it asks for information that companies are required to disclose under the growing number of regulations, indices and questionnaires that address this issue;
- it is composed by a set of straightforward questions⁹⁶ that meet, step by step, the expectations of the UNGP starting with eight common sense questions, and build from there;
- the UNGP Reporting Framework is focussed on the salient HR issues of companies, helping them to prioritize and focus their resources on where it is most needed.

According to the UNGP Reporting Framework Database, since its introduction over 140 MNEs have been reporting by using this methodology, belonging to 12 sectors, identifying around 30 different salient issues⁹⁷.

2.3.2 The salient human rights issues

The notion of salient HR issues is central in the methodology promoted by the UNGP Reporting Framework. According to the definition given by the authors: *“a company’s salient human rights issues are those human rights that stand out because they are at risk of the most severe negative impact through the company’s activities or business relationships. This concept of salience uses the lens of risk to people, not the*

⁹⁶ The structure of the Reporting Framework is made of 31 ‘questions that enable companies to report meaningfully on their human rights performance, regardless of size or how far they have progressed in implementing their responsibility to respect human rights. The Reporting Framework is divided into three parts:

Part A has two overarching questions, each with one or more supporting questions, which focus on the company’s commitment to and governance of human rights risk management.

Part B allows company to narrow the range of human rights issues on which it will focus by requiring to identify only the human rights issues that are salient within its activities and business relationships.

Part C has six overarching questions, each with one or more supporting questions, which focus on the effective management of each of the salient human rights issues on which the company is reporting.

The overarching questions in Parts A and C focus on general, relevant information about the company’s efforts to meet its responsibility to respect human rights. They are designed to enable responses from any company, including small companies and those at a relatively early stage in the process.

⁹⁷ The website of the UNGP Reporting Framework provides update statistics and information about the companies which are currently use the Framework to report (<https://www.ungpreporting.org/database-analysis/explore-disclosures/>)

*business, as the starting point, while recognizing that where risks to people's human rights are greatest, there is strong convergence with risk to the business*⁹⁸." Salience

issues will be identified starting from those impacts:

- Most severe: based on their gravity and diffusion and how hard it would be to remedy the resulting harm.
- Potential: impacts with some likelihood to occur in the future, which are often, but not limited to, those ones that have occurred in the past;
- Negative: focus should be on the avoidance of harm to HR rather than on initiatives aimed at supporting or promoting HR but unrelated with the impacts;
- HR related: focus on risk to people, rather than on risk to the business.

Salience therefore focuses on the company's need to find the decisive information to manage risks to HR, and related risks to the business. This will help companies to disclose the relevant information on HR to shareholders, investors, governments, customers, media, civil society organizations and directly affected people.

In Chapter III and in Chapter IV the HR salient issues of the 98 companies⁹⁹ selected for the empirical analysis of this study will sort out, in order to investigate whether and how the salient HR issues vary among sectors, and to follow-up on their actual attitude to represent the HR risks of the companies¹⁰⁰.

⁹⁸ UNGP Reporting Framework website (<https://www.ungpreporting.org/resources/salient-human-rights-issues/>).

⁹⁹ The sample is composed by the companies interested by the CHRB, a multistakeholder initiative launched in 2016 with the aim to assess companies against their degree of implementation of the UNGPs in their policy commitments and practices. These companies are the most relevant MNEs with operations in three industrial sectors (extractive, agro industry, apparel). To each sector the CHRB links one or more issues, deemed as salient for that specific industry.

¹⁰⁰ As for the next Chapter III, the allegations of HR violations committed or involving the same 98 companies (collected between 2014 and 2016 by mean of the open database Resource Center) will be classified per salient issue and compared with the salient issues identified by the CHRB.

Chapter III

3.1 Assessing the social performances of MNEs

The previous Chapter focussed on the UNGPs, their origination and the assumptions behind their architecture, grounded on three pillars: the duty of States to protect, the responsibility of companies to respect and the access to remedy.

The purpose of this Chapter III is to evaluate the implications that this new voluntary standard is having on business and, specifically, on MNEs¹⁰¹ and Transnational Corporations (TNCs)¹⁰². Although the definition of “Multinational Enterprises” or “Transnational Corporations” has created disputes over the years, for the purposes of this essay, the terms MNEs and TNCs are used interchangeably.

MNEs are intended as large corporations, incorporated in one country and producing or selling services in various countries. The two main features of MNEs are essentially their size and the fact that their worldwide activities are controlled centrally by the parent companies. The ways MNEs operate are diverse, amenable to the following ones:

- importing and exporting goods and services;
- making significant investments in a foreign country;
- buying and selling licenses in foreign markets;
- engaging in contract manufacturing;
- permitting a local manufacturer in a foreign country to produce their products;
- opening manufacturing facilities or assembly operations in foreign countries.

¹⁰¹ According to the OECD Guidelines for Multinational Enterprises, MSEs usually comprise “*companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, state or mixed*”.

¹⁰² According to the Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (UN Doc.E/CN.4/Sub.2/2003/38/ Rev.2, 26/08/2003), the term “*transnational corporation*” refers to “*an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries – whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively*”.

MNEs may benefit from their global presence in a variety of ways. MNEs can benefit from the economy of scale by spreading expenditures and costs over their global sales, by pooling global purchasing power over suppliers, and by utilizing their technological and managerial know-how globally with minimal additional costs. Furthermore, MNEs can use their global presence to take advantage of underpriced labor services available in certain developing countries, and gain access to special R&D capabilities residing in advanced foreign countries.

As highlighted in Chapter I, in the last few decades the significant changes happened in the global economics have been shaping new balances of powers, which led to the universally accepted term of “globalization”¹⁰³. This phenomenon has been increasingly targeting from CSO, politics and academics, because of the increasing economic power of MNEs and TNCs, occasionally even exceeding that of nation-States. Several studies confirmed this trend, one of these is extremely meaningful: it¹⁰⁴ shows that in a combined list of all nation-States, ordered by the size of their GDP in 2015, and all the corporations in the world, ordered by the size of their annual revenues from sale of goods and services in the same year, 69 MNEs ranked among the top 100 versus only 31 nation-States.

This significant economic *“power combined with their ability to choose globally the State with the most advantageous conditions for setting up business, which will very often include the lowest labour costs and the laxest rules for the protection of the environment, conveys substantial bargaining power to MNEs, especially with regard to developing countries”* (Weschka, 2006).

¹⁰³ According to the OECD, *“the term globalisation is generally used to describe an increasing internationalisation of markets for goods and services, the means of production, financial systems, competition, corporations, technology and industries. Amongst other things this gives rise to increased mobility of capital, faster propagation of technological innovations and an increasing interdependency and uniformity of national markets”*.

¹⁰⁴ The study was carried out by the NGO Global Justice Now. The campaign group also discovered that, in the same year, the world’s top 10 corporations – a list that includes Walmart, Shell and Apple – have a combined revenue of more than the 180 ‘poorest’ countries combined in the list which include Ireland, Indonesia, Israel, Colombia, Greece, South Africa, Iraq and Vietnam, <http://www.globaljustice.org.uk/about-us>.

These countries have an increased interest in attracting MNEs because of the capital they bring into the country, the much-needed jobs they provide and the positive effects associated with the presence of MNEs such as their *“capacity to foster economic well-being, development, technological improvement and wealth”* ¹⁰⁵. However, often MNEs do not meet these expectations. To the contrary, they can misuse their power, pose a substantial threat to HR and have negative impacts on the *“lives of individuals and communities through their core business practices and operations, including employment practices, environmental policies, relationships with suppliers and consumers, interactions with Governments and other activities”* ¹⁰⁶. Accordingly, MNEs can be associated with HR violations in a number of different ways. They can infringe HR directly, e.g. by using child or forced labor, by impeding or forbid trade unions, by not assuring the respect of HSE standards to their employees, by applying inhuman working conditions in general, by discriminating against women or ethnic or religious minorities in the workplace, by using land belonging to indigenous people, by polluting the environment and destroying the health and the livelihood of the people living in the region, etc. Moreover, MNEs can be indirectly complicit in or benefit from HR violations committed by host states in order to *“protect their business”*, e.g. when company facilities are guarded against peaceful protesters by the state military, which uses excessive violence.

Due to the NGOs’ campaigns, international media coverage and increasing social awareness, MNEs can no longer merely pursue the kind of profit-oriented attitude. As argued in Chapter I, the responsibility of companies goes well beyond a mere moral responsibility leaving room for a companies’ responsibility to respect, clarified and drawn by the UNGPs.

Since the UNGPs is not a matter of compliance and their implementation is not mandatory, who does actually assess companies’ respect of UNGPs? How could these assessors make leverage on companies to improve their HR performances?

¹⁰⁵ Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, UN Doc.E/CN.4/Sub.2/2003/38/ Rev.2, 26/08/2003.

¹⁰⁶ Ibid.

In the sections below, this study will try to answer to these questions by analysing the actions taken by some categories of stakeholders to hold companies responsible for their HR conduct. These stakeholders generally differ from those ones introduced in Chapter I, the rightsholders, who are those negatively impacted by companies' activities¹⁰⁷.

To the aim of this analysis, the stakeholders considered hereby are:

- The Civil Society Organizations (hereinafter CSOs): the CSOs are non-State, not-for-profit, voluntary entities formed by people in the social sphere that are separate from the State and the market. CSOs represent a wide range of interests and ties. They can include Community Based Organizations¹⁰⁸(hereinafter CBOs) as well as Non-Governmental Organizations¹⁰⁹ (hereinafter NGOs). In the context of the UNGP Reporting Framework, as from Paragraph 2.3.1 in Chapter II, CSOs do not include business or For-Profit Associations¹¹⁰.
- Responsible Investors (RI): responsible investment is an approach to investing that aims to incorporate Environmental, Social and Governance (ESG) factors into investment decisions, to better manage risk and generate sustainable, long-term returns.

3.1.1 Civil society driven initiatives

While responsible investment is a relatively new phenomenon, the CSOs activism on business behaviour is grounded on a sound and well rooted interaction. This interaction can take multiple forms, ranging from the “*name and shame*” approach

¹⁰⁷ It is worth to highlight that rightsholders can produce impact, somehow, on companies and exert leverage to improve their human rights performances. This will depend on how these rightsholders are organized and able to escalate their complaints at national and international level. The role of CSO, such as NGOs, citizen associations, etc., is therefore to catalyze these complaints and advocate for a positive resolution.

¹⁰⁸ A Community Based Organization (CBO) is a public or private nonprofit organization that is representative of a community or a significant segment of a community and works to meet community needs. It can include non-registered networks and groups, as well as more formal and/or funded organizations.

¹⁰⁹ A non-governmental organization (NGO) is a non-for-profit, voluntary citizens' group, which is organised on a local, national or international level to address issues in support of the public good.

¹¹⁰ Definition provided by the UNGP Reporting Framework, launched by Shift and Mazars in 2015.

to a valuable cooperation based on engagement and involvement, depending on the mutual disposition¹¹¹ of both the company and the stakeholder.

Of course, the nature of CSO and its mission will strongly influence the interaction with companies. The Table 4 below shows the actions typically linked to CSO categories.

Civil Society Organizations (CSOs)	
CBO	Public demonstrations: organization and/or participation to initiative aimed at openly complaining against a company conduct or presence within communities boundaries ¹¹² .
	Presentation of instances to judicial and non-judicial body on behalf of rightsholders: counterparts in non-judicial or judicial proceedings against companies, aimed at obtaining the restoration of damages or a fair compensation ¹¹³ .
	Cooperation and engagement with companies on specific topics: involvement in companies' initiatives aimed at understanding, assessing, and designing shared solutions to impact on communities' HR ¹¹⁴ .
NGO	Advocacy and raising awareness campaigns: organizations of public campaigns aimed at attracting the attention of other stakeholders (such

¹¹¹ In the stakeholder management practice, the "Disposition" and "Relevance" are the two main dimensions in use to measure the level of engagement that the company will have with the stakeholder evaluated under these two parameters in a double entry matrix.

¹¹² On this regard see for example the occupation of a piece of land by local communities to prevent the installation of Chevron for the exploration and exploitation of shale gas in the region of Zurawlow, Poland in 2013 (<https://www.business-humanrights.org/en/poland-local-residents-farmers-protest-against-chevrons-shale-gas-exploration-over-concerns-about-contamination-of-water-land>).

¹¹³ On this regard see for example the suit against Rio Tinto filed under the Alien Tort Claims Act in US federal court by residents of the island of Bougainville in Papua New Guinea (PNG) in 2000 (<https://www.business-humanrights.org/en/rio-tinto-lawsuit-re-papua-new-guinea>). The plaintiffs allege that:

- Rio Tinto was complicit in war crimes and crimes against humanity committed by the PNG army during a secessionist conflict on Bougainville;
- environmental impacts from Rio Tinto's Panguna mine on Bougainville harmed their health in violation of international law; and
- Rio Tinto engaged in racial discrimination against its black workers at Panguna.

¹¹⁴ An example of that is the company's involvement of community members represented in a CBO, while developing a local grievance mechanism.

	as institutions, customers, etc.) on specific violations of HR and determining the imposition of fines, boycott, etc ¹¹⁵ .
	Public demonstrations: organization of initiative aimed at openly complaining against a company conduct or presence within communities boundaries ¹¹⁶ .
	Presentation of instances to judicial and non-judicial body on behalf of rightsholders: to represent rightsholders in non-judicial or judicial proceedings against companies, aimed at obtaining the restoration of damages or a fair compensation ¹¹⁷ .
	Reporting on specific topics: desktop based or field based researches carried out through interviews, samples, inspections on specific situations' impacting HR of communities or individuals ¹¹⁸ .
	Cooperation and engagement with companies on specific topics: involvement in companies' initiatives aimed at understanding, assessing, and designing shared solutions to impact on communities' HR ¹¹⁹ .

Table 4 - Actions linked to CSOs

Although none of these actions is linked directly to the UNGPs or does expressly require their implementation, it is worth to highlight that each of them is often grounded on the lack of effective measures taken by companies to mitigate potential HR impacts on communities and individuals. In other words, each of these actions lies on lacking or inadequate HRDD processes. Therefore, besides requiring the

¹¹⁵ On this regards see for example the initiative of Greenpeace that in 2010 call customers to boycott Nestle against its large use of palm oil resulting from destroying rainforest in Indonesia.

¹¹⁶ See for example the Amnesty campaign against Shell concerning pollution in the Niger Delta (<https://www.theguardian.com/global-development/2017/nov/28/amnesty-seeks-criminal-inquiry-into-shell-over-alleged-complicity-in-murder-and-torture-in-nigeria>).

¹¹⁷ See for example the instances initiated by the NGO Crude Accountability before the UK National Contact Point against the KPO Consortium concerning the Baku Tblisi Ceyhan Pipeline (<https://www.gov.uk/government/publications/uk-ncp-final-statement-crude-accountability-ca-complaint-against-the-kpo-consortium>).

¹¹⁸ See for example the Amnesty International Report Negligence on the Niger Delta, on the Oil Spills in Nigeria (<https://www.amnesty.org/download/Documents/AFR4479702018ENGLISH.PDF>).

¹¹⁹ See for example the joint initiative launched by Unilever and Oxfam to enhance women's livelihoods in Thailand (<https://www.oxfam.org/en/pressroom/pressreleases/2012-08-15/unilever-and-oxfam-launch-pilot-project-enhance-womens>).

restoration of damages, with these actions CSOs are likely to contribute positively to improve the way companies identify, assess and act to mitigate such HR impacts.

3.1.2 Investors driven initiatives – the case of Amundi and Norges Bank

Under this umbrella there are initiatives promoted by several actors in order to assess the way the investment they manage will actually meet given ethical standards, usually within the ESG perimeter.

Starting as a niche offer that financial operators used to dedicate only to their most sensible customers, as a way to invest their financial assets in shares belonging to companies with the highest Corporate Social Responsibility standing, this phenomenon has been growing consistently in the last few years.

Today, with the significant exception of the hedge funds, the largest part of investors considers the ethical standing a crucial driver to assess while making its financial resources available to companies and ESG logics are put at the centre of its stockpicking strategy, targeting companies with a “sustainable” long-term strategy.

This changing scenario is proven by the growth of new initiatives aimed at guiding investors to understand the investment implications of ESG factors, to support them in incorporating these factors into their investment and ownership decisions, to encourage investors to use responsible investment to enhance returns and better manage risks.

Among this initiative, it is worth to mention the Principles for Responsible Investment (PRI)¹²⁰, the world’s leading proponent of responsible investment, which defined a voluntary and aspirational set of investment principles¹²¹, as a menu of possible actions for incorporating ESG issues into investment practice.

¹²⁰ The PRI initiative was born in early 2005, when the then United Nations Secretary-General, Kofi Annan, invited a group of the world’s largest institutional investors to join a process to develop the Principles for Responsible Investment. A 20-person investor group, drawn from institutions in 12 countries, was supported by a 70-person group of experts from the investment industry, intergovernmental organisations and civil society.

The Principles were then launched in April 2006 at the New York Stock Exchange. Since then the number of signatories has grown from 100 to over 1,800. The PRI has grown consistently since it began in 2006, accounting for 70 trillion USD of assets and around 1250 signatories at the end of April 2017.

¹²¹ The PRI are:

Principle 1: We will incorporate ESG issues into investment analysis and decision-making processes.

The operators, signatories of the initiatives, commit themselves to implement these principles and to “contribute to developing a more sustainable global financial system”.

In the investment practice, there are essentially two types of investment that promote good practices in sustainable and ethical development, seeking solid answers to society’s challenges: Socially Responsible Investment (SRI) and Ethical Investing:

- SRI focusses on the fight against global warming and corruption and HR; therefore SRI funds invest in companies that demonstrate best practice in terms of environmental, social and corporate governance in their sector;
- Ethical Investing: focusses on financing those organisations selected for their social worth, helping women and men to improve their daily lives through training, employment, housing, health care, etc.

Therefore the SRI is narrowly linked to BHR, becoming the company respect of HR a crucial driver to assess while investing in companies.

Amundi¹²², Nordea¹²³, BNP Paribas¹²⁴, just to cite the biggest asset management operators, are all signatories of the PRI and, in the realm of their SRI approach, they annually evaluate companies in their portfolio according to a list of parameters, also related to HR.

Principle 2: We will be active owners and incorporate ESG issues into our ownership policies and practices.

Principle 3: We will seek appropriate disclosure on ESG issues by the entities in which we invest.

Principle 4: We will promote acceptance and implementation of the Principles within the investment industry.

Principle 5: We will work together to enhance our effectiveness in implementing the Principles.

Principle 6: We will each report on our activities and progress towards implementing the Principles.

¹²²Amundi is a subsidiary jointly created by Crédit Agricole and Société Générale to regroup their asset management operations, created in January 2010. The company is listed on the Euronext Paris since November 2015 and holds 1.426 billion euros in Assets under Management, in 2017.

¹²³Nordea Bank AB, commonly referred to as Nordea, is a Nordic financial services group operating in Northern Europe, listed on the Copenhagen Stock Exchange, Helsinki Stock Exchange and Stockholm Stock Exchange and holds 223 billion euros in Assets under Management, in 2017.

¹²⁴BNP Paribas is a French international banking group, listed on the first market of Euronext Paris, Euro Stoxx 50 stock market index and French CAC 40 index. It holds 230 billion euros in Assets under Management, in 2017.

The methodology applied by Amundi is particularly inspiring and helpful to better understand the rules followed by asset management operators while selecting their SRI. This methodology relies on the following principles:

- promoting respect for international conventions on HR;
- promoting respect for the International Labour Organization (ILO) and the environment;
- advocating a model for responsible and sustainable social development.

Even if the application of these principles consists in excluding from its investment strategy companies¹²⁵ and countries¹²⁶ with unacceptable behaviours, Amundi prefers to refer to focus on dialogue with companies through an engagement process. This engagement process comes within the broader scope of integrating ESG criteria in Amundi's investment management and it is carried out through actions:

- engagement for influence: consisting in meetings with companies intended to influence their practices. Recommendations made at company meetings concern cross-cutting themes common to a company's business sector. They highlight best practices and measure companies progress based on a framework of success indicators set up by the ESG/SRI Analysis team of Amundi;
- data collection for rating purposes: these data are collected with the support of eight suppliers of extra-financial data, Amundi awards Environmental, Social and Governance (ESG) ratings to more than 4,000 issuers;
- voting at general shareholders' meetings and pre-meeting dialogue:
 - voting: the corporate governance team systematically votes at the general meetings of French companies or of those companies in which Amundi holds more than 0.05% of the capital, resulting in more than 2,600 general

¹²⁵ According to the 2016 Engagement Report of Amundi, companies that violate these conventions repeatedly without implementing suitable corrective measures, companies involved in the production or sale of anti-personnel mines and cluster bombs (exclusions resulting from France's ratification of the Ottawa and Oslo treaties) as well as chemical, biological and depleted uranium weapons are excluded.

¹²⁶ According to the 2016 Engagement Report of Amundi, countries that systematically and willfully violate human rights and make themselves guilty of the worst crimes (such as war crimes and crimes against humanity) and companies that generate more than 50% of their sales from coal extraction, are excluded.

meetings a year;

- pre-meeting dialogue: Amundi has implemented a formalised dialogue system to inform the companies in which it holds its largest positions of its voting intentions, to initiate a dialogue and contribute to the improvement of their practices. Moreover Amundi participates to all meetings requested by issuers to discuss general issues or, more generally, governance themes. This second element is tending to increase in importance and, according to Amundi¹²⁷, it enables a more constructive dialogue.

Within its “engagement for influence” activity Amundi interacts with companies to encourage them to adopt, year by year, a progressive approach and to improve their performances on critical themes associated to the industry sector to whom the company under evaluation belongs, such as:

- managing the use of coal¹²⁸ in companies working in the electricity generation sector;
- eliminating child labour in the supply chains¹²⁹ of tobacco and cocoa companies;
- responsible and compliant sourcing of minerals from conflict zones¹³⁰, with respect to IT manufacturers companies;

¹²⁷ 2016 Engagement Report of Amund.

¹²⁸ The exposure of the companies belonging to the electricity generation sector is assessed in terms of: i) Coal capacity in absolute terms, in MW; ii) Share of coal capacity in total installed capacity; iii) Total coal generation (GWh); iv) Share of electricity generation from coal in the energy mix; v) Levels of SOx, NOx and CO2 emissions; vi) Geographical exposure to carbon/coal regulations; vii) New coal-fired power plant projects; viii) Regulatory flexibility. Then companies are assessed by reviewing their Policy & Strategy, the measures implemented and their results in managing the use of coal.

¹²⁹ Companies of these sectors are assessed in order to evaluate if the strategy outlined by the firms is based on the ILO Conventions No. 182 and 138. Furthermore Amundi inquires if the policy includes qualitative and quantitative goals, if it the scope of the policy is accurate and if the firm established a special policy against child trafficking an adequate policy scope. Moreover, in case of non-compliance companies’ performances are evaluated by analysing if the firms have implemented a grievance and remediation system and how transparent they are on the results achieved by the mechanisms.

¹³⁰ The issue of Conflict Minerals is extremely salient in the IT sector and, especially, in the manufacturer industry. For decades, the African Great Lakes region has been known for the crimes that have taken place there and for recurring armed conflict. According to NGOs estimation, between 80s and 2000, these conflicts resulted in more than 100,000 civilian victims per year. The total number of victims is more than 5 million.

Today, armed groups are still in fight on lands, religious and ethnic basis. These tensions are extreme in the Kivu region, between the Democratic Republic of Congo (DRC) and its neighboring countries (Uganda, Rwanda, Burundi and Tanzania). In order to get funds, these armed bands levy illegal taxes

- respecting HR ¹³¹ for mining and oil companies;
- access to food and the fight against food waste ¹³² for food and food retail companies.

on minerals (essentially gold, tungsten, tantalum and tin) extracted from mines in the African Great Lakes region. The exploitation by these militias of the DRC's mineral wealth contributes directly to the proliferation and entrenchment of violence and to multiple human rights violations in this territory. Therefore, while Conflict minerals trade enables armed bands to secure funding in the amount of tens of millions of dollars every year, it impacts on several areas:

- Human rights: extreme working conditions, child labour, violence, armed conflict;
- Environment and ecology: mineral extraction without consideration for the environment, effluents discharged without any treatment, plundering of resources;
- Economic development: the region's growth is hampered by the diversion of mineral resources;
- Illicit trafficking, smuggling and racketing of all kinds are perpetrated on a huge scale. Some NGOs mention amounts ranging from \$150m to \$250m, plus around \$250m for the Rwandese militia over the period from 1998 to 2000 alone. (Amundi Engagement Report 2016).

For the reasons above Conflict Minerals trade was regulated by the Section 1502 of the US Dodd-Frank Act Regulation (Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010), which imposes transparency and disclosure requirements on companies that use to manufacture their products conflict minerals extracted in the Democratic Republic of Congo (DRC) and neighboring countries. This regulation is applicable to manufacturing companies which need conflict minerals for the production or use of end products.

Within its engagement for influence activity, Amundi interacts with companies pushing for the implementation of the following measures:

- policy & Strategy: Check that suppliers' engagements comply with the *Electronics Industry Citizenship Coalition* Code of Conduct (founded in 2004, the EICC is a group of companies in the electronics sector aiming to establish social, environmental and ethical standards for the sector as a whole and its supply chain);
- traceability: Implementation of a policy associated with clear action and improvement plans;
- transparency of communication on systematic compliance control of suppliers;
- control, monitoring, certification: Implementation of a more systematic approach with suppliers; financing of smelter control and certification inspections to contribute to the development of a secure and high-quality database; implementation of direct or indirect certification audits and site visits; setting up of the means necessary to achieve the engagements announced;
- engagement and results: Implementation of quantified objectives to achieve

¹³¹ The engagement of Amundi with extractive companies on the topic of human rights is sound and well rooted over the years. The role of asset management operators, like Amundi, to further enhance in this field will be explored ahead.

¹³² The growing trends in obesity, malnutrition or chronic food-related diseases, affecting almost one third of the world population, both in emerging and developing countries, have significant economic and social consequences. Food companies and large retailers are believed to have an important role to play in the nutritional quality of the products they offer in the different markets, by adapting their products to local nutritional needs and making them more accessible to all populations, including the most disadvantaged. Fighting food waste and optimizing logistics chains are also decisive challenges for this industry. Amundi's engagement was aimed at better understanding corporate strategies on health and nutrition, access to products - especially for disadvantaged populations - and reduction of food waste, prompting companies to improve their practices.

Focusing on HR, the role of asset management operators has given a decisive contribution to improve corporate practices, especially on those sectors whose practices were most exposed to HR violations such as the oil&gas and mining sector. Indeed, even if the work of the SRSG and the adoption of the UNGPs, played a primary role in enhancing awareness on the theme, *“companies tended to refer to the subject in relatively broad terms, or on the contrary would focus on attempting to refute very specific controversies”*¹³³, and the level of transparency was not sufficient to give precise idea of the extent to which companies integrated HR issues in their processes. During these last few years, also because of such engagement by asset management operators, companies have been starting to draft a clearer position on HR and to structure their approach according to the UNGPs.

This enhanced awareness on HR implications of their activities was reflected in several business areas, notably, those most exposed to HR risks, such as in the use of armed forces¹³⁴, the implementation of complaints/grievances mechanisms, the spread of several pilot projects enabling local communities to make their voices heard.

Besides the engagement approach described above, whose the Amundi’s one is an interesting example, financial institutions are able to influence companies operations also by excluding them from their investment choices as a consequence of their implications in HR violations. An example of that is provided by Norges Bank¹³⁵. In 2016, this primary Norwegian bank institution decided to exclude the companies Cairn Energy Plc and Kosmos Energy Ltd from the investment universe of the

¹³³ Amundi Engagement Report 2016.

¹³⁴ In the realm of an initiative launched in 2000, The Voluntary Principles on Security and Human Rights (VPSHR) are a set of principles designed to guide companies in maintaining the safety and security of their operations within an operating framework that encourages respect for human rights”.

¹³⁵ Norges Bank is the central bank of Norway. It has the traditional central bank responsibilities such as financial and price stability and manages the Government Pension Fund of Norway, a stabilization fund that is one of the world's largest sovereign wealth fund. The Norges Bank Investment Management (NBIM) is a separate part of Norges Bank and it is responsible for the management of the Government Pension Fund Global. NBIM also manages Norges Bank's foreign exchange reserves. NBIM invests the fund's assets and the foreign exchange reserves in international equities and fixed income instruments, money market instruments and derivatives (<https://www.norges-bank.no>).

Government Pension Fund Global, in light of their continuing investment in oil exploration off the coast of Western Sahara¹³⁶.

Norges Bank, which is one of the world's largest sovereign wealth fund, was one of the biggest investors in Cairn, owing a 2.85 per cent stake and a 0.8 per cent stake in Kosmos, two independent operators in the O&G with exploration licences in several African countries¹³⁷. The fund decided to ban the companies from its investment portfolio, having found "*serious violations of fundamental ethical norms*" because of their oil and gas exploration off the disputed territory of Western Sahara on behalf of Moroccan authorities. The oil fund based its decision to exclude the two companies on a recommendation from the independent Council of Ethics, a five-member panel appointed by Norway's finance ministry, according to its *Guidelines for observation and exclusion from the Government Pension Fund Global*¹³⁸, which set the rules that the Norges Bank Investment Management follows to exclude companies from its investment choices.

The two oil explorers joined more than 110 companies that the Norwegian fund is excluded from investing in, including businesses involved in the production of tobacco, nuclear weapons and coal¹³⁹.

¹³⁶ Business involvement in the territory of Western Sahara has long been controversial because its ownership is disputed between Morocco and the Polisario Front, a movement calling for independence for the region. Morocco annexed Western Sahara in 1975 when Spain abandoned it, but the Polisario Front, based in neighbouring Algeria, then waged a guerrilla war for independence. The UN brokered a ceasefire deal that provided for a referendum. The vote has yet to be held and Morocco has declared that it will grant its autonomy to the Region.

¹³⁷ Cairn, a UK leading independent oil and gas exploration and development company listed on the London Stock Exchange, and Kosmos, an American international oil company founded and based in Texas listed on the New York Stock Exchange, used to have the 40 per cent share of the project off the coast of Western Sahara, which was operated by Kosmos Energy. But the project has not operated for the past two years after an unsuccessful exploration well was drilled in 2014.

¹³⁸https://www.regjeringen.no/contentassets/7c9a364d2d1c474f8220965065695a4a/guidelines_observation_exclusion2016.pdf.

¹³⁹ The full list of exclusions operated by NBIM can be consulted at this link <https://www.nbim.no/en/responsibility/exclusion-of-companies/>

3.2 A multi-stakeholder initiative to evaluate MNEs under the HR lens: the Corporate Human Rights Benchmark

The dichotomy between civil society and financial institutions, both having a role to play in pushing to increase MNEs' awareness on HR, has been recently overtaken by the CHR.B.

Launched in 2016, CHR.B is a multi-stakeholder initiative whose primary goal is to improve transparency in the way companies report on their adoption of the UNGPs, being the first clear baseline for how businesses should conduct their activities to avoid negative impacts on people.

The promoters of the initiative noted that, while *“there are already companies progressing rapidly in embedding human rights into their core business (...), not every company has started this journey. Many are focused on the demands of quarterly returns and cast human rights as peripheral or irrelevant to their core business model. Implementing respect for human rights across a company’s activities and business relationships is not simple. It takes commitment, resources and time to embed respect for human rights into the ways that a large and diverse workforce thinks and acts. Moreover, companies rarely control all the circumstances in which they operate; those contexts may change rapidly and serious human rights dilemmas may arise. Impacts are often linked via a business relationship, prompting more responsible companies to try to change the behaviour of their partners, which for the largest companies can number in the thousands and even hundreds of thousands. This provides both risks, given vast value chains, but also important opportunities to improve responsible business conduct globally. Implementation of the UN Guiding Principles is therefore a process of continuous improvement, and the CHR.B Methodology itself reflects learning that will continue to evolve”*¹⁴⁰.

The CHR.B involves six organisations from different background, mirroring its multi-stakeholder nature:

¹⁴⁰Corporate Human Rights Benchmark, Pilot Methodology 2016.

- Aviva Investors¹⁴¹: the global asset management business of Aviva plc¹⁴², delivering investment management solutions, services and client-driven performance to clients worldwide.
- Business & Human Rights Resource Centre¹⁴³: is an international NGO that tracks the HR impacts (positive and negative) of over 6500 companies in over 180 countries making information available on its nine-language website.
- Calvert Investments¹⁴⁴: is an investment management firm, leader in sustainable and responsible investment strategies.
- Institute for Human Rights and Business (IHRB)¹⁴⁵: is a global think tank that provides a trusted, impartial space for dialogue and independent analysis to deepen understanding of HR challenges and the appropriate role of business.
- VBDO¹⁴⁶: is the Dutch association of investors for sustainable development that aims at a sustainable capital market, considering financial as well as non-financial environmental, social, governance (ESG) criteria.
- Vigeo Eiris¹⁴⁷: formed from the merger of EIRIS and Vigeo, is a global provider of environmental, social, governance (ESG) research for responsible investors.

Their representatives are parts of the CHRB Steering Committee, governing the initiative. Moreover, CHRB received the financial support of the Governments of the Netherlands and United Kingdom and of the Joseph Rowntree Charitable Trust.

3.2.1 Objectives

CHRB starts by the assumption that negative impacts on workers and their families, communities, and customers occur due to the fact that companies' activities and business relationships are not always considered by the markets. Markets allocate capital according to investment decisions which do not embed media scrutiny, an

¹⁴¹<https://www.avivainvestors.com>.

¹⁴²Aviva is a British multinational insurance company headquartered in London, United Kingdom. According to its website, it has about 33 million customers across 16 countries. In the United Kingdom, Aviva is the largest general insurer and a leading life and pensions provider (<https://www.aviva.com>).

¹⁴³<https://www.business-humanrights.org>.

¹⁴⁴<https://www.calvert.com>.

¹⁴⁵<https://www.ihrb.org>.

¹⁴⁶<http://www.vbdo.nl/en/>.

¹⁴⁷<http://www.vigeo-eiris.com>.

activity of regulation and advocacy to companies on how they are managing their HR risks and impacts. This implies that most of the companies have no reason to account for their social “costs” and their impacts on HR. As a consequence, *“capital is being misallocated; companies that impose the costs of their negative impacts onto workers, communities, and local governments are able to raise capital at the same rate as their more responsible peers, ultimately making them more competitive”*¹⁴⁸.

Although there are a number of ways to address this “market failure”, such as through appropriate policy and regulation, the disclosure of relevant information and the market and society reactions to these disclosures proved itself to be one of the most effective¹⁴⁹.

To this aim, CHRB assessed certain factors across many companies in order to develop a proxy measure of their HR performance.

These factors were the availability and quality of companies’ policy commitments on HR, the way they were governed, the systems and processes implementing these commitments and specific practices to prevent impacts or respond to serious allegations.

Ultimately, according to CHRB authors, since *“respecting rights should be a competitive advantage. In ranking the largest companies on their human rights performance, the CHRB is seeking to incentivise companies to race to the top of the annual Benchmark – within and across industries”*.

All this said, the CHRB objectives can be summarized as:

1. Acknowledge companies putting HR at the core of their business.

¹⁴⁸Corporate Human Rights Benchmark, Pilot Methodology 2016.

¹⁴⁹Recently, there have been several attempts to develop indexes and rankings aimed at assessing disclosures and soliciting companies to respond to particular global or industry challenges. Oxfam’s Behind the Brands (2013), for example, ranked ten major food and beverage companies; the Access to Medicine’s Index (launched in 2008 by the Access to Medicine Foundation, founded by the Bill & Melinda Gates Foundation, the UK Department for International Development and the Dutch Ministry of Foreign Affairs) assessed pharmaceutical companies’ provision and pricing of medicines; the Access to Nutrition Index (launched in 2013 by the Access to Nutrition Foundation) and the Access to Seeds Index (launched in 2013 by the Access to Seeds foundation) focused, respectively, on the consumption and production ends of the global food value chain.

2. Introduce a positive competitive environment for companies to race to the top of the annual ranking.
3. Enable investors to incorporate social “costs” into capital allocation decisions to better reflect the true cost of doing business.
4. Equip civil society, workers, regulators and consumers with information to take an evidence-based approach to challenge poorly performing companies.

This should lead CHRB to produce impacts on the involved stakeholders:

1. Investors: who will be better equipped to direct investments to companies performing in line with international HR standards, and engage with those who are not, in order to improve their performances or shift capital away if improvements are not achieved.
2. Businesses will be incentivised to demonstrate their respect of HR by making information publicly available, and when impacts occur more likely to demonstrate how they were addressed and the lessons learned. This provides an opportunity to learn from peers within and across industries, and improve preventative measures as well as effective remedies for victims.
3. Civil society, workers communities, customers and consumers will be empowered with better information to encourage and pressure HR advances by companies and make well-informed choices about which companies to engage with.
4. Policy-makers and regulators will have an objective means helping them to focus on those companies and industries that have significant HR risks and impacts and those underperforming despite these risk and impacts, highlighting where increased interventions, regulation and incentives might be necessary.

To achieve these goals and produce the expected impacts the CHRB walked a long way since its ideation in 2013. This way allowed CHRB to define a clearcut methodology and timeline. Below the relevant milestones of this path, so far:

2013- 2014	After consultations held with different stakeholders in multiple locations, to share the will to organize an initiative aimed at
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	<p>driving improvements in corporate human rights performance through a competitive incentive, CHRB was launched at the 3rd annual UN Forum on Business & Human Rights in Geneva.</p>
2015	<p>Development of the Methodology for the Pilot Benchmark, resulting from an extensive research, stakeholder engagement and dialogue with companies, industry associations, investors, civil society organisations, trade unions, academics, and reporting standards organisations.</p> <p>Consultations were held, involving over 400 individuals and organisations to collect feedbacks on the initial draft CHRB Framework and Indicators. Technical workshops with small groups of expert stakeholders were also carried out to discuss specific points and methodological challenges.</p>
2016	<p>CHRB identified and published its Measurement Themes and Indicators, involving stakeholders in a final consultation for collecting feedbacks in view of the final CHRB Pilot Methodology. The first 100 companies for the 2016 Pilot Benchmark on the Agricultural Products, Apparel and Extractives industries were selected. Throughout the year the engagements with the selected companies took place.</p>
2017	<p>The CHRB unveiled its Pilot results at a launch event in London and on its new website. At the end of the six-week appeal period –CHRB did not receive any formal Appeals in relation to the 2017 results.</p> <p>After an internal reflection on the Pilot Benchmark, CHRB developed a proposal to review its methodology with some changes, involving over 300 individuals and organisations representing a wide variety of stakeholders submitted feedback through: online survey calls, meetings and multi-stakeholder sessions.</p>

	The CHRB published the 2018 Methodology, together with a summary of the changes made to the CHRB Methodology and explanations and justifications of these amendments.
2018	Starting of the new assessment based on 2018 Methodology, involving the same companies of the previous one.

Table 5 – CHRB Milestones (2013 – 2018)

It is out of the scope of this work to analyze in detail the changes and improvements made in 2018 Methodology, since this work will focus on the Pilot Benchmark assumptions and results. Indeed, the purpose of this analysis is to perform - in Chapter IV – a comparison between its results and scores with the allegations of HR violations committed by the same sample of companies, collected by the Resource Centre.

3.2.2 2016 CHRB Pilot Benchmark: scope

The 2016 Pilot Benchmark focussed on the Agricultural Products¹⁵⁰, Apparel¹⁵¹ and Extractives industries¹⁵².

Each industry has a wide range of HR risks and impacts at every step of its value chain, which are reported in the Table 6.

¹⁵⁰Agricultural sector is intended from farm production up to processing, but not distribution and retailing of agricultural products.

¹⁵¹Apparel sector is intended as production and manufacturing, but not distribution and retailing of apparel products.

¹⁵²Extractive sector is intended as exploration, development, production, decommissioning and closure phases, but not processing, refining, marketing or end-use of extractive resources.



Table 6 - Challenges of the industries (Source: Corporate Human Rights Benchmark, Pilot Methodology 2016)

The choice of these industries only was based on multi-stakeholder consultations held in 2014, taking in considerations:

- severity of HR impacts of the industry;
- extent of previous work on HR in the industry, including through industry-specific initiatives;
- existence of other HR-related benchmarks covering the industry;
- global economic significance by size or “connecting” influence.

Considering these three industries and on the basis of the criteria¹⁵³ in Table 7, CHRBR selected a final sample of 106 companies¹⁵⁴ to involve in the analysis.

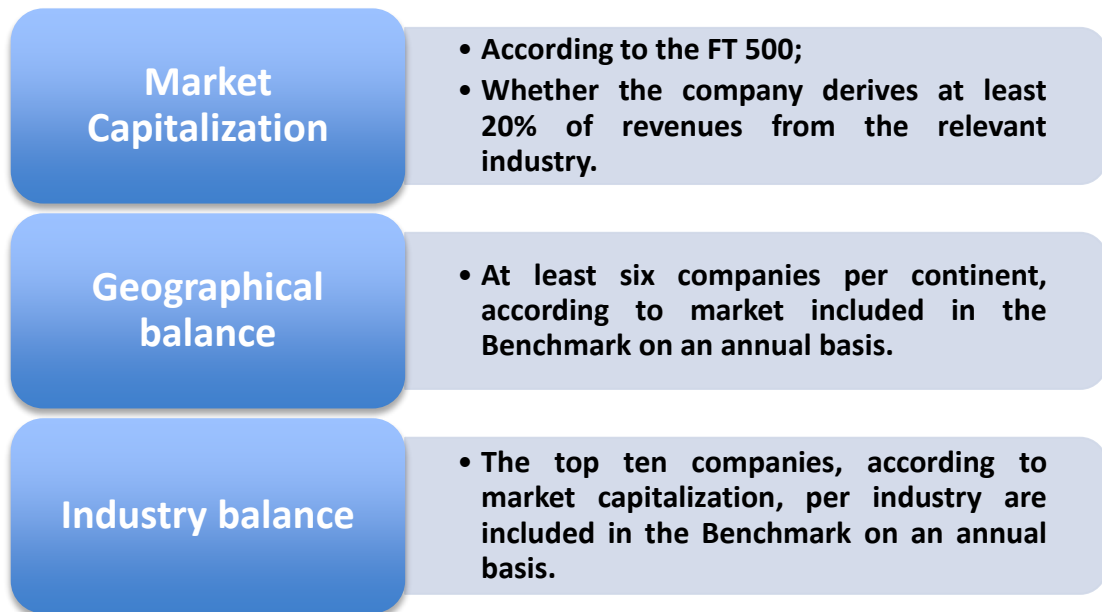


Table 7 – Selection criteria applied to companies of its sector.

The following tables show the distribution of these companies in terms of Region (Table 8) and Industry (Table 9). Table 10 shows the regional distribution of companies in each industry.

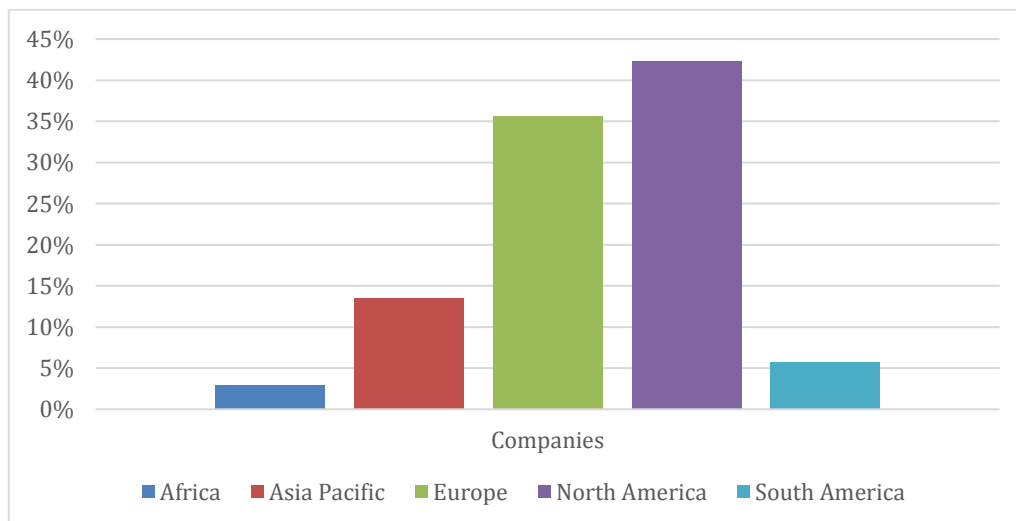


Table 8 - Companies by Region

¹⁵³ The market capitalization was calculated on Forbes 2000 (<https://www.forbes.com/global2000/list/#/tab:overall>).

¹⁵⁴The table with the full list of companies selected for each industry by the 2016 CHRBR is reported in the Annex 2.

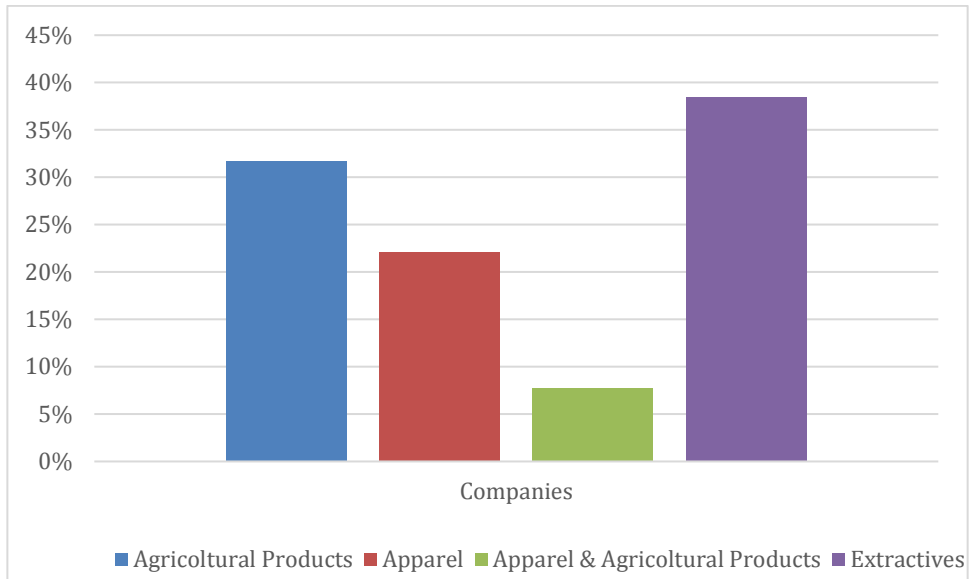


Table 9 Companies by sector

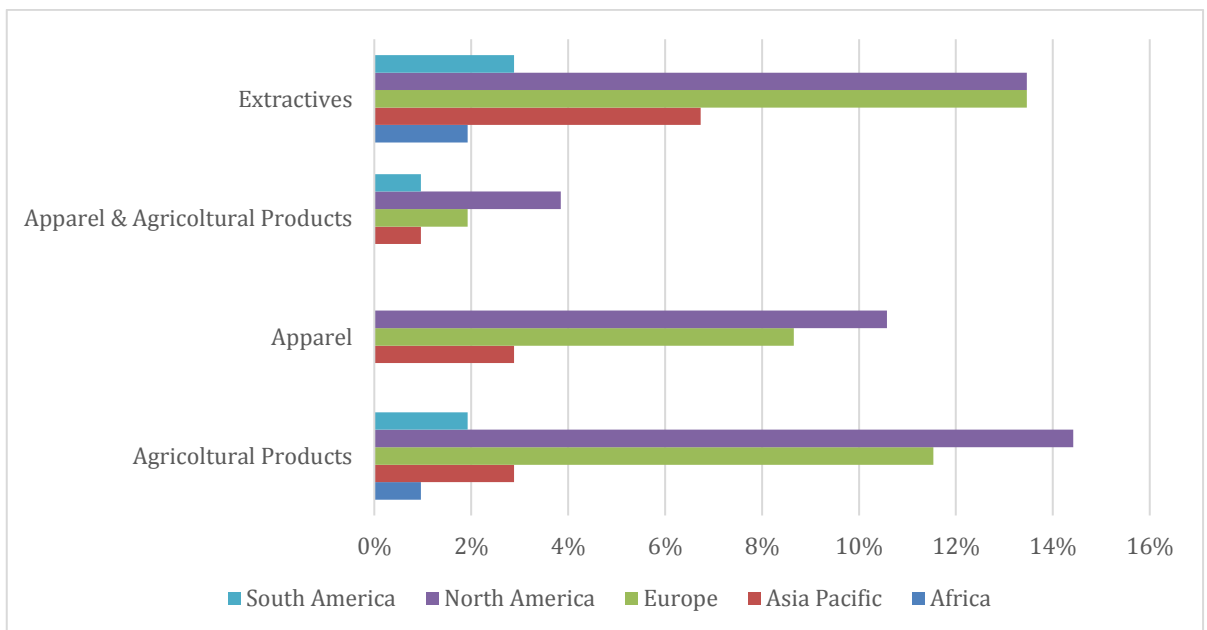


Table 10 - Regional distribution of companies in each industry

3.2.3 2016 CHRB Methodology

The methodology applied by CHRB rests on five pillars, which constitute the fundamental assumptions that have led the assessors.

1. **Transparency:** the Benchmark uses information in the public domain to assess companies. This aims to encourage greater disclosure of information by

companies and supports greater corporate transparency. The choice to use only this source of information is aligned with the “know and show” approach promoted by the UNGPs.

2. **Policies, Processes, Practices and Responses:** the Benchmark measured corporate HR performance by focusing on companies’ policies, processes, practices and responses to manage their HR risks and impacts. These different levels of evaluations were identified by means of the stakeholders consultations carried out with the aim *“to achieve a balance between measuring actual human rights impacts on the ground as well as the effectiveness of policies and processes implemented across large and complex companies to systematically address their human rights risks and impacts”*.

In Chapter IV this work will go through this assumption by linking these results with the alleged HR violations committed by the same companies, available on the database of the Resource Center.

3. **Comparability:** the Benchmark will focus on core aspects, integral to respecting HR and to sector specific issues where applicable. The Benchmark ensured that companies from different sectors could be benchmarked against each other, as well as companies belonging to the same sector in order to allow the identification of proper HR leaders. Moreover, CHRB was built to look at the long term in order to demonstrate companies’ improvement in HR performance achieved over time.

4. **International and Industry-Specific Standards:** the Benchmark is grounded in the UNGPs, meaning that indicators associated to each theme were based on UNGPs requirements. Moreover it is worth to highlight that, besides the UNGPs, the CHRB considered also several additional standards and guidance focused on specific industries and issues¹⁵⁵.

¹⁵⁵ CHRB cites the main UN Conventions & Declarations (such as the Universal Declaration of Human Rights (UDHR), 1948; International Covenant on Civil and Political Rights - ICCPR, 1966; International Covenant on Economic, Social and Cultural Rights - ICESCR, 1966; The Convention on the Rights of the Child - CRC, 1989; The Convention on the Elimination of All Forms of Racial Discrimination - CERD, 1965; The Convention on the Elimination of All Forms of Discrimination Against Women - CEDAW, 1979; The Convention on the Rights of Persons with Disabilities - CRPD, 2006; The Convention on the Protection of the Rights of All Migrant Workers and Members of their Families - ICMW, 1990; The Declaration on the Rights of Indigenous Peoples - UNDRIP, 2007; The Declaration on the Rights of

5. **Key Industry Risks:** the Benchmark focused on key industry risks as the main means to assess industry-specific challenges and approaches to managing HR risks and impacts. These key industry risks, commonly regarded as potentially severe or likely within the industry, are linked narrowly to HR salient issues introduced in Chapter II. The main difference is that these risks are relevant for companies in each industry as a whole, while salient HR issues are those at risk of the most severe negative impacts through a company’s specific activities or business relationships. In Chapter IV, companies in the sample will be analyzed to verify how their salient issues will be actually aligned with key industry risks, deviations will be then investigated. The risks for the three sectors, identified by CHRB through stakeholder consultations, are in Table 11.




 <p>Agricultural Products</p> <ul style="list-style-type: none"> Child labour Forced labour Freedom of association and collective bargaining Health and safety Land rights Water and sanitation Women’s rights 	 <p>Apparel</p> <ul style="list-style-type: none"> Child labour Forced labour Freedom of association and collective bargaining Health and safety Women’s rights Working hours 	 <p>Extractives</p> <ul style="list-style-type: none"> Freedom of association and collective bargaining Health and safety Indigenous peoples rights and FPIC Land rights Security Water and sanitation
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Table 11 – Key industry risks

Each of these risks is likely to impact on one or more specific HR. Some of them are cross-cutting to industries and, specifically, those ones related to labour rights, such

Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1981), the OECD Guidelines for Multinational Enterprises (2011), the International Labour Organization – ILO - core labour standards; the International Finance Corporation Performance Standards on Environmental and Social Sustainability (2012), Human Rights-Specific Indicators (such as specific guides on measurement and implementation, etc.) and sector specific standards (such as FAO-OECD Guidance for Responsible Agricultural Supply Chains for the Agriculture Sector, the Know the Chain initiative for the Apparel sector, and the Voluntary Principles on Security and Human Rights for companies of the extractive sectors).

as freedom of associations and collective bargaining, believed relevant for every industry making extensive use of low skilled force labour.

The efforts that companies make to address them is part of the HRDD required by the UNGPs and it was in the scope of CHRB to analyse these efforts and give them a score, only considering information made of public domain by the companies.

All this given, CHRB tried to translate the rules expressed in these five pillars above into indicators in order to fulfil its measurement and comparability goals.

Indicators were related to the following six Measurement Themes:

- **Measurement Theme A: focused on governance and policy commitments**

This Measurement Theme focused on a company's HR related policy commitments and how they are governed. It includes two related sub-themes:

Policy Commitments¹⁵⁶: related indicators aim to assess the extent to which a company acknowledges its responsibility to respect HR, and how it formally incorporates this into publicly available statements of policy.

Board Level Accountability¹⁵⁷: related indicators seek to assess how the company's policy commitment is managed as part of the Board's role and responsibility.

- **Measurement Theme B: assessed the extent of a company's systems and processes established to implement the company's policy commitments in practice.**

It included two related sub-themes:

Embedding¹⁵⁸: related indicators seek to assess how the company's HR policy

¹⁵⁶According to the UNGP 16, a policy commitment is a statement approved at the highest levels of the business that shows the company is committed to respecting human rights and communicates this internally and externally. This is important because it sets the "tone at the top" of the company that is required to drive continuously respect for human rights into the core values and culture of the business. A proper policy commitment indicates that top management considers respect for human rights to be a minimum standard for conducting business with legitimacy; it sets out their expectations of how staff and business relationships should act, as well as what others can expect of the company.

¹⁵⁷According to the UNGP 16, the development and implementation of a company's approach to human rights should be guided from the Board. It should guide the company to assure coherence between its responsibility to respect human rights and its policies and procedures governing its wider business activities and relationships. As an example, it should include policies and procedures that set financial and other performance incentives for personnel, procurement practices or lobbying activities where human rights are at stake.

¹⁵⁸According to UNGPs, embedding policy commitments into company culture and its broader management systems and reinforcing them with specific due diligence processes ensures that a company takes a systematic and proactive to respecting human rights, rather than a reactive approach.

commitment is embedded in company culture and across its management systems and day-to-day activities, including within the management systems covering their business relationships.

HRDD¹⁵⁹: related indicators were focussed on the specific systems the company has in place to ensure that due diligence processes are implemented to assess risks to HR emerging from companies activities, to integrate and act on these findings, to prevent and mitigate the impacts, and to track and communicate those actions. The focus must be on risks to the HR of people, as distinct from risks to the business itself.

- **Measurement Theme C: looked at the extent to which a company provides remedy in addressing actual adverse impacts on HR.** These indicators seeked to assess the extent to which a company has appropriate processes in place so that grievances could be addressed early and remediated directly where appropriate¹⁶⁰.
- **Measurement Theme D: focussed on specific practices to prevent HR impacts in each industry.** Its indicators seek to assess the actual practices occurring within

¹⁵⁹As for Chapter II, human rights due diligence lies at the hearth of the UNGPs' architecture. Therefore companies are requested to:

- identify and assess any negative impacts on human rights with which they may be involved. This includes actual impacts (past or current) and potential impacts (those possible in the future), from the company's own activities and from its business relationships. Assessing is the starting point for a company to understand how to translate its human rights policy commitment into practice, it is the process by which the company gathers the basic information it needs in order to know what its human rights risks are so it can prevent and mitigate them;
- address negative human rights impacts by integrating the findings from their impact assessments across relevant internal departments and processes. Companies should be able to act, prevent and mitigate the impacts identified, and set in place internal decision-making, budget allocation and oversight processes accordingly;
- track their responses to actual and potential human rights impacts to evaluate how effectively they are being addressed. Tracking should be based on appropriate qualitative and quantitative indicators and draw on internal and external feedback, including from affected stakeholders.
- communicate externally in order to account for how they address their impacts, particularly when concerns are raised by, or on behalf of, affected stakeholders.

¹⁶⁰According to UNGPs, in case a company realizes that it has caused or contributed to negative human rights impacts, it should provide for, or cooperate in, their remediation through legitimate processes. An alternative channel for affected stakeholders is in the remediation processes provided by the state or third-party institutions allowing affected stakeholders to raise complaints or concerns, being free to choose which available channels they wish to use.

companies in order to implement key enabling factors¹⁶¹ and to prevent specific impacts on HR more at risk¹⁶² of occurring given the industry in question.

- **Measurement Theme E: related indicators were focused on responses to serious allegations of negative impacts that a company may be alleged or reported to be responsible for by an external source.** The indicators focussed on the responses provided by the company to specific allegations identified by CHRB in coherence with the UNGP 14¹⁶³. Such allegations should anyway have resulted in impacts clearly related to HR¹⁶⁴, fallen within the time range set by CHRB¹⁶⁵ and reported on external sources such as print media, NGOs, news sites, governmental agencies, commentaries and social media. CHRB have chosen to consider a maximum of two allegations per type of impact, considering those with highest severity, systemic nature, with a prior warning and with legal implications (e.g. ongoing court cases, fines, judgements, formal inquiries by government departments and regulators).
- **Measurement Theme F: focused on transparency on HR,** which came in the form of additional “disclosure points” awarded against individual indicators the company has used to publish information against certain reporting standards¹⁶⁶.

The table 12 below summarises the number of indicators related to each measurement theme, by sector:

¹⁶¹Intended as factors and business processes deemed helpful to enable rights-respecting outcomes within company activities and improve performances.

¹⁶²Intended as those risks commonly regarded as potentially severe or likely within the industry and that companies are expected to demonstrate, through a process of human rights due diligence, how they are preventing them or why they are not relevant. Additional details on these risks, splitted by industry, are reported in table 11.

¹⁶³Severity of impacts will be judged by their scale (The gravity of the impact on the human right(s)), scope (the number of individuals that are or could be affected and irremediable character) and remediability (the ease with which those impacted could be restored to their prior enjoyment of the right(s)).

¹⁶⁴In particular when these impacts regard child labour, forced labour, discrimination, freedom of association and collective bargaining, working hours, health and safety, right to security of persons including freedom from torture, cruel inhumane or degrading treatment, land rights including forced displacement, indigenous peoples rights and environmental damage leading to water, land or air harmful to human health or negative impacts on livelihoods.

¹⁶⁵Allegations must have occurred within the previous three years from the start date of the annual CHRB research period

¹⁶⁶Global Reporting Initiative (GRI), Sustainability Accounting Standards Board (SASB), UN Guiding Principles Reporting Framework (UNGPRF) reporting standards or equivalent standards.

Measurement Theme		Agriculture Products	Apparel	Extractive
A – Governance and Policies		9 indicators		
A.1 - Policy Commitment		6 indicators		
A.2 - Board Level Accountability		3 indicators		
B - Embedding Respect and HRDD		14 indicators		
B.1 – Embedding Policy Commitment		9 indicators		
B.2 - HRDD		5 indicators		
C - Remedies and Grievance Mechanisms		7 indicators		
D - Performance: Company HR Practices		20 indicators	18 indicators	8 indicators
Enabling factors	Living wage	2 indicators	2 indicators	1 indicator
	Aligning purchasing decisions with HR	1 indicator	1 indicator	
	Mapping and disclosing the supply chain	1 indicator	1 indicator	
	Transparency and accountability			1 indicator
Key Industry Risks	Child Labour	2 indicators	2 indicators	
	Forced Labour	4 indicators	4 indicators	
	Freedom of association and collective bargaining	2 indicators	2 indicators	1 indicator
	Health and Safety	2 indicators	2 indicators	1 indicator
	Indigenous Peoples rights and FPIC			1 indicator
	Land Rights	2 indicators		1 indicator
	Security			1 indicator
	Water and Sanitization	2 indicators		1 indicator
	Women’s Rights	2 indicators	2 indicators	
	Working Hours		2 indicators	
E - Performance: Responses to Serious Allegations		3 indicators	3 indicators	3 indicators
F - Transparency		28 indicators	26 indicators	25 indicators
<u>Total number of indicators</u>		<u>78 indicators</u>	<u>74 indicators</u>	<u>63 indicators</u>

Table 12 – CHRB Measurement Themes and related indicators

In order to translate the result achieved by each company, CHRB assumed that for each indicator a company could score zero, one or two points. Zero points if the company did not provide sufficient evidence to fulfil the requirements highlighted in Score 1. To gain two points a company had to fulfil the requirements outlined in Score

1 and Score 2¹⁶⁷. The overall score of the company was obtained by adding the score of each indicator, weighted with the relevance of the corresponding Measurement Theme, according to the Table 13 below.

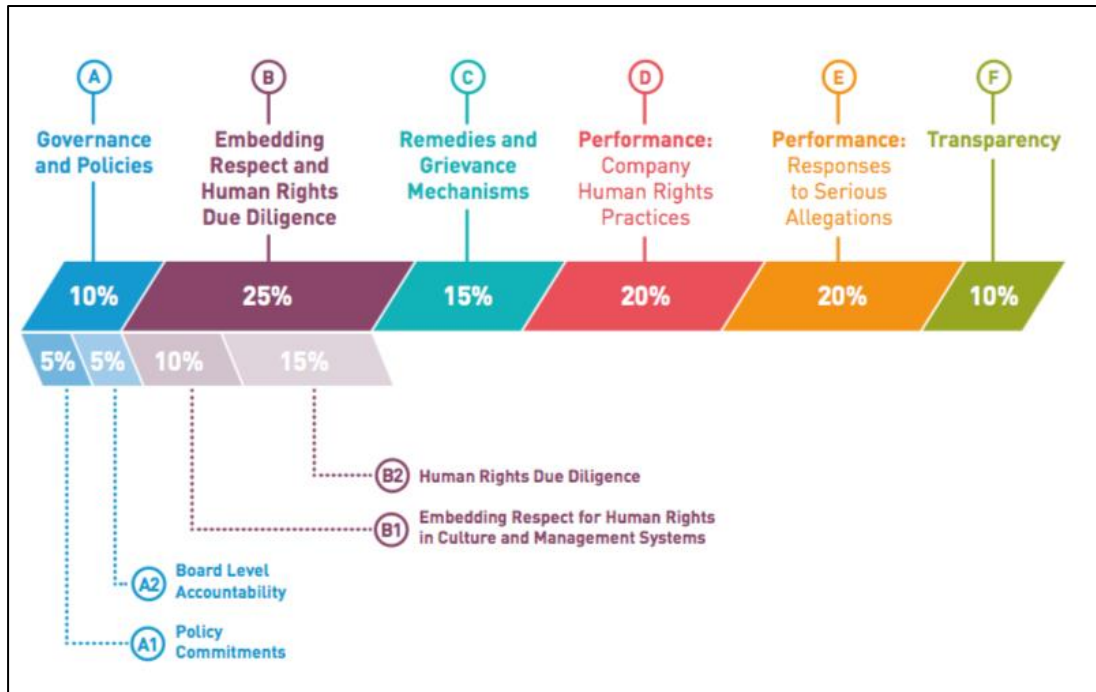


Table 13 - Weighting of CHRB Measurement Themes

Finally, the authors of CHRB specified that some of the aspects¹⁶⁸ that actually contribute or are able to impact on the HR performance of companies were

¹⁶⁷ Indicators related to the Measurement Theme F (Transparency) did not follow this approach. In this case a company could score zero or one point. The overall score of the Theme was calculated by adding the number of points awarded for each indicator and by dividing it by the maximum number of points available.

¹⁶⁸ As for the Corporate Human Rights Benchmark, Pilot Methodology 2016, these aspects are:

- Geography: while there are specific criteria for each industry, there are not specific criteria for companies operating in particular geographies – although there are some criteria that encourage companies to identify their salient risks, which might include geographical considerations;
- Consumption of product and services: focused on the production end of the value chain of each industry, rather than on the impacts linked to the distribution, retailing, end-use or consumption of products and services;
- Positive impacts: In line with the UN Guiding Principles, the Benchmark focused on measures to avoid adverse impacts on human rights. It did not take into account positive impacts through, for example, CSR and philanthropic programmes;
- Collective impacts: CHRB did not include issues that are relevant to human rights but where specific impacts on identifiable victims cannot be directly attributed to a particular company or its business relationships (such as climate change links to human rights concerning a clean environment or taxation links to economic rights).

intentionally not covered in the 2016 Pilot Benchmark in order to keep the survey more focussed on key issues of the BHR discussion.

3.2.4 2016 CHRB Results

In 2016 the CHRB’s team of researchers¹⁶⁹ reviewed the material companies uploaded on the CHRB Disclosure Platform and on other additional public sources, such as company annual reports, sustainability reports, and financial reports.

Then, CHRB engaged with companies in order to share the results of their analysis. To this aim, companies were contacted with their draft Benchmark assessment and any outstanding issues from the research.

Companies had an opportunity to review the research and analysis and feedback issues to the CHRB. In the course of this period of engagement, companies had also the opportunity to understand and discuss any discrepancies in the analysis due to either a lack or misinterpretation of data.

At the end of this engagement, whether companies wanted to disclose further information into the public domain to supplement the research conducted by CHRB, these additional details were considered for their final assessments, if relevant.

The result¹⁷⁰ of this first round of analysis was published in March 2017, and it consisted in the rankings of these 98¹⁷¹ companies (Table 14 below) across the agricultural products, apparel and extractives industries, based on their HR related policies, processes, practices and responses.

CHRB BAND RANGE	RESULTS
60-69%	3 companies (100% Europe)
50-59%	3 companies (100% Europe)

¹⁶⁹ The team of researchers supporting CHRB was made of Vigeo-EIRIS researchers, who carried out the research and analysis on behalf of the CHRB.

¹⁷⁰ The table with full results is in Annex 3.

¹⁷¹ 106 companies were originally announced in the March 2016 publication of the CHRB Pilot Methodology, but 8 companies were subsequently removed due to mergers or being their subsidiaries of other companies: Ambev (Brazil – AG) ; BG Group (UK – EX); Coca-Cola Femsa (Mexico – AG) ; Hindustan Unilever (India – AG); Imperial Oil (Canada – EX); Koninklijke Ahold (Netherlands – AG); LVMH Moët Hennessy Louis Vuitton (France – AP); SABMiller (UK – AG).

40-49%	12 companies (58% North American, 33% Europe, 9% Africa)
30-39%	18 companies (44% Europe, 39% North America, 11% South America, 6% Africa)
20-29%	48 companies (42% North America, 31% Europe, 19% Asia Pacific, 4% Africa, 4% South America)
10-19%	5 companies (60% North America, 20% Asia Pacific, 20% South America)
0-9%	9 companies (67% North America, 33% Asia Pacific)

Table 14 - CHRB 2016 Overall results

CHRB researchers¹⁷² have effectively highlighted the main messages resulting from the analysis. They are:

1. each industry has its leaders, even if none of them has achieved the top score, with at least two companies per industry in the top two bands. The top score earned was in the 60-69% range;
2. the results are significantly skewed toward the lower bands, with around the 63% of companies scoring between the last three bands (0%-29%). It seems to prove that many companies are still facing an implementing phase of the UNGPs and other internationally recognised HR and industry standards. CHRB underlines this finding as “uncomfortable”, being already seven years since the UNGPs were endorsed. Next assessments will measure how this implementation process evolve;
3. since a large majority of companies has poorly performed, according to CHRB, it could result in dangers for HR abuse of workers and communities. Therefore the critical mass of low performing companies should look to the leaders’ example and make urgent improvements, especially those with operations in high risk countries for HR;
4. the analysis showed that companies performed better on policy commitments and high-level governance arrangements, while HRDD is still behind even amongst leading companies. This was true especially for what concerned risks

¹⁷² Source: CHRB, Key Findings 2017.

identification, tracking responses, communicating effectiveness, remediating harms, and undertaking specific practices linked to preventing key industry risks. It is therefore needed a stronger focus on implementing due diligence and remedy, interiorizing lesson learned systematically;

5. results showed a lack in companies engagement with potentially affected stakeholders, especially communities and workers¹⁷³, although stakeholders could provide decisive contribution to assess how company products, operations and services could jeopardize HR in their operations and supply chains;
6. the 2017 results indicate that the companies that faced serious allegations¹⁷⁴ fell in the top and bottom bands of the Benchmark, while companies in the middle bands tended not to face allegations meeting CHRB's threshold of severity for inclusion. According to the authors, companies tended to respond publicly to the allegations considered and most of the companies had appropriate policies in place covering the alleged issue. Viceversa only few companies showed to have taken appropriate action.

Moreover, by looking at the results both in terms of regional distributions of companies and in terms of industry distribution, some additional inputs emerged.

In particular, considering the regional distribution (Table 15), it was observed that more than 50% of the companies falling in the first three CHRB Band Ranges (hereinafter CHRB BR) were European companies. By considering only the first two CHRB BR, this percentage rose to 100%.

¹⁷³ According to the authors, the 56% of companies did not score any points for their commitments to such engagement; 84% did not score any points for having a framework for such engagement; and 91% of companies did not score any points for involving users in the design or performance of their grievance mechanisms.

¹⁷⁴ As explained earlier, the CHRB did not consider the veracity of the allegation itself, whether how timely was company respond to the allegation, whether the company had appropriate policies in place, and whether actions taken were appropriate.

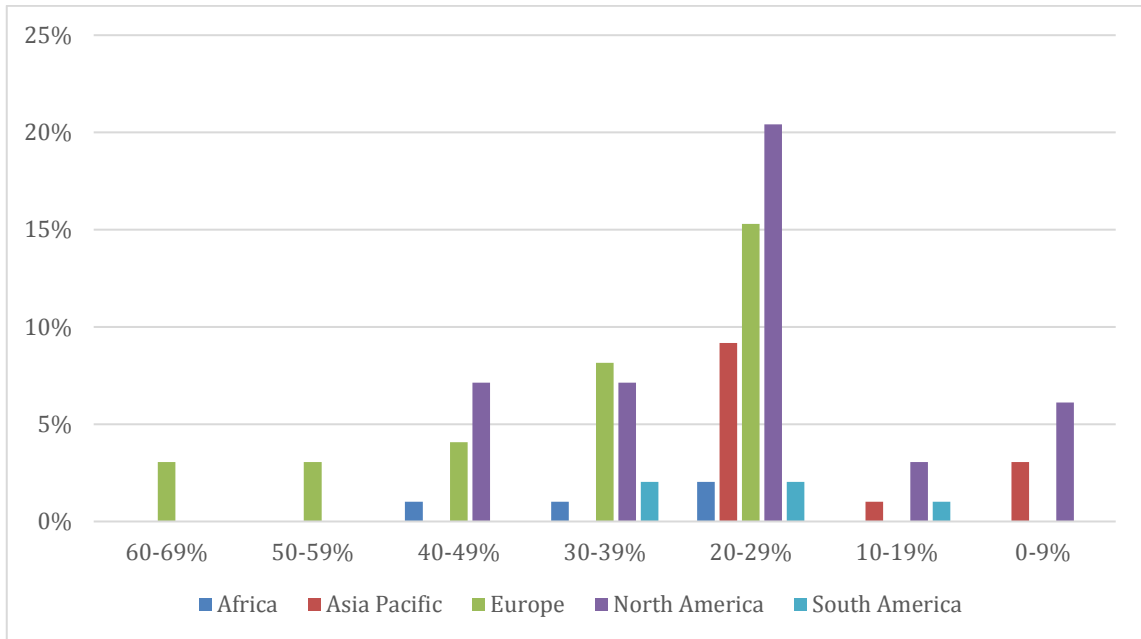


Table 15 - Band Ranges by region

This trend reflects the composition of the sample, with more than the 80% of the companies based in North America (48%) and Europe (34%). Companies based in Europe showed higher HR performances, considering that approximately the 30% (10 companies out of 33) of them ranked the three Highest CHRBR, while companies from USA are skewed to the Lower CHRBR with the 67% (29 companies out of 43) concentrated in the last three CHRBR.

Such a big difference could be explained considering that, in the last few years, the European context has been interested by legislative initiatives on BHR, aimed at pushing companies to disclose measures taken for addressing HR risks. An example of this is the UK Modern Slavery Act (2015), requiring companies to annually publish a statement showing how they manage modern slavery risks affecting their supply chain. The France Law on the Duty of Care in France (2016) or the European Union Directive on Non Financial Disclosure (2014) go in the same direction. Additional details on these emerging legislative trends are provided in Chapter I.

It is also quite interesting to notice that, although African companies were poorly represented in the sample, they showed relatively good performances with the 50% of them placed in Upper-Medium CHRBR (49% - 30%).

The companies' distribution by industry was much more omogeneous, with an overwhelming majority of the companies of each industry concentrated in the Lower-Medium CHRB BR (20%-29%).

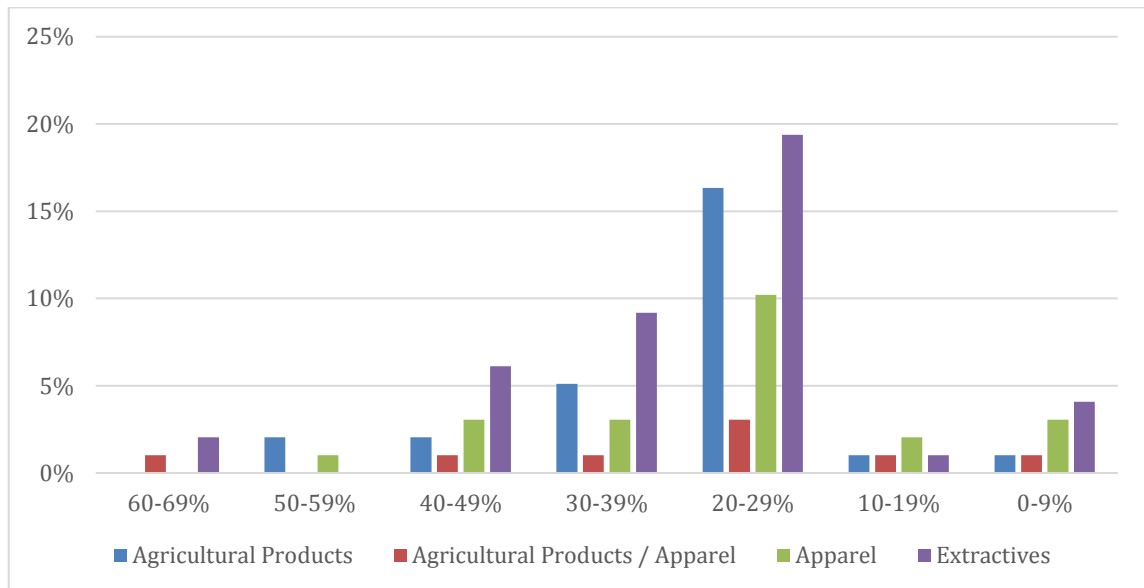


Table 16 - Band ranges by sector

The 46% (19 companies out of 41) of the Extarctive companies in the sample and the 60% (16 companies out of 27) of Agricultural Products companies fell in this CHRB BR, showing convergence of operators on low medium standards.

While the results of this first Pilot of the CHRB provides meaningful feedbacks and information on the main trends observing within these three industries having potentially severe impacts on HR, it is necessary to keep in mind two main considerations and answers which will horizon the next part of this work:

1. CHRB has considered only information in the public domain to assess companies. This approach is centered on an assumption of transparency and alignment with the “know and show” attitude of the HR reporting, promoted by the UNGPs. The survey gave back a list of top performers and a list of companies with poor HR performances, based on the way they communicate their alignment on UNGPs and other standards.

This consideration has led me to a first question: did this alignment result in a tangible reduction in the number and magnitude of HR violations committed¹⁷⁵ by the high performer companies, compared with the average of their industry? Ultimately, did the UNGPs implementation by companies produce a decrease in HR violations or, behind the adoption of this framework, companies continue “business as usual” with no, or few, effects on HR impacts caused on communities and individuals?

2. Most of the indicators applied by the CHRB were based on specific HR risks connected with each industry. These risks were identified through consultations with stakeholders in light of HR deemed as the most at stake by business activities. This consideration has led me to a second question: did these risks reflect the real industry HR challenges? In other words, were these risks consistent with the HR salient issues of the companies and industries they belong to?

This work will answer to these questions in Chapter IV. To this aim the alleged HR violations, committed by these 98 companies within 2014 and 2016, were collected and analysed in order to classify them per HR impacts and to assess how these violations are linked with the overall score of companies.

¹⁷⁵ Consistently with the UNGPs, human rights’ violations caused or happened in the interest of the company or committed by public authorities, business partners or other entities with its complicity, should be associated to the company itself.

Chapter IV

4.1 HR performances of Multi National Enterprises

In the previous Chapters this work has investigated whether MNs have the responsibility to respect the HR identified by the international treaties and conventions, beyond the local laws. According to influential authors in the field of Business Ethics and CSR (Wettstein, 2016; Nolan, 2013), the existence of this obligation is controversial, due to the non-binding nature of the initiatives taken in this field.

Then this study has focused on the UNGPs Framework, representing the international non-mandatory standard that companies are called to adopt in order to meet their responsibility to respect HR. On this regards, some authors expressed doubts on the effectiveness of its HRDD, being both a standard of conduct to discharge a responsibility and a process to manage HR risks (Bonnitcha et al., 2017). Other authors acknowledge the disruptive value of the UNGPs Framework, although questioning the lack of courage in the SRSR when he decided to go for a soft-law solution, highlighting that little actual evidence is available so far on the tangible impacts of the UNGPs (Wettstein, 2015) and on how companies are actually conducting HRDD consistent with their responsibility to respect HR under the UNGPs (Mc Corquodale et al., 2017).

In Chapter III, this work has introduced the CHRB and its results, which has provided a ranking of the most virtuous companies and of those ones following behind, in the long journey to operationalize UNGPs and HRDD in internal policies and practices.

The aim of this Chapter IV is to assess whether, in their daily business activity, these leading companies do better than their followers in terms of HR impacts on individuals and communities, and if they showed a decreasing trend of HR violations over time. For this analysis, besides the results of the CHRB, I have considered the information contained in the database of the Resource Centre, which collects extensive data concerning alleged HR violations committed by companies, HR lawsuits involving these companies, and their eventual public replies to these allegations.

Indeed the ultimate goal of this Chapter is to assess the capability of the UNGPs and HRDD to improve HR performances of companies, an area poorly investigated so far, providing with that an answer to the observed scarcity of actual evidence on how companies are actually conducting HRDD and on the tangible impacts of the UNGPs, mentioned earlier.

To this aim, the methodology applied has followed these steps:

1. collect both the allegations of HR violations and lawsuits, which have interested the 98 companies scrutinized by the CHRB in the period 2014 – 2016;
2. analyze their trend in the period 2014 – 2016;
3. interpolate data on HR violations and lawsuits with the CHRB BR in which companies are allocated, analyze their trend in the same period, by sector;
4. drill down on specific cases of HR violations to understand the measure taken by companies, if any;

in order to allow a conclusive analysis of the results in terms of sector specificities and other influencing factors.

4.2. The Business and Human Rights Resource Centre

The Resource Centre¹⁷⁶ is a small non-profit organization, playing a crucial role in the relatively small BHR movement. Since 2001, the Resource Center has been tracking the HR policies and performances of over 7500 companies in over 180 countries, making this information publicly available on its website.

During the years the Resource Centre has been collecting almost 110 thousand records of HR related information and its website is the only global BHR knowledge hub, delivering up-to-date and comprehensive news in eight languages addressed to advocates, activists, business people, governments, investors and the UN.

¹⁷⁶ The Resource Centre makes use of 18 Regional Researchers based in Australia, Brazil, China, Colombia, Egypt, Hong Kong, India, Kenya, Japan, Jordan, Mexico, Myanmar, Philippines, Senegal, South Africa, UK, Ukraine and USA, supported by two offices in London and New York. Oversight is provided by a board of trustees, consisting in former business people, HR, development and environmental advocates and academics.

The Resource Center is focussed on advocacy, corporate accountability and transparency on BHR and every time a new specific allegation arises, it approaches the company asking to respond. The response rate is more than 70%¹⁷⁷.

Among the wide offer of information and services provided by The Resource Center, I have focused on those ones regarding HR violations committed by company, or caused by its business relationships, when directly linked to its operations, products or services.

4.2.1 Alleged HR violations committed by MNE and lawsuits, mapped by the BHRRC

As said, the database of the Resource Center has almost 110 thousands items¹⁷⁸. These items are stories, single articles, reports or lawsuits referred to HR violations, involving one or more companies all over the world:

- story: it is the entire stream of articles related to an alleged HR violation or pending lawsuit. Only the biggest issues will result in stories;
- article: it is the single news concerning an alleged HR violation or a pending lawsuits, that is a violation already resulted in a legal proceeding, involving one or more companies;
- report: it is the news introducing the publication of a Report or research concerning a relevant HR violation, which is normally not episodic and with long lasting impacts.

Each item is supported by all the relevant information, such as:

- Company: company involved in the alleged violation;
- Region/ Country: Region/Country where the violation has taken place;
- Date: date of the article/report

Finally, each item is associated to certain categories of issues, proper of the BHR discussion. They are:

¹⁷⁷ Source Resource Centre website (<https://www.business-humanrights.org>).

¹⁷⁸ The Resource Centre does not store only information related to HR abuse connected to companies. Part of these items are referred to positive facts, such as reports highlighting human rights progresses made in a country related to business activities. For the purpose of this work I will consider only those items related to human rights violations, which are in scope of the proposed analysis.

- Abuses: 22 kinds of human rights abuses are mapped. Each item can be associated to more than one¹⁷⁹.
- Discrimination: 10 kinds of discriminations are mapped¹⁸⁰.
- Groups: this category specifies the group the abuse is related to¹⁸¹.
- Labour: in case the violation concerns labour, this category explicits the kind of labour implication¹⁸².
- Other human rights topics: several additional topics fall in this category. Most of them are industry specific and helpful to identify the most salient issues connected to each industry¹⁸³.

The Table 17 below shows how the information are organized and made accessible by the Resource Centre's website.

Story:

Government to sue BHP and Vale over dam disaster that caused deaths & environmental destruction

In 5 November 2015, a dam burst at an iron ore mine in Brazil, operated by Samarco, a joint venture between BHP Billiton and Vale. A state prosecutor claimed it was the worst ever environmental disaster in Minas Gerais state. It has caused deaths, people are still missing, the city closest to the mine was destroyed by muddy waters, and the mud tide has spread for nearly 500 km from the site, newspapers said. More than 2000 people and several rivers are believed to be affected by the disaster, as pointed out by Movimento dos Atingidos por

¹⁷⁹ They are: disappearances, abductions, arbitrary detentions, beatings and violences, complicity, death penalties, death threats, deaths, denial of freedom of association, denial of freedom of expression, denial of freedom of movement, displacements, genocide, human trafficking, injuries, intimidations and threats, killings, rape and sexual abuses, sexual harassment, slavery, torture and ill treatments, unfair treatments.

¹⁸⁰ They are age discrimination, disability discrimination, gender discriminations, HIV/AIDS discrimination, marital status discrimination, political opinion discrimination, pregnancy discrimination, racial/ethnic/caste origin discrimination, religion discrimination, oriental and gender identity (LGBT) discrimination.

¹⁸¹ They are: castes, children, family, fathers/paternity, homosexuals, indigenous people, men, migrant and immigrant workers, mothers, pregnant women, racial and ethnic groups, mothers..

¹⁸² They are: child labour, export processing zones, forced labour and modern slavery, labour in general, living wage, prison labour.

¹⁸³ They are: access to information, access to water, certification, complaints mechanisms, consumers, corruption, cultural issues, digital divide, disclosure/use of payments to governments, education, Free Prior Informed Consent (FPIC), genetically modified food and crops, housing, intellectual property, land rights, microcredit, monitoring, privacy, privatization, procurement, protests, religion, reputation, right to food, supply chain, tax avoidance.

Barragens-MAB (Movement of people affected by dams). It includes comments from Samarco and BHP Billiton.

All components of this story: 13 articles.

These articles come from different sources. Some of them are NGOs declarations (e.g. Movement of People Affected by Dams/MAB-Movimento de Atingidos por Barragens), some of them are official requests (e.g. United Nations independent experts on environment and toxic waste), some others are companies' replies (e.g. Samarco reply to allegations)

Region: South America

State: Brazil

Company: BHP Billiton, Vale, Samarco (JV BHP Billiton and Vale)

Company: BHP Billiton, Vale, Samarco (JV BHP Billiton and Vale)

Categories:

Abuses: Injuries, Displacement, Deaths

Other issues: Access to water, Access to information, Health

Table 17, Example of story related to BHP and Vale (Extractive sector)

4.3 Searching for a direct correlation between CHRB's results and the Resource Centre stories: does the implementation of the UNGPs Framework imply improving HR performances?

An extensive analysis of the Resource Centre database has allowed me to collect all the HR stories¹⁸⁴ (hereinafter Stories) related to each of the 98 companies assessed by the CHRB, covering a three years period (2014 – 2016).

This analysis led me to fulfill the first and the second steps of the four steps identified in the Paragraph 4.1 of this Chapter, that is:

“to collect both the allegations of HR violations and lawsuits, which have interested the 98 companies scrutinized by the CHRB, in the period 2014 – 2016” and “analyze their trend in the period 2014 – 2016”

The analysis has shown the results reported in the Table 18 below.

Sector	Number of companies	2014	2015	2016	Total
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¹⁸⁴ Every single story was analyzed together with those articles, lawsuits, reports associated to it.

Extracive	41	121	159	172	452
Apparel	22	12	25	49	86
Agricultural Products	35	39	87	126	259

Table 18, HR allegations collected by BHRRC referred to the 98 companies (period 2014 – 2016)

By looking at this Table 18, it is possible to affirm that these stories are not homogeneously distributed among the different sectors. Indeed, even if the extractive one is much more represented than the apparel sector, the average number of stories per capita ranges between 5, in the apparel sector, and 12, in the extractive sector.

Moreover, it is easy to observe that every sector has shown a steady increasing trend in the number of stories, both at aggregate level and per capita level¹⁸⁵. In particular, the apparel sector has shown a meaningful increase of its stories, corresponding at around the 100% per year. These trends are represented in the Table 19 below.

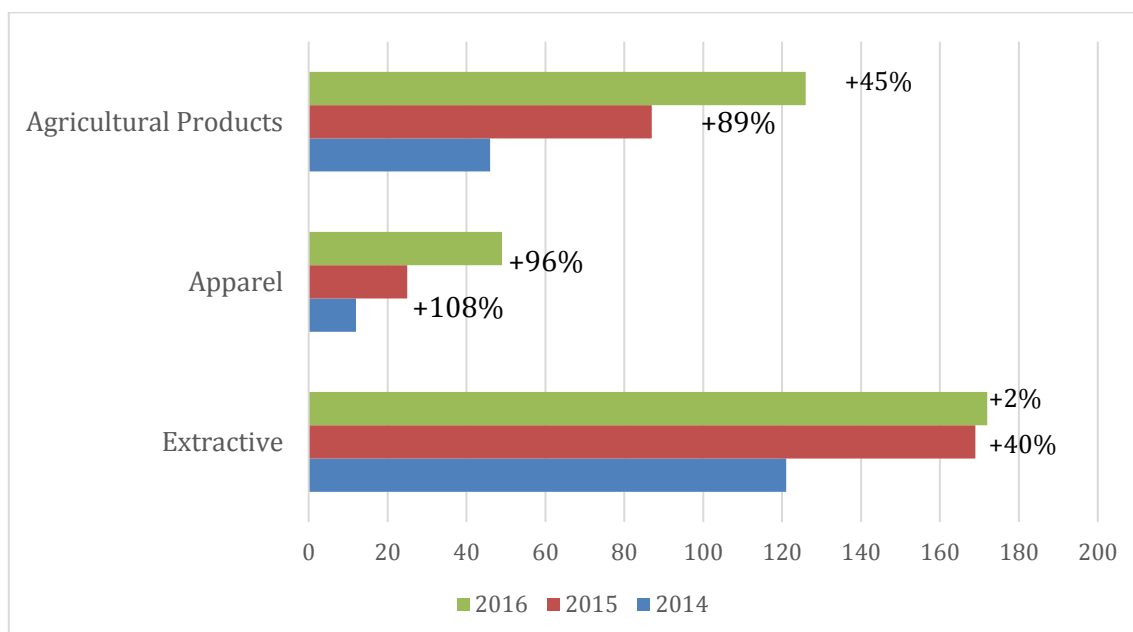


Table 19 - Number of allegations (stories) related to companies in the sample, by sector (period 2014 – 2016)

¹⁸⁵ At per capita level the number of alleged human rights violations showed the following trend:

- Extractive: 2014: 3,1; 2015: 4,33 (+40%); 2016: 4,4 (+2%).
- Apparel: 2014: 0,75; 2015: 1,6 (+113%); 2016: 5,4 (237%).
- Agricultural Products: 2014: 1,6; 2015: 3 (+88%); 2016: 4,3 (+143%).

Before going deeper with the analysis, this information led me to a first general consideration: despite the effort showed by many MNEs to strengthen their commitment to respect HR by implementing the UNGPs Framework in their processes, HR violations continue to occur in every sector. This confirms the general concern on the impact of business on HR and the need to keep the attention high on this topic (Bloomer, 2014).

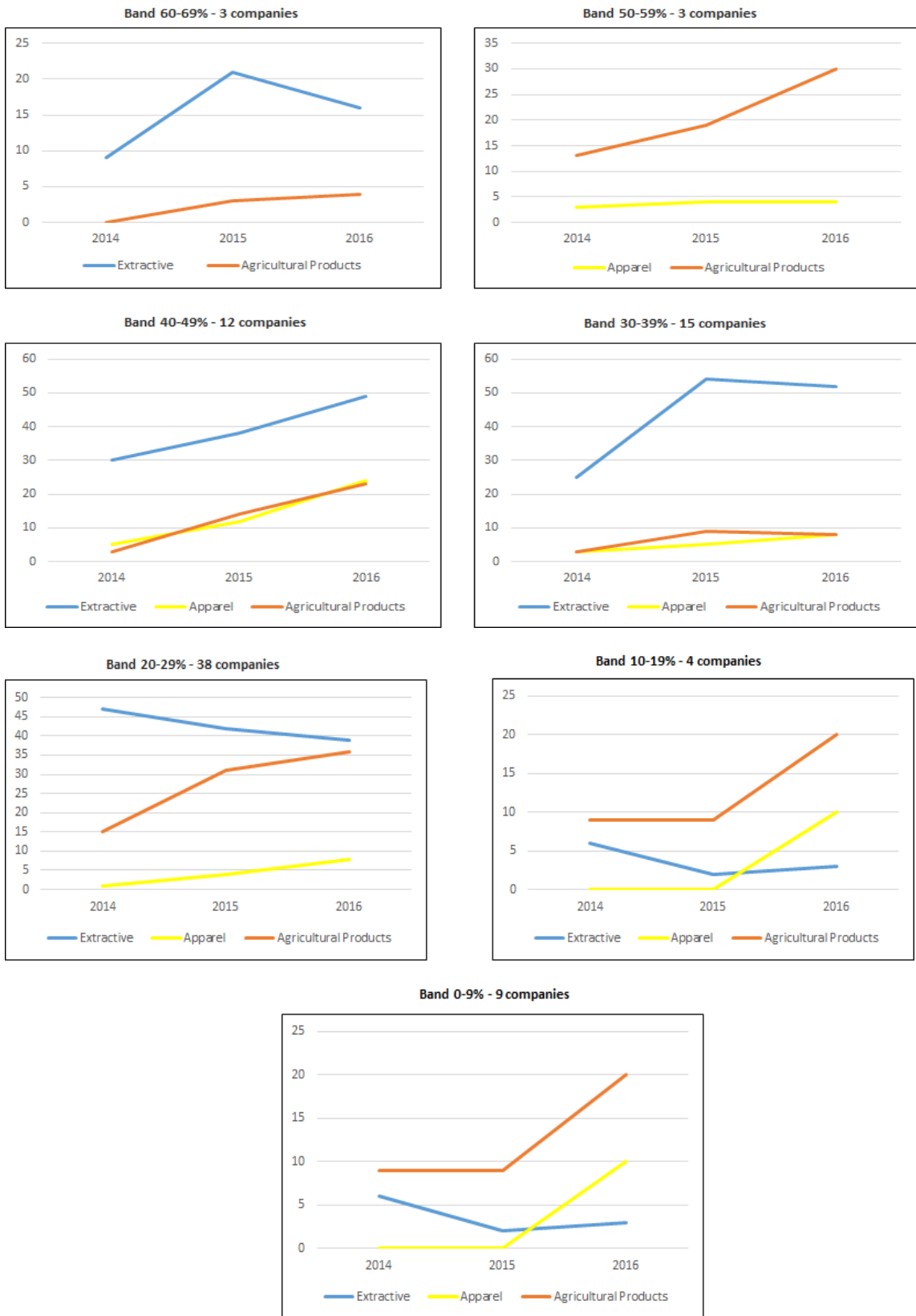
Furthermore, some sectors were object of an even higher amount of stories. This is particularly true for the extractive sector, characterized by high complexity in terms of its industrial processes, business partnerships and countries of operations. Indeed the extractive is a known environmental sensitive sector (Comyns et al., 2015) and it is also one of the most exposed to HRs abuses and risks, (Fonseca, 2010; Islam and McPhail, 2011). The fact that, for the same reasons, companies of this sector are object of a periodical scrutiny by the CSO, plays also a role in explaining these figures.

The third step of the analysis, that is:

“to interpolate data on HR violations and lawsuits with the CHRB BR in which companies are allocated, analyze their trend in the same period, by sector”

it was aimed at understanding if - and to what extent - the progressive UNGPs' implementation undertaken by the 98 companies considered in the sample, has contributed to a progressive improvement of their HR performances, at least for those companies that showed a more radicated corporate culture on BHR.

To this aim, I have associated to each CHRB BR (Table 14, Chapter III) the overall number of items (stories) collected per year, between 2014 and 2016, by sector. The results are in the following tables (20-26).



Tables 20-26 – Observed trend of the amount of stories linked with each CHRB BR, by sector (period 2014 – 2016)

While it was predictable to observe a growing trend in the number of stories associated to the Lower CHRB BR (0-29%), due to the fact that i) these CHRB BR were the most populated¹⁸⁶ ones and that ii) the companies less equipped for addressing contemporary HR challenges were supposed to fall in these CHRB BR, it was quite surprising to realize that the strongest increases in the number of stories were concentrated in the Highest CHRB BR (30-69%)¹⁸⁷.

A closer look highlighted that, from 2014 to 2016, the companies belonging to these Highest CHRB BR had the highest amount of stories per capita, ranging from a minimum of 5 (Apparel, band range 30-39% in table 23) to a surprising 31 (Agriculture Products, band range 50-59% in table 21). On the contrary, companies in the Lower CHRB BR had a much lower amount stories per capita, ranging from 1 (Apparel, band range 0-9% in table 26) to 19 (Agriculture Products, band range 10-19% in table 25). Besides, between 2014 and 2016 in the extractive sector only, the companies included in the Highest CHRB BR had increased their amount of stories of more than 82%, both on aggregated and per capita terms¹⁸⁸.

These empirical observations led me to affirm that, although some companies demonstrated to have adequate policy commitment and implemented sound HRDD methodologies, in coherence with the UNGPs Framework, it did not result in a general improvement of their HR performances on the field.

On the other way around, companies not fully aligned with the UNGPs Framework did not perform bad or, at least, not as bad as expected.

The Tables below (27-29) offer a clear representation of these relations, by sector.

¹⁸⁶ The 52% of companies in the sample has fallen in the CHRB Band Ranges between 0 and 29%.

¹⁸⁷ The four band ranges between 30% and 69% with the remaining 48% of the sampled companies.

¹⁸⁸ The 17 extractive companies in the CHRB band ranges between 30% and 69% accounted for 64 stories in 2014 and 117 stories in 2016. The amount of stories per capita increased from 3.8 to 6.9.

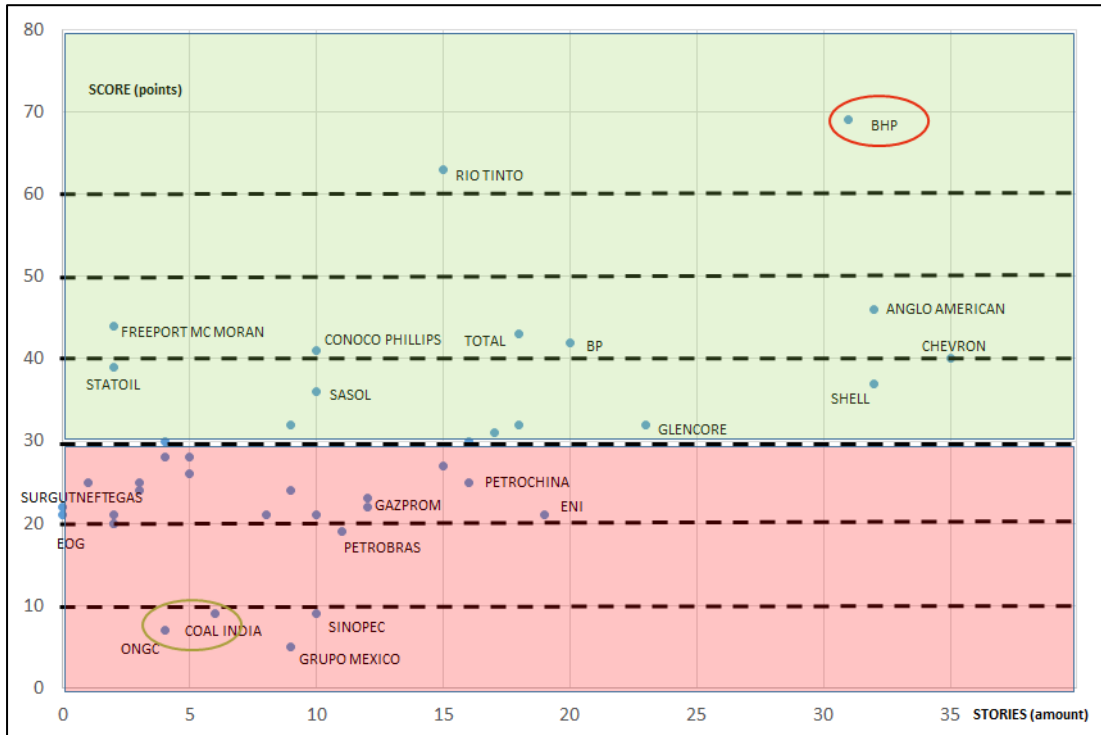


Table 27 - Interpolate Score and Stories: Extractive sector (period 2014 – 2016). Circled in red the best performer and in green the worse performer for the Extractive sector.

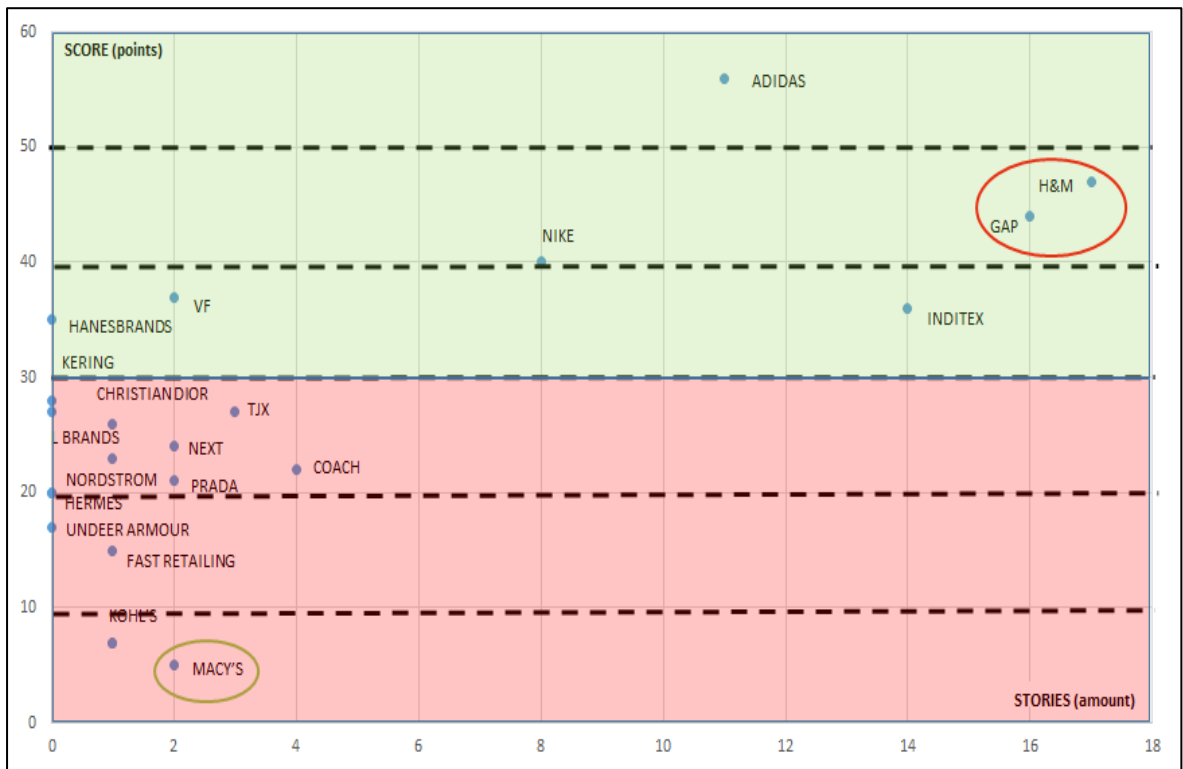


Table 28 - Interpolate Score and Stories: Apparel (period 2014 – 2016). Circled in red the best performers and in green the worse performer for the Apparel sector.

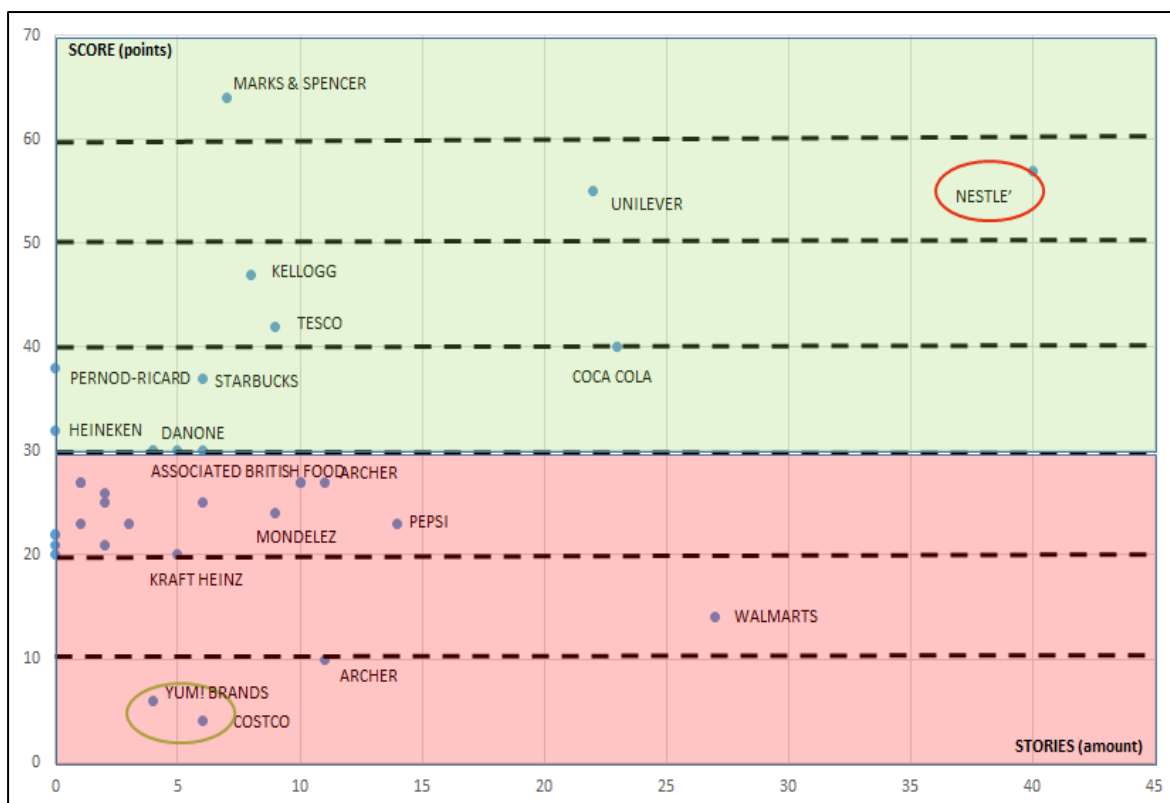


Table 29 - Interpolate Score and Stories: Agricultural Products (period 2014 – 2016). Circled in red the best performer and in green the worse performers for the Agricultural sector.

In order to explain this phenomenon, understand its causes and finally answer to the initial question “does the implementation of the UNGPs Framework imply improvement on human rights performances?”, I have analyzed classified the stories associated to the 98 companies, grouped by CHRB BR, on the basis of the categories proposed by the Resource Centre¹⁸⁹. The Table 30 below offers a synthesis of this research.

CATEGORIES (TYPOLOGIES IN LIBRARY)	EXTRACTIVE		APPAREL		AGROCOLTURE PRODUCTS	
	Best performers Band Range (30-69%)	Worst performers Band Range (0-29%)	Best performers Band Range (30-69%)	Worst performers Band Range (0-29%)	Best performers Band Range (30-69%)	Worst performers Band Range (0-29%)
ABUSES (22)	15	16	10	4	13	13
DISCRIMINATIONS (9)	2	4	3		3	2

¹⁸⁹See the notes from 179 to 183 for detail on the categories applied by the Resource Centre to classify the stories.

ENVIRONMENT (2)	2	2	1	1	2	3
GROUPS OF RIGHTHOLDERS (12)	7	7	5	2	3	4
LABOUR (7)	5	3	5	3	5	4
SECTOR SPECIFIC TOPICS (26)	15	12	6	1	14	13

NUMBER OF STORIES	284	168	68	18	122	130
NUMBER OF COMPANIES	17	24	7	15	12	23
NUMBER OF STORIES PER CAPITA	16,7	7	9,7	1,2	10,2	5,7
NUMBER OF COMPANIES RESPONSES	101	24	41	2	49	19
RESPONSE %	35%	14%	60%	11%	40%	15%
GEOGRAPHICAL DISTRIBUTION OF STORIES						
NORTH AMERICA	29	20	10	5	8	18
SOUTH AMERICA	78	24		7		4
EUROPE	4	12	6	6	8	6
CENTRAL ASIA	8	13				1
ASIA PACIFIC	50	37	40		44	40
MIDDLE EAST E NORTH AFRICA		1	2		3	7
AFRICA	68	35			28	22
GENERAL	47	26	10	0	31	32
COMPANY HQ	EXTRACTIVE		APPAREL		AGROCOLTURE PRODUCTS	
NORTH AMERICA	6	9	3	9	5	11
EUROPE	7	2	4	3	7	5
ASIA PACIFIC		7		3		3
CENTRAL ASIA		5				
SOUTH AMERICA	2	1				2
AFRICA	2					2

Table 30 – Stories classified per category, by sector and geographical distribution of stories and companies (period 2014 – 2016)

Table 30 is effective to summerise what I have highlighted so far, providing helpful answers. In particular:

- concerning the fact that companies belonging to the Highest CHRB BR (30-69%) did not perform better on HR than those in Lower CHRB BR (0-29%) but, on the contrary, the formers had a much higher amount of stories per capita, the analysis showed that:
 - high ranking companies are MNEs facing i) diversified operational challenges in ii) several countries, through iii) a long and articulated supply chain, with multiple business partners. It means that these companies, while carry out their business, interact with multiple stakeholders and they need to foresee numerous variables and adopt diversified

approaches¹⁹⁰. Moreover, companies falling in these CHRB BRs have a complex supply chain, with suppliers and sub-suppliers widespread in several locations. It results for MNEs to experience a reduced power to impose their social standards and internal rules, together with a limited capacity to control their suppliers' behaviours. Nevertheless, any eventual break of these standards committed by their business partners might have had big impacts on the MNEs reputation¹⁹¹. Finally, these companies operate in nuanced scenarios, with different HR laws and customs, which contribute to make the scenario harder to understand¹⁹².

At the same time, these CHRB "best performers", which demonstrated to have better implemented the UNGPs and, in particular, the HRDD in their processes, are large international players, with relevant reputational capital to defend, and a history and culture of corporate governance that allows them to understand the UNGPs language and effectively undertake their journey into BHR, as previously done on other topics, such as the anti-corruption or the HSE.

- Low ranking companies (placed in the Lower CHRB BR) are, with few exceptions, large companies too but much more focalized on smaller business segments, in terms of operations, countries and business partners. This implies a less dynamic and risky business environment and a lower complexity in terms of HR topics.

¹⁹⁰ The category "group" in the Table 30 gives an idea of the extent of stakeholders these companies engage with. It has been verified that, largest companies were associated to wider range of stakeholders' categories.

¹⁹¹ Especially in the Apparel and Agriculture sector, most of the stories relate to human rights violations committed by suppliers and sub-contractors. Indeed, in these sectors, final sellers own the brands and the design of products (for the Apparel sector, mainly) or own the stores and the dealing sale contracts, but the products themselves are produced, assembled elsewhere by their suppliers. It has been verified that for the Apparel sector and the Agriculture one, around 70% of stories refer to violations committed by sub-contractor along the supply chain.

¹⁹² Especially for the largest companies, which are exposed to significant reputational returns, the mere application of local standards - in case they are lower than those set by international Treaties and Conventions, it is not admissible anymore. On the other way around, to set higher standards than the local ones (e.g. on freedom of association) in an authoritative country, requires to be disruptive and could ingenerate the diffidence of the authorities.

- The analysis of the geographical distribution of the stories and companies' locations provides additional details to decode these results:
 - with specific regards to the extractive sector, companies head quartered in Central Asia (5) and in Asia Pacific (7) countries are well represented¹⁹³ and they are all placed in the Lower CHRB BR. Nevertheless, the Resource Centre has tracked relatively few stories referred to them¹⁹⁴. These companies, mostly National Oil Companies (NOC) or National Mining Companies (NMC) whose shares are held by the Governments¹⁹⁵, have the largest part of their operations in the same countries where they have their HQs. These countries are distinguished by a limited access to information on companies' conducts, which are barely and seldom made available to CSO and media. The CSO and media themselves are under a strict authorities' control. All these considerations give a reliable explanation to this, observed, apparent contradiction (poor CHRB's score associated to a moderated number of stories¹⁹⁶).
- The analysis of the prevailing categories empirically associated to the stories, highlighted the existence of several sector-specific issues¹⁹⁷ and risks, which were only partially identified during the CHRB's consultations that informed the 2016 Methodology and the design of its indicators, as described in Chapter III Table 5. In light of that, CHRB results could not adequately mirror the actual complexity

¹⁹³Asia-Pacific: China Shenua Resources, CNOOC, Sinopec and Petrochina from China, Coal India Ltd, ONGC, from India and PTT from Malaysia. Central Asia: Gazprom, Lukoil, Norilsk Nickel, Rosneft, Surgutneftegas (Russia). They weight for the 30% of the total amount of extractive companies in the sample.

¹⁹⁴79 stories, whose 52 referred to Asia-Pacific companies and 27 to Russian companies.

¹⁹⁵CNOOC, Sinopec, Petrochina, PTT, Gazprom, Surgutneftegas and Rosneft are proper NOC. The other companies (Coal India Ltd, ONGC, Lukoil and Norilsk Nickel) are namely private companies, but their final beneficial owners have narrow tights with the national Governements.

¹⁹⁶According to the BHRRC's stories considered for this analysis, only 17 out of 211 stories of human rights violations committed in Asia-Pacific countries are referred to Pacific-Asian companies. Concerning Central Asia, 9 out of 22 stories of human rights violations are referred to Central-Asian companies.

¹⁹⁷ The cathegory "group" in the Table xx gives an idea of the extent of stakeholders these companies engage with. It has been verified that, largest companies were associated to a wider range of stakeholders' categories.

of each sector. More in detail the stories related to the 98 companies in the sample revealed that:

- the Extractive Sector was narrowly interested by 6 specific categories of HR abuses, 1 discrimination pattern, 2 groups of rightholders, 1 labour implication and 12 additional topics¹⁹⁸;
- the Apparel Sector was mainly interested by 2 specific categories of HR abuses, 1 discrimination pattern, 3 groups of rightholders, 3 labour implications and 3 additional topics¹⁹⁹;
- the Agriculture Products was principally involved in 4 specific categories of HR abuses, 1 discrimination pattern, 3 groups of rightholders, 3 labour implications and 9 additional topics²⁰⁰.

These issues are the topics most frequently interested by the alleged HR violations, being therefore the most salient issues of each industry sector considered in the analysis. By comparing this information with the Table 11 (Chapter III), it is possible to observe that the CHRB indicators, captured in the Measurement Theme D, looked at narrower perimeter²⁰¹. It is likely that this

¹⁹⁸ Abuses: Beating and Violence, Complicity, Deaths, Displacement, Injuries and Killings. Discrimination: Racial/Ethnic/Caste origin discrimination. Groups of Rightholders: Women, Indigenous People. Labour: Living wage. Additional topics: Access to Information, Access to water, Disclosure Use of payment to Governments, Free Prior Informed Consent (FPIC), Housing, Land Rights, Protests, Right to food, Tax Avoidance, Environment, Climate Change, Security in conflict areas.

¹⁹⁹ Abuses: Denial of Freedom of Association, Human Trafficking. Discrimination: Gender discrimination. Groups of Rightholders: Women, Migrant & Immigrant Workers, Children. Labour: Living wage, Forced Labour and Modern Slavery, Children Labour. Additional topics: Access to Information, Land Rights, Protests and Environment.

²⁰⁰ Abuses: Denial of Freedom of Association, Deaths, Displacement, Human Trafficking. Discrimination: Gender discrimination. Groups of Rightholders: Indigenous People, Women, Migrant & Immigrant Workers. Labour: Living wage, Forced Labour and Modern Slavery, Children Labour. Additional topics: Access to Information, Access to water, Land Rights, Rights to food, Free Prior Informed Consent (FPIC), Housing, Tax Avoidance, Genetically modified food/crops, Security in conflict areas.

²⁰¹ More in detail the indicators in the Measurement Theme D of the CHRB were focused as follows:

- Extractive sector: Transparency and accountability, Freedom of association and collective bargaining, Health and Safety, Indigenous Peoples rights and FPIC, Land Rights, Security, Water and Sanitization;
- Apparel sector: Living wage, Mapping and disclosing the supply chain, Child Labour, Forced Labour, Freedom of association and collective bargaining, Health and Safety, Women's Rights, Working Hours.

limitation did not allow the CHRB to comprehensively evaluate companies' implementation of the UNGPs, that is CHRB did not consider the entire picture of HR implications.

- By looking at the responses provided by companies in the sample to allegations of HR violations it is possible to obtain another decisive argumentation to the effectiveness of UNGPs and HRDD in reducing HR violations and creating awareness on BHR. The Table 30 shows that the rate of responses released by best CHRB's performers exceeded the threshold of the 35% in all the three sectors. The worst CHRB's performers achieved a maximum rate of only the 15% in the Agriculture Products sector. As highlighted before, "knowing and showing" it is a crucial approach promoted by the UNGPs. This goal must be achieved through adequate HRDD (Reporting and Communication). Therefore, even if, often, these responses were aimed at confirming the companies' commitment to respect HR and the appropriateness of their behaviours in the contested situations, sometimes they were public companies' acknowledgements of the need to improve on BHR and on their UNGPs implementation. The fact that, irrespective of the sector, the best CHRB's performers had such high rates of responses proves that a proper BHR awareness is actually radicated within most of these companies, representing an important stimulus for further improvement on this field²⁰².

On this aspect, as eloquently observed *"the Guiding Principles provide that companies have a responsibility to respect human rights. In order to prevent human rights abuses, they should carry out 'human rights due diligence'. One*

– Agriculture Products sector: Living wage, Mapping and disclosing the supply chain, Child Labour, Forced Labour, Freedom of association and collective bargaining, Health and Safety, Land Rights, Water and Sanitization, Women's Rights.

²⁰² From another point of view *"the 'knowing and showing' approach is based on the idea that companies should continuously identify, assess, and address their human rights impact by conducting a due diligence process. However, until all companies are doing so effectively, 'naming and shaming' continues to be the principal method by which companies are held accountable for human rights abuses. This occurs primarily through NGO reports and investigative journalism. How companies respond (or do not respond) to such reports is therefore of great interest. The responses substantially contribute to the body of knowledge on corporate attitudes towards human rights and thereby provide clues for campaigners and regulators"* (T. Kamminga, 2015).

crucial component of the due diligence process is ‘meaningful consultation with potentially affected groups and other relevant stakeholders’. Clearly, failure even to respond to civil society reports transmitted by the Resource Centre is incompatible with this obligation to consult. The Resource Centre’s staff tenaciously pursues responses by follow-up messages and phone calls to officials at different levels of the company. A non-response must therefore be regarded as a deliberate decision on the part of a company, and not as a mere oversight” (T. Kamminga, 2015).

Once analyzed the reasons behind the fact that, in our sample, also the companies showing a stronger commitment to respect HR according to the UNGPs have been involved in several alleged HR violations, and understood that the complexity of business operations, the geographical location and the articulation of their supply chain and partnerships are all factors likely to impact on the effectiveness of company’s approach to HR, I have focused my research on the last step:

“drill down on specific cases of HR violations to understand the measure taken by companies, if any”.

Indeed, as some authors observed, *“UNGPs invoke human rights due diligence (HRDD) both as a standard of conduct to discharge a responsibility and as a process to manage human rights risks, without adequately distinguishing between the two. This leads to confusion as to when and whether businesses should be obliged to remedy human rights infringements. The confusion means that many businesses regard HRDD only as a best practice and effectively ignore their responsibility to provide remedy”* (Bonnitcha et al., 2017). In other words, these authors warned about the risk that companies could use the HRDD only as a shield not to be found responsible of HR violations, rather than a process to duly manage their HR risks.

Therefore the purpose of this conclusive analysis is to verify if, in a sample of selected relevant stories²⁰³, the companies have applied – or have tried to apply - a proper

²⁰³ The sample is composed by 12 stories, chosen among the most relevant ones associated to both the best and worst two CHRB performers of each sector. The relevance here is based on the concept of “severity” recommended by the UNGPs, which state that all impacts should be addressed, but

HRDD in order to identify, assess and mitigate the risk of HR violations or, viceversa, whether these alleged violations resulted from companies' inactions.

The results are summarized in the Table 31 below, where allegations are linked to the corresponding due diligence gaps, that I have identified by analyzing the story and its related articles.

Company - Industry	Rank – Score Band	Context	Allegations	Gaps in HRDD
BHP (JV with Anglo American and Glencore) - Extractive	1 – 60-69%	Cerrejón Coal mine (Colombia)	<ul style="list-style-type: none"> • <i>Land grabbing and forcibly displacement of the native Afro descendant community from its hometown;</i> • <i>re-routing of the Arroyo Bruno river, threatening the water availability in the already water-deprived region.</i> 	<p>Lack in understanding and considering the concerns of potentially affected stakeholders (UNGP 18);</p> <p>Lack in taking the appropriate steps to prevent the adverse human rights impacts related to displacement of communities, finding other solutions (UNGP 19);</p> <p>Lack in demonstrating the efforts made to mitigate the impacts if other solutions were not feasible (UNGP 19).</p>
Marks & Spencer –	2 – 60-69%	Garment factory (India)	<ul style="list-style-type: none"> • <i>M&S alleged to pay Asian workers less than</i> 	Lack in identifying, assessing and

recognize that it may not always be possible to address them simultaneously. If prioritization of actions to address impacts is necessary, the UNGPs indicate that a business should begin with addressing those human rights impacts that will be most severe (UNGP 12).

Agriculture Products			<i>living wage, brands respond</i>	integrating actions to prevent adverse human rights impacts related to inadequate wages paid to suppliers' workers involved in its supply chain (UNGP 19).
Rio Tinto - Extractive	3 – 60-69%	Bougainville Copper Mine (Papua New Guinea)	<i>Transfer of shares from Rio Tinto to the national Government and company's refusal to take responsibility for legacy issues</i>	Lack in duly identifying human rights impacts caused by the previous operator and accepting to take responsibility for this legacy (UNGP 19)
Nestle - Agriculture Products	4 – 50-59%	Fish supplier (Thailand)	<i>Nestle found to have forced labour and modern slavery through its supply chain</i>	Lack in identifying and assessing the risk of occurrence of modern slavery in its supply chain, both with preventive and detective measures.
Adidas - Apparel	5 – 50-59%	Sale of shirt (Brazl)	<i>Government accuses Adidas of selling shirts linking country with sexual tourism & exploitation</i>	Sales is not typically interested by HRDD, but this situation proves that human rights risks are extremely crosscutting and sector specific.
Hennes & Mauritz (H&M) - Apparel	8 – 40-49%	Garment factory (Bangladesh)	<i>Another major factory for major Apparel brands on fire in Bangladesh due</i>	Lack in identifying and assessing the risk of making use of suppliers with

			<i>to lack of safety and prevention measures</i>	inadequate safety standards.
Kohl's Apparel -	93 – 0-9%	Garment factory (Bangladesh)	<i>Only 31 Ready-Made Garments (RMG) factories have fully implemented the remediation process of improving safety and compliance, 3 years after Rana Plaza disaster</i>	Lack in identifying and assessing the risk of making use of suppliers with inadequate safety standards.
Oil & Natural Gas Corporation - Extractive	94 – 0-9%	Mangalore Refinery (India)	<i>ONGC has made allegations of vested interests of NGOs in protest against the coke & sulphur plant</i>	This situation does not imply a HRDD issues but it concerns a meaningful lack of realibility in the relation with stakeholders.
Yum! Brands - Agriculture Products	95 – 0-9%	Fast food chain (China)	<i>OSI subsidiary Shanghai Husi alleged to have sold out-of-date meat to McDonald's, KFC & Pizza Hut</i>	Lack in identifying and assessing the risk of making use of suppliers with inadequate ethics standards.
Grupo Mexico - Extractive	96 – 0-9%	Southern Copper mine (Peru)	<i>Peru: One farmer dead, 11 injured during clashes with police over protests against Southern Copper mine; company says it will carry on with project</i>	Lack in identifying and assessing the risk of human rights violations caused by security guards, private and public and lack in taking adequate actions, such as the signing of Memorandum of Understanding with the public security forces to adhere to

				specific standards (e.g. the Voluntary Principles on Security and Human Rights).
Macy's Apparel	- 97 – 0-9%	Garment factory (USA)	<i>USA: Wage theft common practice in "Made in the USA" garments manufacturing due to legal loophole & brands business models</i>	Lack in identifying, assessing and integrating actions to prevent adverse human rights impacts related to inadequate wages paid to suppliers' workers involved in its supply chain (UNGP 19).
Costco Wholesale - Agriculture Products	- 98 – 0-9%	Fish supplier (Thailand)	<i>US class action lawsuit filed against Costco & CP Foods for selling prawns allegedly derived from slavery</i>	Lack in identifying and assessing the risk of occurrence of modern slavery in its supply chain, both with preventive and detective measures

Table 31 - Most relevant stories of the best and worst two CHRБ's performers, per sector (period 2014 – 2016)

Each of the 12 stories has revealed at least one gap in the way the HRDD was applied by companies. It demonstrates that the HRDD could really work - if properly applied - as an effective tool for companies to identify, assess and manage the risks of HR violations caused or directly linked with their operations. On the other way around, these companies – especially the CHRБ best performers – with their demonstrated a factual, even if not always effective, commitment to act and to remediate the implications of their operations on HR of individuals and communities.

To conclude, in this Chapter IV I have highlighted that:

- irrespective of the sector, complex business entities, such as MNEs, experience higher chances to violate HR. Therefore largest operators, with complex business

relationships and activities in several regions, will be more exposed to HR violations;

- these largest operators are more able to understand the BHR language and keen to adopt the UNGP Framework within their processes. This because of the experience they have had on other topic in the last few years, such as the Anti-Corruption and HSE models;
- some sectors have more variables to be considered and more stakeholders to consult than others. These sector specific issues tend to coincide with the HR salient issues of the companies belonging to the sector;
- the political and historical context of the country, where companies have the HQs and the majority of their operations, is able to influence both the extent of HR commitment showed by the companies and the amount of alleged HR violations raised by media and CSO;
- In order to reduce this risk it is essential to adopt a proper HRDD. Anyway, even in this case, companies need to keep their HRDD updated, since the operational context is extremely dynamic. This said, if developed and implemented according to the UNGPs, the HRDD has proven to be an effective tool for a successful HR strategy.

Conclusions

This research has tried to be an extensive recognition on the state of art in the BHR context. As seen, due to the cross-cutting intrinsic character of HR, an effective approach to this subject requires the interests, capacities and engagement not only of States, but also of market actors, civil society and workers organizations because, otherwise, as observed by Sen *“a narrow legalistic view threatens to “incarcerate” the social logics and processes other than law that drive public recognition and respect for human rights”* (Sen, 2004).

The UNGPs Framework goes in this direction and, thanks to the inclusive work of the SRSG, it has been the first global standard for preventing and addressing the risk of adverse impacts on HR linked to business activity, receiving an unanimously endorsement by multiple stakeholders.

On this regards, some authors have argued that the non-mandatory nature of the UNGPs Framework is inadequate for achieving its ambitious objectives. Others have highlighted the lack of actual evidence on the tangible impacts of the UNGPs and, ultimately, questioned their effectiveness in making the companies accountable of their responsibility to respect HR.

In order to answer to these observations, I have carried out an in-depth empirical analysis on the effects that the adoption of the UNGPs has had on the performances of large MNEs belonging to the extractive, agriculture and apparel sector.

The purpose of this analysis was to compare the results of this brand new, prominent benchmark on human rights, the CHRB, achieved by 100 MNEs belonging to these three sectors with their HR performances, showing that the best CHRB performers were also the companies, which are experiencing the biggest HR challenges throughout their operations. The analysis has also showed clear cut identification of HR salient issues, which means that companies belonging to the same sector face similar criticalities on HR.

The study has allowed me to draft a first empirical rule concerning BHR, that is: irrespective of the sector, complex business entities experience higher chances to

violate HR. In other words largest operators, with complex business relationships and activities in several regions, are more exposed to commit HR violations. Moreover, some sectors have more variables to include in the picture than other sectors, such as the kinds of stakeholders and the political and historical context of the country.

While these assertions could appear obvious, they must be placed in the realm of the CHRB's results. This Benchmark has revealed that these operators have a journey in progress, not completed yet, for improving their HR standards throughout their entire value chain and, ultimately, for operationalizing the UNGPs Framework. The reason of this journey rests, as Ruggie observed, in the social expectations to act properly and respect HR, expressed by a growing range of stakeholders.

In light of that, the observed trends of increasing HR violations committed by companies although they have proven to own HR Policy Commitments and HRDD methodologies aligned with the UNGPs, finds a justification. Indeed, the UNGPs Framework is a relatively new answer to complex and, sometimes, deteriorated situations and, during my analysis, I have encountered several encouraging signals and best practices adopted by some leading companies. This allow me to affirm that the UNGPs and HRDD are demonstrating to be effective tool for improving HR performances of companies, although their youth.

Of course, it is likely that to manage such complex scenario, a smart mix of both soft and hard law would be preferable. In the meanwhile, this soft law solution represented by the UNGPs could serve as a precursor for the introduction of hard law or a mix of these two solutions. Therefore, while waiting that all the relevant stakeholders involved in the BHR movement will mature an awareness regarding the need for a mandatory mean to regulate this topic, the UNGPs could be used as a testing ground for experiencing new mechanisms of HR accountability.

Further research on this field could focus on the need to develop HR KPIs, able to measure and monitor the effectiveness of the single actions taken by company within their HRDD process. These KPIs could, then, measure the impact that the legislative initiatives launched at country level, such as the UK Modern Slavery Act or the French Law on the Duty of Care, will have on the BHR's topic they claim to regulate.

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Acronyms

BHR: Business and Human Rights

CHRB: Corporate Human Rights Benchmark

CHRB BR: CHRB Band Range:

CSOs: Civil Society Organizations

CBOs: Community Based

EU: European Union

HR: Human Rights

HRDD: Human Rights Due Diligence

IGWG: Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises

KPIs: Key Performance Indicators

MNEs: Multi National Enterprises

NCP: National Contact Point

NGOs: Non-Governmental Organizations

OECD: Organisation for Economic Co-operation and Development

2008 Framework: Protect, Respect and Remedy: a Framework for Business and Human Rights

Resource Centre: Business and Human Rights Resource Centre

SEC: Security & Exchange Commission

SRI: Socially Responsible Investment

SRSB: Special Representative of the Secretary General

HRC: UN Human Rights Council

UN: United Nations

UNGPs: United Nations Guiding Principles on Business and Human Rights

Annex 1- An example of policy commitment (Rio Tinto –

Rio Tinto

EXT-A-001

Group Policy	Title: Human Rights Policy		
	Function: External Affairs and Communications		
	No. of Pages: 2		
	Approved : October 2015	Effective: October 2015	Supersedes: Human Rights Policy May 2012
Owner: Global Head of External Affairs and Communications	Approver: Rio Tinto Executive Committee	Target Audience: This Policy applies to all employees (permanent, contract or temporary)	
<p><i>Direct Linkages to other relevant Policies, Standards, Procedures or Guidance notes:</i></p> <p>Employment; Health, Safety, Environment and Communities; Inclusion and Diversity policies. Communities and Social Performance and Group Security Standards. Human rights guidance, Communities and Social Performance guidance, Implementing security and human rights principles guidelines and Procurement principles.</p>			
<p><i>Document purpose:</i></p> <p>The Human Rights Policy articulates the fundamental elements of the Group's approach to human rights and how the Group demonstrates its commitment to respect human rights in line with the Universal Declaration of Human Rights and other international frameworks.</p>			

Fully accessible on the website

Approved by the Executive Committee

Coherent with the other relevant policies

Human rights policy

Rio Tinto respects and supports the dignity, well being and human rights of our employees, the communities in which we live and those affected by our operations.

Our approach to human rights is based upon the Universal Declaration of Human Rights and the UN Guiding Principles on Business and Human Rights. We undertake due diligence activities to identify, prevent and mitigate adverse human rights impacts of our operations. This includes conducting stand-alone studies where necessary, as well as integrating human rights into existing corporate processes.

Wherever we operate, we engage with communities to understand the social, cultural, environmental and economic implications of our activities. We provide communities with easily accessible complaints mechanisms and we listen to and take actions to address complaints. We work to optimise the benefits and reduce the negative impacts of our activities, both for local communities and the countries where we operate.

We acknowledge and respect Indigenous peoples' connections to lands and waters, consistent with the UN Declaration on the Rights of Indigenous Peoples.

We reject any form of slavery, forced or child labour.

We support and implement the Voluntary Principles on Security and Human Rights and ensure relevant employees and contractors are trained in accordance with these principles. We impose strict controls on the use of force and limit the use of firearms on our sites as far as possible. We work with external stakeholders, as well as public and private security forces to promote understanding and implementation of the Voluntary Principles and avoid security arrangements at our sites contributing to human rights harm, including through misuse of our equipment and facilities.

Through appropriate contractual arrangements and procurement principles, we make our consultants, agents, contractors and suppliers aware of and expect their compliance with our human rights commitments. We strive to ensure our joint venture partners and non-controlled companies in which we participate also respect our commitments to uphold human rights.

This policy provides the foundation to our human rights approach. Our policies on Employment; Health, Safety, Environment and Communities and Inclusion and Diversity also contain human rights commitments.

Affirming similar expectations on business partners

Annex 2 – 2016 CHRB companies

Agricultural Products			
Alimentation Couche-tard	Canada	Kweichou Moutai	China
Ambev	Brasil	McDonald's	USA
Anheuser-Busch InBev	Belgium	Mondelez International	USA
Archer Daniels Midland	USA	Nestle	Switzerland
BRF	Brasil	PepsiCo	USA
Carrefour	France	Pernod-Ricard	France
Coca-Cola Femsa	Mexico	SABMiller	UK
Compass Group	UK	Shoprite	South Africa
Danone	France	Starbucks	USA
Diageo	UK	Sisco	USA
General Mills	USA	Tesco	UK
Hieneken NV	Netherlands	The Coca-Cola Company	USA
Hindustan Unilever	India	The Hershey Company	USA
Kellogg	USA	Unilever	UK
Koninklijke Ahold	Netherlands	Wollworths	Australia
Kraft Heinz	USA	Yum! Brands	USA
Kroger	USA		

Apparel			
Adidas	Germany	L Brands	USA
Christian Dior	France	LVMH Moet Hennesy Louis Vuitton	France
Coach	USA	Macy's	USA
Fast Ratailing	Japan	Next	UK
Gap	USA	Nike	USA
Hanesbrands	USA	Nordstrom	USA
Heilan Home	China	Prada	Hong Kong
Hennes & Mauritz	Sweden	Ross Stores	USA
Hermes International	France	TJX Companies	USA
Inditex	Spain	Under Armour	USA

Kering	France	VF	UK
Kohl's	USA		

Apparel & Agricultural Products			
Aeon Company	Japan	Marks & Spencer Group	UK
Associated British Foods	UK	Target	USA
Cotsco Wholesale	USA	Wal-Mart de Mexico	Mexico
Falabella	Chile	Wal-Mart Stores	USA

Extractives			
Anadarko	USA	Imperial Oil	Canada
Anglo American	South Africa	Lukoil	Russia
BHP Billiton	UK	Marathon Petroleum	USA
BP	UK	Norilsk Nickel	Russia
Canadian Natural Resources	Canada	Occidental Petroleum	USA
Chevron Corporations	USA	Oil & Natural Gas Corporation	India
China Petroleum & Chemicals	China	Petrobras	Brazil
China Shenhua Energy	China	Petrochina	China
CNOOC	China	Phillips 66	USA
Coal India	India	PTT	Thailand
Conoco Phillips	USA	Repsol	Spain
Devon Energy	USA	Rio Tinto	UK
Ecopetrol	Colombia	Rosneft Oil	Russia
Eni	Italy	Royal Dutch Shell	UK
EOG Resources	USA	Sasol	South Africa
Exxon Mobil	USA	Statoil	Norway
Freport-McMoran	USA	Suncor Energy	Canada
Gazprom	Russia	Surgutneftegas	Russia
Glencore	UK	Total	France
Goldcorp	Canada	Vale	Brazil

Grupo Mexico	Mexico	Valero Energy	USA
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Annex 3 – 2016 CHRB Results

BAND RANGE	COMPANY	INDUSTRY	Country
60-69%	BHP Billiton	Extractives	UK
	Marks & Spencer Group	Agricultural Products / Apparel	UK
	Rio Tinto	Extractives	UK
50-59%	Nestle	Agricultural Products	Switzerland
	Adidas	Apparel	Germany
	Unilever	Agricultural Products	UK
40-49%	Total	Extractives	France
	Hennes & Mauritz	Apparel	Sweden
	Kellogg	Agricultural Products	USA
	Anglo American	Extractives	South Africa
	Gap	Apparel	USA
	Freeport-McMoRan	Extractives	USA
	BP	Extractives	UK
	Tesco	Agricultural Products / Apparel	UK
	ConocoPhillips	Extractives	USA
	Chevron Corporation	Extractives	USA
	The Coca-Cola Company	Agricultural Products	USA
	Nike	Apparel	USA
30-39%	Statoil	Extractives	Norway
	Pernod-Ricard	Agricultural Products	France
	Royal Dutch Shell	Extractives	UK
	General Mills	Agricultural Products	USA
	VF	Apparel	
	Inditex	Apparel	
	Sasol	Extractives	South Africa
	Hanesbrands	Apparel	USA
	Vale	Extractives	Brazil

	Ecopetrol	Extractives	Colombia
	Glencore	Extractives	UK
	Heineken NV	Agricultural Products	Netherlands
	Exxon Mobil	Extractives	USA
	Suncor Energy	Extractives	Canada
	Diageo	Agricultural Products	UK
	The Hershey Company	Agricultural Products	USA
	Occidental Petroleum	Extractives	USA
	Target	Agricultural Products / Apparel	USA
20-29%	Danone	Agricultural Products	France
	PTT	Extractives	Thailand
	Devon Energy	Extractives	USA
	Kering	Apparel	France
	Archer Daniels Midland	Agricultural Products	USA
	Goldcorp	Extractives	Canada
	BRF	Agricultural Products	Brazil
	Associated British Foods	Agricultural Products / Apparel	UK
	Anheuser-Busch InBev	Agricultural Products	Belgium
	Sysco	Agricultural Products	USA
	TJX Companies	Apparel	USA
	L Brands	Apparel	USA
	Christian Dior	Apparel	USA
	Canadian Natural Resources	Extractives	Canada
	PetroChina	Extractives	China
	Compass Group	Agricultural Products	UK
	Norilsk Nickel	Extractives	Russia
	Starbucks	Agricultural Products	USA
	Marathon Petroleum	Extractives	USA
	Woolworths	Agricultural Products	Australia

	Nordstrom	Apparel	USA
	Anadarko Petroleum	Extractives	USA
	Phillips 66	Extractives	USA
	Mondelez International	Agricultural Products	USA
	PepsiCo	Agricultural Products	USA
	Coach	Apparel	USA
	Lukoil	Extractives	Russia
	Kroger	Agricultural Products	South Africa
	Shoprite	Agricultural Products	South Africa
	Next	Apparel	UK
	Surgutneftegas	Extractives	Russia
	Alimentation Couche-tard	Agricultural Products	Canada
	Aeon Company	Agricultural Products / Apparel	Japan
	Gazprom	Extractives	Russia
	EOG Resources	Extractives	USA
	Valero Energy	Extractives	USA
	Carrefour	Agricultural Products	France
	Repsol	Extractives	Spain
	Prada	Apparel	Hong Kong
	Falabella	Agricultural Products / Apparel	Chile
	CNOOC	Extractives	China
	Eni	Extractives	Italy
	Rosneft Oil	Extractives	Russia
	China Shenhua Energy	Extractives	China
	Hermes International	Apparel	France
	Heilan Home	Apparel	China
	Kraft Heinz	Agricultural Products	USA
	Kweichow Moutai	Agricultural Products	China
10-19%	Petrobras	Extractives	Brazil
	Under Armour	Apparel	USA

	Fast Retailing	Apparel	Japan
	Wal-mart Stores	Agricultural Products / Apparel	USA
	McDonald's	Agricultural Products	USA
0-9%	Coal India	Extractives	India
	China Petroleum & Chemical	Extractives	China
	Ross Stores	Apparel	USA
	Kohl's	Apparel	USA
	Oil & Natural Gas Corporation	Extractives	India
	Yum! Brands	Agricultural Products	USA
	Grupo Mexico	Extractives	Mexico
	Macy's	Apparel	USA
	Costco Wholesale	Agricultural Products / Apparel	USA