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DUE DILIGENCE IN THE DOWNSTREAM VALUE CHAIN

CASE STUDIES OF CURRENT COMPANY PRACTICE

FEBRUARY 2023

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1 INTRODUCTION

Over the past decade since the adoption of the UN Guiding Principles on Business and Human Rights (UNGPs), much work has been done to build a common understanding that a business bears responsibility for adverse human right impacts in its supply chain. However, business-related human rights impacts can take a range of forms. They occur not only in the supply chain or within a business's own operations, but also after a product or service has left a company, often referred to as the "downstream" part of the value chain.

This can involve the provision of goods and services to end-users and consumers, how these goods and services are used by other companies or governments, as well as conditions for workers in distribution and logistics or impacts associated with end-of-life disposal of products. It is critical that businesses think not only about their suppliers when assessing their human rights impacts, but also how their products and services can impact the enjoyment of rights.

The process of human rights and responsible business conduct (RBC) due diligence outlined in authoritative frameworks such as the UNGPs and OECD Guidelines for Multinational Enterprises (OECD GL) and associated guidance each encourage businesses to have regard to the whole of the value chain when identifying and addressing their impacts. These frameworks are the baseline on which companies can build. However, there is currently a lack of clear standards and guidance on what responsibilities a company may have in relation to impacts which occur in the downstream, or what action they should take when involved in such impacts. Clear guidance, including through regulation, is needed to help companies better understand how to manage human rights impacts in the downstream and develop their practices.

Many companies are already conducting some form of due diligence in the downstream. While certain sectors at higher risk of impacts in this part of the value chain, such as tech, have more established practices on downstream due diligence,[1] companies across a range of sectors are taking a full value chain approach which includes conducting due diligence on their downstream human rights impacts. As the case studies in this publication show, this can be done in a number of ways. Examples include conducting human rights impacts assessments (HRIAs) on the full value chain, enabling a company to become aware of and act on its downstream human rights impacts; adapting existing, well-understood processes, such as know your customer (KYC) checks or anti-bribery and corruption processes to consider human rights impacts; or developing responsible approaches to marketing of products.

These case studies have been developed based on company interviews, drawing from company processes and policy commitments, and informed by a closed roundtable for businesses convened by the Danish Institute for Human Rights in October 2022, which discussed common challenges and practical approaches to addressing downstream human rights impacts under Chatham House rules.

WHAT DO THE UNGPS AND OECD GL SAY?

The UN Guiding Principles on Business and Human Rights (UNGPs) state that a business bears responsibility for respecting human rights not only within its own activities but with respect to risks which arise from its business relationships. This includes not only business partners in the upstream supply chain, but relationships with entities in its full value chain.[2] Other authoritative guidance, such as the OECD Guidelines for Multinational Enterprises (OECD GL), also adopts a value chain approach, referring to the expectation that an entity conduct due diligence on its business relationships, defined to include entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services.[3]

These frameworks set out a risk-based approach to due diligence, which requires identifying what actual or potential impacts a company may cause, contribute or be directly linked to through a business relationship across the value chain. To address these impacts, companies should prioritise human rights due diligence efforts based on the severity of risks, regardless of where in the value chain they arise. For some sectors, where the most severe risks may arise after a product or service leaves the company, this means prioritising impacts in the downstream part of the value chain.

2 WHAT IS THE DOWNSTREAM AND WHY SHOULD IT BE INCLUDED IN HRDD?

There is no settled definition of the 'downstream' value chain, and companies may take different approaches to defining what constitutes the downstream in the context of their particular business models. In general, downstream human rights impacts arise after a product or service leaves the company. A company may cause downstream impacts itself, such as by marketing unsafe products or using discriminatory distribution models, or contribute through the use of products or services or be directly linked to them through business relationships, such as by providing service to a customer whose activities adversely affect human rights.

There is an increasing expectation that companies should take responsibility for the use of their products or services. In addition to the expectations set out in the UNGPs and OECD GL, cases concerning downstream human rights impacts are increasingly being reported in the media,[4] being referred to OECD National Contact Points[5] and becoming the subject of litigation.[6]

As a recent report from the UN Office of the High Commissioner for Human Rights[7] notes, omitting the downstream part of the value chain can lead to severe human rights impacts not being properly considered by a company. Risks may differ by sector, business model, operating context, and geography. In some industries, the downstream value chain may carry more severe human rights risks than the upstream supply chain. The impact of the use of technology on the enjoyment of rights is a clear example, however as the case studies set out below show, all sectors carry some level of risk. Accordingly adopting a risk-based approach to due diligence across the value chain is needed even in sectors considered to be "low risk".

The UNGPs and OECD GL expect that businesses will respect the full range of rights, at least those set out in the International Bill of Rights, but to date there has been a primary focus on labour rights of workers in own operations and in the first tier of the supply chain. The provision of goods and services to consumers and communities, as well as their distribution, marketing and end-of-life disposal concerns a broader range of rightsholders beyond workers with a broader range of potentially affected rights. A focus on the value chain can enable a better understanding of the range of rights on which a company can have an impact and thereby contribute to realisation of the UNGPs.

WHAT IS THE DIFFERENCE BETWEEN THE ‘SUPPLY CHAIN’ AND THE ‘VALUE CHAIN’?

A company’s ‘supply chain’ encompasses the resources, activities, and business relationships that feed into a product or service. It traditionally covers ‘upstream’ inputs, such as the extraction of raw materials for manufacturing, energy used to power project sites, suppliers who build product components, and service providers who offer guidance or technical support. The supply chain includes physical assets as well as labour within all tiers of suppliers who contribute to a product or service.

A company’s ‘value chain’ extends beyond its supply chain to include the delivery, consumption, and end use of a product or service.[8] The value chain covers the full lifecycle—including marketing and sales, logistics and distribution, responsible use of products, and end of-life disposal, as well as business relationships with entities that use the company’s products or services.

For example, the **supply chain** of an automobile company would include raw materials used in each component of the vehicle and the factories and suppliers involved in production, while its **value chain** would also cover responsible design and marketing practices, safe operation of vehicles, environmental impacts and disposal or recycling of parts at the end of a vehicle’s life.

3 WHAT HUMAN RIGHTS ISSUES ARISE AND WHO IS AFFECTED?

Downstream human rights impacts affect the full range of rights and rightsholders. They arise across sectors through internal company practices, including product design or marketing, and through business relationships such as the use of a product or service by a business partner, or use by consumers or end users.

Examples range from the design and construction services provided to projects where allegations of severe labour abuses are known, such as the construction of World Cup Stadia in Qatar; end-of-life disposal, such as litigation concerning death occurring as a result of unsafe conditions in shipbreaking yards; or litigation based on production and marketing practices in relation to opioid medication, targeting not only the manufacturers, but also retailers and consultancy firms.

Rightsholder groups who may be at risk of adverse human rights impacts in the downstream include:

- **Workers**, such as employees at franchises or those involved in transport and distribution of goods;
- **Consumers**, such as customers who purchase an unsafe product or use a service provided by a company's business customers;
- **End users**, such as members of online platform exposed to biased algorithms; and
- Broader **communities**, such as rightsholders in the local community affected by a business partner's use of land, or population groups targeted by irresponsible marketing or pricing.

The breadth of examples set out above illustrates that risks arise regardless of the sector or industry. However, some sectors such as finance or technology are inherently prone to downstream human rights impacts, as they carry more severe and widespread risks in their downstream value chains. Careful consideration of the nature of the product or service, the nature of the customer and the context into which products or services are sold is needed to properly understand what impacts a company may have and at what stage of the value chain.

Downstream human rights impacts—like those arising in upstream supply chains—are not limited to one category of rights and can impact the whole spectrum of human rights captured by the International Bill of Rights.[9] They can include risks to:

- **Labour rights**, such as restrictions on freedom of association and collective bargaining at a franchise or hazardous work conditions in distribution or disposal of goods;
- **Economic, social, and cultural rights**, such as livelihoods affected by the introduction of automated services, mental health impacts driven by algorithms or

marketing campaigns, or land rights of communities living near large scale projects to which a company provides design and technology services, or environmental impacts surrounding end-of-life disposal sites; and

- **Civil and political rights**, such as the tension between freedom of expression and freedom from violence in moderation of online hate speech, the right to privacy for end users, or the sale of surveillance equipment to or construction of prisons on behalf of repressive regimes known to target dissidents, or the right to an effective remedy for affected stakeholders.

Impacts may also differ depending on the nature of the business model and the parties to a transaction. The impacts arising from a business which provides goods and services to consumers may differ from those which supply other businesses, which may be more removed from a rightsholder. Further, the provision of goods or services to state actors gives rise to additional considerations, necessitating due diligence on the human rights track record of the particular state and the potential for misuse.[10]

Other considerations may arise where companies are involved in providing essential goods or services, such as those in the health, education, food or housing sectors where a company's practices can affect whether such services are available, accessible, accessible and of a sufficient quality (AAAQ) for the communities they serve.[11]

4 WHAT IS NEEDED TO HELP ADDRESS HUMAN RIGHTS IMPACTS IN THE DOWNSTREAM?

As noted above, companies are seeing renewed impetus to more actively address adverse human rights impacts in the downstream. However, calls for companies to better address these impacts are hindered by the absence of clear guidance which builds on the strong foundation of the UNGPs and OECD GL. During a closed roundtable discussion convened by DIHR in October 2022 a number of company representatives expressed frustration at a lack of operational guidance or tools to further develop due diligence in this segment of the value chain.

Businesses can benefit from peer learning by sharing practices and processes, but also from clearer guidance, including through regulation which sets out expectations for downstream due diligence. Regulatory developments are already driving a value chain approach to business respect for human rights. The European Commission's proposal for a Corporate Sustainability Due Diligence Directive (CSDD) published on 23 February 2022 states the objective of fostering sustainable and responsible corporate behaviour throughout global value chains. Consistent with the UNGPs and OECD GL, it applies a due diligence obligation to the full value chain, rather than being limited to the supply chain.

The EU Corporate Sustainability Reporting Directive similarly references the UNGPs and OECD GL and applies to the full value chain,[12] requiring disclosures in relation to "the principal actual or potential adverse impacts connected with the undertaking's own operations and with its value chain, including its products and services, its business relationships and its supply chain" as well as actions taken to address those impacts.[13] On social topics, which include human rights, businesses are required to make disclosures relevant to four stakeholder groups across the full value chain: workers in own operations; workers in the value chain; affected communities; and consumers and end users.[14]

In addition, while some national legislative developments[15] such as the German Act on Corporate Due Diligence in Supply Chains have taken a narrower approach, other national legislative measures currently in force, such as the Norwegian Transparency Act, mirror the approach set out in the OECD GL and have been interpreted as applying to a company's value chain. Further, a Bill on Responsible and Sustainable International Business Conduct which takes a full value chain approach was presented to the Dutch Parliament in November 2022.

As a number of the case studies set out below note, the value chain approach has helped companies understand expectations and build internal buy-in to drive action in the downstream. In some cases this has been driven by the approach taken in forthcoming regulation. A consistent approach across regulatory initiatives is needed to ensure a coherent regulatory space which sets clear requirements and meets the current practice of companies which are already conducting human rights due diligence in the downstream part of the value chain. It should be noted that a number of statements on behalf of high profile companies have expressed support for any regulation in this area to take a full value chain approach.

5 COMPANY PRACTICE

Many companies are already undertaking some form of due diligence which covers human rights impacts in the downstream part of the value chain. Some do so explicitly, adopting policy commitments and taking a full value-chain approach to their human rights due diligence. Others do so through existing processes which, though not framed as such, nonetheless consider human rights impacts.

There are a range of strategies and processes which can be used to manage downstream human rights impacts, including:

- Making **policy commitments** to address human rights throughout their value chains;
- **Mapping risks**, including through undertaking human rights impact assessments, across the value chain and using the findings to inform action plans;
- Ensuring that **products are designed responsibly** through interventions at the research and development stage;
- **Adapting sales processes** and **KYC checks** or **anti-bribery and corruption processes** to include due diligence on human rights;
- Developing **responsible marketing practices** to manage human rights impacts;
- **Ongoing engagement with business customers** to address human rights risks, monitor effectiveness of mitigation measures, and encourage improvement;
- Exploring how to **increase leverage**, for example through design features, ongoing service contracts or collective action efforts;
- Ensuring that **end-of-life disposal** is conducted in a manner which respects rights;
- **Engagement with rightsholders** and affected communities;
- Ensuring that ongoing risk management processes allow for **escalation of risk**, both by employees and external stakeholders; and
- Making **complaint and grievance mechanisms accessible to rightsholders** affected by downstream human rights impacts.

As the case studies set out below show, these practices are employed across a range of sectors, country contexts, and business models, designed to address a range of human rights impacts.

6 CASE STUDIES

6.1 NOVO NORDISK: EXPANDING ANTI-BRIBERY/CORRUPTION RISK PROCESSES TO COVER HUMAN RIGHTS

Novo Nordisk is a global healthcare company headquartered in Denmark. It employs more than 50,000 people in 80 offices around the world and markets pharmaceutical products, including diabetes, obesity, haemophilia, growth disorder and hormone replacement medicines, in 170 countries. Novo Nordisk's primary customers are businesses—mainly distributors, wholesalers, pharmaceutical chains, and hospitals.

Novo Nordisk is committed to respect all internationally recognised human rights across its own activities and business relationships, in line with the UNGPs, combining a 'patient-first' approach centred on end-user rights with respect for the rights of its own employees, workers across all tiers of suppliers and communities. It recognises that adverse human rights impacts can arise beyond its own operations in both upstream and downstream value chains, whether via labour rights abuses in business partners' operations or via flow-through impacts on patients, suppliers, external workers and communities.

In order to implement its human rights commitments, Novo Nordisk is enhancing global systems to assess, track and internally report potential and actual human rights risks. In 2021, Novo Nordisk mapped its main human rights risks across all activities and processes throughout the value chain, including over 30,000 first-tier customers. In addition to its Third-Party Risk (TPR) management process, the company looked at, for example, product-related risks via its pharmacovigilance processes and product tracking and safety reports to its customer complaint centres, which could have an impact on end-users.

The 2021 risk assessment identified salient issues including product accessibility and affordability, patient safety, and human rights in business relationships, among others. To ensure that it proactively identifies, mitigates and prevents these and other adverse human rights impacts, Novo Nordisk is also expanding the scope of its risk management process to consider potential risks to the rights of patients and other affected stakeholders across its value chain. In addition, Novo Nordisk monitors high-risk business relationships on a yearly basis.

In order to address impacts in both upstream and downstream value chains, Novo Nordisk is expanding its TPR management system, which is currently designed to enable compliance in areas such as anti-corruption and bribery. This is being done by revising its business partner questionnaire to also include questions relevant to human rights risks, such as whether the business partner has had incidents of human rights harms.

The expanded TPR process does not focus specifically on end-user impacts, but rather on those affected throughout the downstream value chain. In addition to addressing the potential risk of labour rights violations by customers or other business partners in its value chain—such as inadequate working or safety conditions, worker recruitment fees, or informal employment—it also recognises that human rights impacts may arise from product misuse, from logistical disruptions or other operational challenges. Accordingly, Novo Nordisk is conscious of the need to design a process and input format which is capable of identifying such risks.

As the expanded TPR process is launched, engagement and clear guidance for business partners is needed to build a common understanding on human rights and ensure that the process will effectively identify human rights risks. Internal training will also be key to ensure that all relevant departments and employees, especially in local operations where colleagues may be less familiar with the concept of human rights risks, share that common understanding. Regulatory developments at the EU level have supported increased buy-in among management, prompting action to expand the TPR process and helping Novo Nordisk consider its impacts throughout the full value chain.

6.2 RECKITT: USING VALUE CHAIN HRIA TO IDENTIFY AND ADDRESS IMPACTS ON CONSUMERS AND END-USERS

Reckitt is a global consumer hygiene, health, and nutrition company headquartered in the UK. Reckitt exists to protect, heal, and nurture in the relentless pursuit of a cleaner, healthier world. Operating in over 60 countries around the world, Reckitt is behind some of the world's most recognisable and trusted consumer brands, including Air Wick, Dettol, Durex, Enfamil, Finish, Gaviscon, Harpic, Lysol, Strepsils, and more.

In 2019, Reckitt and the DIHR entered a partnership to support the evolution of Reckitt's approach to respecting human rights, a key part of which involved conducting Reckitt's first HRIA. The assessment focused on the impacts of the company's operations in Thailand, focusing onlooking at the value chain of two product categories, condoms and infant formulas. The HRIA took a full value chain approach, considering human rights impacts in the downstream part of the value chain, including on consumers.

Regarding the downstream findings about condoms sold in Thailand, based on the ICESCR Committee's General Comment No.14, the HRIA applied the AAAQ criteria (to assess Availability, Accessibility, Acceptability and Quality) to ensure that the consumer access to condoms, including retail sales and marketing, are is compatible with the right to health and sexual and reproductive rights of consumers. It The HRIA identified the potential risk that these products might not always be accessible (in terms of affordability for poorer segments of society) and acceptable (caused by the stigma associated with buying condoms) for all consumer groups, including vulnerable consumers.

Reckitt tries to break down these barriers by educating consumers and equipping them for sexual health and wellbeing, while promoting sexual and reproductive rights more broadly. Within Thailand, this has included a range of initiatives to erase cultural stigma and normalise sex. These include a partnership with UNFPA and the Ministry of Public Health to promote condoms and modern contraception through education to teens, and sponsoring Bangkok Pride 2022 with events such as an in-store activation with a major retail partner to raise awareness and engage consumers. The Durex brand has also launched consumer campaigns, such as "The Unequal Dinner" exposing the unequal pleasure couples may experience in bed, promoting the need for equal pleasure regardless of gender. Finally, to increase access to condoms for all segments of society, Durex expanded distribution of a more affordable condom range called Durex Protect.

In the case of infant formula, the HRIA identified the potential risk that marketing, advertising and sales practices might have on children's rights to life, survival and development and to the highest attainable standard of health, of which breastfeeding is considered an integral component. Reckitt has continued to evolve its engagement, compliance monitoring and communication activities to ensure responsible marketing and sales of its infant and child nutrition portfolio.

Specifically, Reckitt has engaged key stakeholders such as healthcare professionals and retailers to define responsible marketing. The company has enhanced its due-diligence processes to ensure adherence to marketing standards, which includes auditing high-risk retailers. Finally, it has developed an online eLearning module on responsible marketing practices in partnership with the Thai Pediatric Nutrition Manufacturer Association (PNMA) and leveraged its social media presence by promoting the benefits of breastfeeding, through a “Breast Milk is Best” campaign.

In meeting these challenges, Reckitt has considered the market segment it currently meets and how this can be developed to also strengthen delivery of human rights. Reckitt has emphasised the importance of raising awareness among all consumers on health-related topics, which would also provide greater business opportunities for the industry.

6.3 VESTAS: CAPTURING DOWNSTREAM HUMAN RIGHTS IMPACTS THROUGH A RISK-BASED APPROACH TO HRDD

Vestas provides sustainable energy solutions by designing, manufacturing, installing, developing, and servicing wind energy and hybrid projects around the globe. Vestas customers own and operate wind energy projects using Vestas wind turbines.

In line with the UNGPs, Vestas adopts a full-value-chain approach to its human rights due diligence informed by company-wide human rights impact assessments to identify gaps and address human rights issues. Vestas' early social risk mapping revealed that its downstream relationships could carry greater risk compared to its upstream value chain.

Mega infrastructure projects, such as a wind farm, can potentially have negative impacts on the surrounding environment and communities. Often communities see only one project: while it is Vestas' customers who own and operate the wind farms, the turbines carry the Vestas logo, and local communities therefore often mistake Vestas as the owner and may associate Vestas with impacts arising from the project.

Vestas recognises and addresses these downstream risks through a range of tools applied during the sales process and through partner engagement during the construction of the wind farm. Vestas has identified the following general potential social risks related to wind farms: land acquisition and resettlement, local employment, Indigenous Peoples, cultural heritage, community health and safety, and access to remedy for adversely impacted communities and workers.

As part of its sales process, Vestas has developed a social due diligence (SDD) tool used in all Engineering, Procurement, and Construction (EPC) and certain Supply-and-Installation (S&I) projects in emerging markets as well as projects in OECD countries with high-risk ratings on Indigenous Peoples' rights. The SDD tool includes desktop assessment of country-level risks and know-your-customer (KYC) processes to assess social risks, including assessing what kind of due diligence a potential customer undertakes alongside media screening and benchmarking scores. It also includes in-depth project site due diligence to collect or validate data. Based on the SDD findings, Vestas creates a social management plan with measures to prevent or mitigate the identified risks, to be implemented during construction.

Vestas conducts ongoing due diligence to ensure that the social mitigation measures are adequately implemented, monitored and adjusted if needed during the construction phase. This includes active engagement with customers and other external stakeholders and, in some cases, embedding an on-site coordinator to work with the customer's community liaison officer. The company reports progress on the mitigation measures to its customers where requested and organizes regular meetings with community representatives not only to report on construction status but also to hear their concerns. Vestas also maintains an operational grievance mechanism through which community members can raise concerns—a key function to identify and address human rights impacts directly with stakeholders in a timely manner.

Finally, Vestas has set KPIs to monitor and communicate around its downstream efforts, including the share of in-scope projects having undergone the SDD process; the number of community beneficiaries reached; and the number of community grievances received. Vestas acknowledges that gathering data can be a challenge, with upstream data more readily available than downstream and restrictions given the confidentiality of the project documents, making developing the right social and human rights KPIs and tools to collect and manage these data a key consideration.

Downstream impacts are at the core of Vestas's approach to due diligence. Rather than adapting procedures geared towards other types of risks, Vestas identified and sought to address its downstream impacts as a natural phase of its full-value-chain human rights due diligence and has designed processes to address these risks. While attention to downstream impacts will not eliminate criticism from external stakeholders, Vestas' human rights due diligence processes provide a critical tool to manage risk in line with the UNGPs.

6.4 ERICSSON: ENHANCING ICT SALES PROCESSES TO SCREEN FOR HUMAN RIGHTS RISKS

Ericsson is a Sweden-based provider of Information and Communication Technology (ICT) services. The company's products and services range across telecommunication networks, cloud software and services, and emerging technologies such as 5G, artificial intelligence, automation, VR/AR, and edge computing.

Privacy and freedom of expression are two major salient human rights issues in Ericsson's downstream value chain. The 'Internet of Things' (IoT) will lead to vastly increased data flows and questions over storage and sharing of personal data, including state actors engaging in surveillance and private enterprise utilizing personal data to predict and monetize behaviour. Although ICT can enhance freedom of expression as a means of digital communication, the very same right can be violated if the technology is misused.

Ericsson has long recognized that downstream risks to end users' privacy and freedom of expression sit at the core of the company's business as an ICT provider, as illustrated by the company joining the Global Network Initiative as a member in 2019. Accordingly, Ericsson undertakes human rights due diligence focused on such potential downstream human rights impacts in order to assess, prevent and mitigate potential misuse of their technology.

Ericsson has integrated human rights due diligence into its sales process through its Sensitive Business Framework (SBF). In the SBF, all sales opportunities are reviewed in Ericsson's internal system to flag high risks across four checkpoints: product (what technology is being sold), purpose (its intended use), customer (ownership analysis of the potential buyer), and country (risks where the technology will be used). For example, for products which may carry elevated inherent risk, greater restrictions will be placed on selling into a geographical or other context where there are elevated risks. Conversely, more low-risk communications technology may not face such restrictions unless there are identified issues with the intended end use.

Sales opportunities that reach a certain threshold of combined risk across these four checkpoints must be scrutinized by the Sensitive Business Core Team before signing, with the possibility for cases to be escalated to the Sensitive Business Board's review. This can lead to a decision to reject the sales engagement or to proceed with the opportunity, with or without conditions to mitigate risks. Conditional approvals can include both technical (product-level) and contractual (e.g. limitations on use) mitigations. While continuous monitoring of downstream human rights performance can be difficult, Ericsson applies the SBF to all transactions, which can allow the company to look into issues at a later stage in an ongoing commercial relationship.

In addition to screening through the SBF, Ericsson also undertakes stand-alone human rights impact assessments for major business developments. In March 2021, Ericsson published a human rights assessment report regarding their 5G technology services. The assessment was a crucial part of ensuring that risks and impacts are identified at an early stage of the 5G rollout, taking action to mitigate risks and address impacts where needed, as well as proposing ways of collaboration across the ICT industry. Although the 5G rollout may impact human rights in myriad ways, Ericsson focused on downstream impacts including change in livelihoods and job transition, privacy, data loss and misuse, cybersecurity of critical infrastructure, network surveillance and shutdowns.

The assessment serves a starting point for further engagement and learning with customers, suppliers, NGOs, investors and other stakeholders. Ericsson has invited constructive dialogue recognizing that no actor alone can avoid the human rights risks systemic to the ICT sector. Ericsson works within networks to make the ICT sector more responsible, including the UN Global Compact and the Global Network Initiative.

Owing to the nature of its business, Ericsson has recognized that its key salient human rights impacts occur in the downstream part of the value chain. In addition to human rights impact assessments which take a value chain approach, it has developed specific processes to manage risks arising from the use of its products.

6.5 MAERSK: RESPONSIBLE SHIP RECYCLING STANDARDS TO INTEGRATE HUMAN RIGHTS IN END-OF-LIFE DISPOSAL

Maersk is an integrated transportation and logistics company based in Denmark. It is one of the world's largest container shipping companies, deploying more than 730 container vessels to facilitate global trade.

Container vessels have a typical lifespan of 25 years, after which they are demolished by shipbreakers to recycle the steel bodies of the vessels. Ship recycling is an environmentally sound means of disposal that contributes to a circular economy, but only a small fraction of vessels is recycled responsibly. The industry has been deemed hazardous by the ILO, with nearly 80% of the gross tonnage recycled in shipbreaking yards with frequent health and safety incidents and adverse labour and human rights impacts.

Given these challenges, Maersk has long identified end-of-life disposal and recycling as a salient issue in its downstream value chain. It introduced a ship recycling policy in 2009 and launched its Responsible Ship Recycling Standard (RSRS) to assess recycling facilities' practices in 2016.

The RSRS reflects Maersk's respect for international human rights and labour standards, such as those set out in the Universal Declaration of Human Rights and the ILO Core Conventions, including detailed requirements on working and employment conditions, freedom of association and collective bargaining, child labour and forced labour, and worker health and working environment.

The RSRS positioned Maersk to not only meet the standards set out in the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (HKC), but also to scale its efforts in the absence of a global regulatory framework. The RSRS in some respects goes beyond the standards laid out in the HKC as well as the EU Ship Recycling Regulation. With the HKC as a baseline, Maersk was able to gain momentum internally to take action on the issue and introduce its own standards which reflect its commitment to human rights and supporting socially responsible business conduct throughout its value chain.

The RSRS allows ship recycling facilities to engage in a process of gradual improvement. To ensure the standards are practical and targeted to address impacts on the ground, Maersk employees work directly with ship yard workers, collaboratively developing improvement plans and verifying compliance through on-site supervision and follow-up audits.

Maersk notes that, for the company to understand its downstream impacts, "there is nothing compared to being on the ground." To this end, Maersk has engaged with the local community of Alang, India, where some ship recycling yards are located, to ensure that sub-contracted workers earn the requisite wages with insurance, leave and retirement benefits and incentivise the construction of ILO-compliant dormitories. The company has also invested in community health programs throughout Alang, supporting a Mobile Health Unit and health trainings that aim to improve health outcomes for yard workers.

Maersk also tries to maximize its leverage through collaboration with other stakeholders. It is a UN Global Compact member and a founding member of the Ship Recycling Transparency Initiative (SRTI), which aims to accelerate a voluntary, market-driven approach to responsible ship recycling.

The industry's challenges are systemic and growing in urgency, with global ship recycling volumes projected to quadruple by 2033. Many vessels ready for recycling in the next decade are estimated to be too large to be responsibly recycled at current facilities. To address sector-wide impacts, Maersk uses the RSRS as a standard and a basis for ongoing dialogues with global players in the industry, assisting them with research and technological developments, building the business case for responsible recycling and performing rigorous due diligence on potential sites to ensure the industry addresses its downstream risks, including risks to human rights.

6.6 PANDORA: ADDRESSING DOWNSTREAM RISKS AND CREATING OPPORTUNITIES THROUGH RESPONSIBLE MARKETING PRACTICES

Pandora is a Danish company that designs, manufactures and markets hand-finished jewellery. Its products are sold in more than 100 countries through 6,400 points of sale, including more than 2,400 concept stores.

Pandora engages with millions of consumers through its marketing efforts across various channels such as social media, store networks and advertising. Given that Pandora's practices could have an impact on consumers and other stakeholders, it has a responsibility to establish thoughtful, responsible marketing practices that can help mitigate potential risks in its downstream value chain and drive positive change where possible.

Pandora identified various potential human rights risks for its marketing activities through a third-party company-wide human rights impact assessment (HRIA) in 2021. Potential risks included the absence of due diligence around online advertising and a lack of controls to sufficiently manage risks such as discrimination, bias and children's rights in campaigns. The company seeks to address its salient risks by establishing appropriate processes and policies, as well as effective governance to ensure their implementation. As a starting point, Pandora launched its Responsible Marketing Standard to outline expectations for the business, its own employees and its business partners.

Guided by the International Chamber of Commerce's (ICC) Advertising and Marketing Communications Code, the Standard sets out principles on inclusive and diverse marketing, upholding children's rights, and truthful, substantiated sustainability claims. Pandora is now working to put these principles into practice:

- The company established inclusion and diversity targets for customer engagement, such as ensuring that by 2025, 30% of its brand ambassadors are from underrepresented groups. Pandora also seeks to include diverse consumer voices throughout its campaign development process to avoid contributing to negative stereotypes, bias, or cultural appropriation.
- Pandora does not market to children under the age of 13; seeks to promote positive social behaviour, body image, lifestyle and attitudes in marketing campaigns; and ensures safeguarding measures are in place during photoshoots involving children.
- Pandora verifies all sustainability claims and includes relevant qualifications to ensure transparent communication with its customers to avoid misleading claims.

Implementing responsible marketing practices throughout the value chain can pose challenges. Given the numerous platforms where Pandora's marketing material may appear, it is difficult to ensure uptake of the Standard—as well as Pandora's Human Rights Policy and Supplier Code of Conduct— across all business relationships. To address these challenges, Pandora has begun to map its advertising partners and integrate sustainability requirements into tenders.

Pandora is also building capacity to implement the Standard internally. It established a Responsible Marketing Committee, which reports annually to the Sustainability Board and comprises representatives from marketing, sustainability, legal and compliance teams. The company consults these functions throughout campaign development to ensure compliance with the Standard. Pandora also seeks to embed responsible marketing principles across the business by educating staff; in 2023, it will offer eLearning modules on human rights and responsible marketing to raise awareness of potential downstream impacts and ensure that employees in relevant functions feel empowered to address them.

Pandora found that, in order to address salient human rights risks across its business, it needed to consider its full value chain, including marketing practices. Pandora recognises that responsible marketing is a journey requiring ongoing, active engagement. The company has noted that without legislation to push the agenda forward, these developments will take longer, and that regulatory developments in the EU such as the CSDDD have raised awareness and increased buy-in among their staff.

7 ANNEX: RESOURCES

A SELECTION OF GENERAL GUIDANCE

- Business for Social Responsibility, Human Rights Due Diligence of Products and Services (July 2021)
- European Coalition for Corporate Justice, OECD Watch, Swedwatch, SOMO and European Center for Constitutional and Human Rights, Setting the record straight: Downstream due diligence (December 2022)
- Global Business Initiative on Human Rights, Effective downstream human rights due diligence: Key questions for companies (February 2023)
- Global Business Initiative on Human Rights, Responsible Product Usage (March 2021)
- Jonathan Drimmer et al, Downstream Due Diligence: Regulation through Litigation, Paul Hastings (December 2022)
- UN Global Compact, Addressing Adverse Human Rights Impacts Connected to Product Misuse (May 2017)
- UN Global Compact HRB Dilemmas Forum, Product misuse (Undated)
- UN Office of the High Commissioner for Human Rights, Mandating Downstream Human Rights Due Diligence (13 September 2022)
- Shift, Business Model Red Flags (February 2021)
- Triponel Consulting, Respecting human rights, when the products your company sells can be misused: illustrative examples (September 2021)

B SELECTION OF SECTORAL GUIDANCE

- American Bar Association, Defense Industry Human Rights Due Diligence Guidance (August 2022)
- B-Tech, Identifying and Assessing Human Rights Risks related to End-Use (September 2020)
- B-Tech, Taking Action to Address Human Rights Risks Related to End-Use (September 2020)
- B-Tech, The Feasibility of Mandating Downstream Human Rights Due Diligence: Reflections from technology company practices (September 2022)
- Electronic Frontier Forum, Human Rights and Technology Sales: How Corporations Can Avoid Assisting Repressive Regimes (April 2012)
- UN Office of the High Commissioner for Human Rights, Response to Request from BankTrack for Advice Regarding the Application of the UN Guiding Principles on Business and Human Rights in the Context of the Banking Sector (June 2017)
- Shift, Professional Responsibility of Lawyers under the Guiding Principles (April 2012)
- Unicef, A Child Rights-Based Approach to Food Marketing: a Guide for Policy Makers (April 2018)
- UN Principles for Responsible Investment, EU Corporate Sustainability Due Diligence (CSDD) Directive (September 2022)
- US State Department, Guidance on Implementing the “UN Guiding Principles” for Transactions Linked to Foreign Government End-Users for Products or Services with Surveillance Capabilities (September 2020)

- Verisk Maplecroft, Human rights and environmental due diligence in downstream supply chains, August 2022
- UN General Assembly A/63/263, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Annex: Human Rights Guidelines for Pharmaceutical Companies in Relation to Access to Medicines (11 August 2008)

ENDNOTES

1 B-Tech, Identifying and Assessing Human Rights Risks related to End-Use: A B-Tech Foundational Paper, (September 2020); B-Tech The Feasibility of Mandating Downstream Human Rights Due Diligence: Reflections from technology company practices (September 2022).
2 UN Guiding Principles on Business and Human Rights, Commentary to GP 13; UN Office of the High Commissioner for Human Rights, Mandating Downstream Human Rights Due Diligence (13 September 2022).
3 OECD Guidelines for Multinational Enterprises, Part I, Chapter II, Commentary 14.
4 See examples referred to in Gabrielle Holly, Will the EU turn a blind eye to human rights impacts of business beyond the supply chain? BHRRC Blog Series, 23 November 2022.
5 See for example, Milieudefensie et al vs. ING filed 5 July 2019. A number of specific instances which consider downstream impacts ae included in European Coalition for Corporate Justice, OECD Watch, Swedwatch, SOMO and European Center for Constitutional and Human Rights, Setting the record straight: Downstream due diligence (December 2022).
6 Jonathan Drimmer et al, Downstream Due Diligence: Regulation through Litigation, Paul Hastings (December 2022).
7 UN Office of the High Commissioner for Human Rights, Mandating Downstream Human Rights Due Diligence (13 September 2022).
8 See for example International Sustainability Standards Board, Exposure Draft: IFRS® Sustainability Disclosure Standard (March 2022); OECD, Mapping Global Value Chains (3 December 2012).
9 According to the UNGPs, companies are required, at a minimum, to respect the rights set out in the International Bill of Rights, which includes the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic and Social Rights and the ILO Core Conventions.
10 For consideration of these issues, see for example, due diligence guidance from the US State Department, Guidance on Implementing the "UN Guiding Principles" for Transactions Linked to Foreign Government End-Users for Products or Services with Surveillance Capabilities (September 2020).
11 For an example of a value chain HRIA which incorporates AAAQ analysis, see Reckitt Benckiser Human rights impact assessment – Durex and ENFA value chains in Thailand (February 2021).
12 See for example, Recitals 9, 18, 31, 33, 49, and 50; Article 1: Amendments to Directive 2013/34/EU, Article 19a (2)(f) and (3); Article 29a (2)(f), (3) and (4).
13 CSRD Article 1: Amendments to Directive 2013/34/EU, Article 19a(2)(f)
14 See the European Sustainability Reporting Standards adopted by the European Financial Regulatory Authority in December 2022.
15 See also the French Duty of Vigilance Law.

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