

A Shared Vision for Respecting the UN Guiding Principles on Business and
Human Rights in Grocery Trade Supply Chains

20 August, 2015

TABLE OF CONTENTS

1. INTRODUCTION

Background and goal

The structure and scope of the document, and its relation to the UN Guiding Principles

2. FOUNDATIONAL PRINCIPLES

Internationally recognised human rights

The extent of corporate responsibility in the supply chain

Examples on how the grocery trade can be involved in adverse human rights impacts

3. GUIDELINES FOR COMPLYING WITH HUMAN RIGHTS DUE DILIGENCE

3.1. Human rights due diligence

3.2. Risk assessments

3.3. Actions

Risk prevention

Recommendations for actions that prevent human rights risks

Audits

Actual adverse impacts

Issues of Context

3.4. Communication

Organising the responsibility practices of supply chains

Transparency

3.5. Grievance mechanisms

4. FURTHER MEASURES

1. INTRODUCTION

Background and goal

This document represents the common view of the representatives of the business community, non-governmental organisations and the authorities as regards the implementation of the UN Guiding Principles on Business and Human Rights (henceforth referred to as the UN Guiding Principles) across the supply chains of the Grocery Trade.¹

The UN Guiding Principles were adopted in 2011 and are built on three pillars: the States' obligations to protect and fulfil human rights, the responsibility of business enterprises to respect human rights, and the provision of appropriate and effective remedies for the victims of human rights abuses.

As part of the national implementation of the UN Guiding Principles the Ministry of Employment and the Economy and the Ministry for Foreign Affairs organise sector-specific round-table discussions which aim to foster dialogue between different stakeholder groups in order to establish the key risks for each sector as well as determine a sufficient degree of risk management and due diligence. The grocery trade round-table group convened six times from November 2014 to June 2015. As a result, the group reached a common view on the practical implementation of the Guiding Principles across the supply chains of the grocery trade.²

The purpose of this paper is to support grocery retailers in recognising their roles and responsibilities within the value chains of their sector and to better enable them to avoid any complicity in adverse human rights impacts.

The structure and scope of the document, and its relation to the UN Guiding Principles

This paper follows the structure of the UN Guiding Principles; the section describing the corporate responsibility to respect human rights is divided between foundational principles and operational principles (Chapters 2 and 3 in this document). Each subsection of this paper makes mention of the corresponding UN Guiding Principle.³ Additional information regarding the application of the Principles can be found, inter alia, in *The Corporate Responsibility to Respect Human Rights – An Interpretive Guide*, published by the Office of the UN High Commissioner for Human Rights and translated to Finnish by the Human Rights Centre.⁴

The UN Guiding Principles apply to all business enterprises irrespective of size, sector, operational context, ownership or structure. In addition, each company in the supply or value chain represents a corporate entity to which the UN Guiding Principles apply.

The practices and guidelines described in this paper do not weaken or limit the scope of application of the UN Guiding Principles, nor are they intended to supersede legislation or the role of the State in the protection of human rights.

The guidelines determined in this paper can be seen to apply to all types of business enterprise which engage in import or marketing under their own name, trademark or some other distinguishing symbol. In the retail trade the companies' private label products and own imports play such a role. The purpose of these guidelines is, through stakeholder dialogue, to further define and specify the UN Guiding Principles as regards supply chains.

The corporate responsibility to respect human rights: Foundational principles

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

12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

13. The responsibility to respect human rights requires that business enterprises:

(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;

(b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.

15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

(a) A policy commitment to meet their responsibility to respect human rights;

(b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;

(c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

UN Guiding Principles on Business and Human Rights, no. 11-15.

2. FOUNDATIONAL PRINCIPLES

Internationally recognised human rights

Companies must respect human rights. In the UN Guiding Principles of the UN internationally recognised human rights are, at a minimum, understood to denote the level expressed and recognised in international human rights conventions and, especially, in the Declaration on Fundamental Principles and Rights at Work of the International Labour Organization (ILO).

- The following three human rights instruments are the core international human rights documents establishing the 'International Bill of Human Rights': 1) The Universal Declaration on Human Rights, 2) The International Covenant on Civil and Political Rights, and 3) The International Covenant on Economic, Social and Cultural Rights, which subsequently have been supplemented through numerous binding conventions.
- The ILO's Declaration on Fundamental Principles and Rights at Work embraces the following rights and principles: freedom of association and the right to collective bargaining; the elimination of all forms of compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

The extent of corporate responsibility in the supply chain

The UN Guiding Principles determine that the responsibility of business enterprises to respect human rights extends all the way through the value chain. The nature of an enterprise's responsibility depends on the degree of complicity in adverse human rights impacts.

Business enterprises may be, or become, involved with adverse human rights impacts through their own activities or they can contribute to such impacts through their business relationships with other companies or third parties.

- In such instances the company should cease doing so and modify its operations to prevent such impacts or decrease the possibility of their reoccurrence.

Additionally, business enterprises may indirectly be involved with adverse human rights impacts through their business relationships, should their partners cause adverse human rights impacts or contribute to them.

- When it comes to indirect impacts the primary responsibility lies with the party that caused the adverse impact. Nevertheless, a business enterprise which, through its business partnership, is indirectly involved in such activity is obliged to encourage the party that caused, or contributed to, the adverse impact to prevent it or decrease the possibility of its reoccurrence.

Examples on how the grocery trade can be involved in adverse human rights impacts

Direct impacts

The scope of this document is limited to examining supply chains outside of Finland. If the grocery retailer does not have its own production abroad, then its possible human rights impacts regarding supply chains are indirect (cf. contributing or indirect impacts below).

Other grocery retail trade's activities may have direct impacts on human rights, for example, on personnel, customers or product safety, but they are not within the scope of this document, the focus of which is on supply chains.

Contributing to negative impacts

- *Unreasonably tight delivery schedules or unforeseen changes in orders may result in working hours which exceed permissible norms or rule out sufficient rest periods for employees.*
- *A first-tier supplier factory in the company's supply chain repeatedly violates occupational safety; the purchaser is aware of said violations but fails to react to them. This may, among other things, involve substandard fire safety arrangements or inadequate protective equipment for using dangerous chemicals.*
- *Audits at the supplier's factory have uncovered the use of child labour. However, the retailer continues its purchases as usual without intervening.*
- *The retailer has not listed any countries, products or suppliers as posing a risk, nor has it set any contractual requirements for its suppliers regarding occupational conditions and human rights standards. Purchasers make their decisions solely based on price. Workplace standards are being violated at the supplier's factories, but the retailer, owing to shortcomings in its risk assessment or monitoring systems, is unaware of this.*
- *The contractual partner reassigns the production to its subcontractor who is outside the sphere of the purchaser's responsibility monitoring regime. The purchaser finds out about this, but does not react to the new conditions. Rather, it continues its purchases in the usual manner. The supplier of the contractual partner violates labor standards.*

Indirect impacts

- *The retailer has a human rights code of conduct in place for its suppliers. Furthermore, the retailer has trained its purchasers on topics associated with responsibility and gone through the code of conduct with its suppliers; it also trains its suppliers and regularly audits their factories. Even so, meticulous monitoring reveals that a subcontractor has misled the auditors, bringing to light shortcomings in occupational safety as well as forced and unpaid overtime within the value chain.*

The retailer is not responsible for adverse human rights impacts when it becomes the victim of deception or fraud perpetrated by its supplier or another subcontractor in the supply chain. However, once it finds out about the matter it must take appropriate action in order to avoid complicity in adverse human rights impacts.

To summarise, it is of key importance for retailers to strive for maximum diligence in risk assessment and monitoring, and to react to exposed shortcomings. Through active involvement the retailer can eliminate the possibility of contributing to adverse human rights impacts. In contrast, inaction and indifference will only expose it to human rights risks.

In order for companies to avoid situations similar to those depicted in the aforementioned examples they should comply with due diligence, the practical implementation of which is further examined in Chapter 3.

3. GUIDELINES FOR COMPLYING WITH HUMAN RIGHTS DUE DILIGENCE

3.1 Human rights due diligence

17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

UN Guiding Principles on Business and Human Rights, no. 17.

In this paper due diligence denotes a process, described in the UN Guiding Principles, through which appropriate diligence is executed so that companies can better carry out their responsibility on respecting human rights. It is a continuous process through which companies recognise and prevent adverse human rights impacts in which they could become involved in, directly or through their business activities. Through this process they also determine their policies vis-à-vis such impacts. Due diligence comprises the following areas: impact assessment, integration into activities, monitoring and communications, as well as taking corrective action should any anomalies occur. These are further described in Chapters 3.2 – 3.5.

Risk assessments

18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

- (a) Draw on internal and/or independent external human rights expertise;
- (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

UN Guiding Principles on Business and Human Rights, no. 18.

The human rights risk assessment process must be an integral element of the purchasing process; in addition to the manufacturing phase, it must also recognise the human rights risks included in the sourcing of key raw materials. When human rights risks are identified with regard to other than key raw materials, special effort must be made to mitigate them.

If the risk assessment identifies human rights risks in the product's supply chain in phases following the first tier, such as raw material extraction, appropriate action must be taken.

The assessments must be effective and it is acceptable to use as their basis for example different risk country lists (e.g. World Bank governance index, the OECD's list on developing countries, the UN list of the Least Developed Countries (LDC), country profiles compiled by national human rights centres). However, one must note that risks may not be exclusively limited to the listed risk countries. Consequently, if some country is not included in a given risk country list, it does not directly follow that it can be entirely ignored in risk assessments. It is also important to recognise that human rights situations vary by country and region, and that human rights risk assessment is a continual process.

The UN Guiding Principles were adopted only in 2011. In practice, this means that companies have selected many products in their present selection, as well as suppliers, without implementing the due diligence process defined in the Principles. When it comes to such products companies must, without delay, begin to chart the risks associated with raw materials, prioritising suppliers in risk countries. These company's responsibility/human rights principles must be communicated to all suppliers; retailers must also require that their suppliers carry out human rights assessments and implement sufficient practices or procedures in mitigating human rights risks in their own operations.

3.3 Actions

19. In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.

(a) Effective integration requires that:

- (i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;
- (ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.

(b) Appropriate action will vary according to:

- (i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;
- (ii) The extent of its leverage in addressing the adverse impact.

22. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

UN Guiding Principles on Business and Human Rights, no. 19 and 22.

Risk prevention

Companies must take appropriate actions on the results of completed human rights risk assessments. They must prevent the materialisation of potential adverse impacts, and take corrective action on actual adverse impacts.

The appropriate action depends on whether the companies could be the cause of adverse impacts or if they indirectly contribute to them.

Furthermore, the actions are also affected by a company's actual capacity – leverage – in influencing the adverse impacts. In this context leverage means the ability to impose changes in the operations of the party which causes the impacts or contributes to them.

Nevertheless, companies cannot shirk their human rights responsibilities by using their small size or lack of leverage as an excuse.

The primary emphasis must be on the prevention of adverse human rights impacts before any purchases are made.

Risk assessment, as well as corrective action taken on risk prevention and adverse human rights impacts, must pay particular attention to vulnerable risk groups such as children, women and migrant workers.

Recommendations for actions that prevent human rights risks

- Business enterprises should avoid entering into business relations with suppliers whose operations include serious shortcomings or whose due diligence process-based information is not available.
- When it comes to human rights risks assessment it is particularly important to make certain that also the supplier has sufficient risk mitigation practices in place.
- Contractual requirements constitute an instrument through which one can aim to ensure that suppliers will react to identified human rights risks in their operations or that they will take corrective action as soon as adverse impacts arise.
- The company must also evaluate its own purchasing practices. The evaluation should review whether purchasing practices negatively affect the realization of human rights.
- The company must introduce a human rights code of conduct aimed at suppliers, go through the code with its suppliers, and train the suppliers as well as its own purchasing staff.
- Regular audits at the suppliers' factories are to be carried out.

Audits

20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:

- (a) Be based on appropriate qualitative and quantitative indicators;
- (b) Draw on feedback from both internal and external sources, including affected stakeholders.

UN Guiding Principles on Business and Human Rights, no. 20.

The measures used by companies for the monitoring of the human rights compliance of their suppliers, must be proven reliable from the standpoint of due diligence.

International, third party, criteria-based, standardised systems are always preferable options in the implementation of credible monitoring. It is also advisable that the credibility of third party audits be determined by independent, external monitoring. This can be ensured through ISO 17065 accredited monitoring.

It is justifiable to use third party auditors and certifications, including their audit databases, to avoid unnecessary duplication in monitoring, which only places additional burden on suppliers. Audit systems/certifications that incorporate public criteria and accredited monitors, and abide by the key conventions and treaties of the ILO and the UN, are endorsed.

During audits companies should try to relate to the interested parties that the potential impacts concern by interviewing them face-to-face in a manner which makes it possible to take into account any coercion, threats or coaching by the employer (e.g. the employer providing acceptable answers beforehand) as well as any barriers to effective participation, be they language problems or other reasons. The persons to be interviewed must have an opportunity to speak freely without any fear of reprisal. If it is impossible to arrange such a setting, for example through off-site interviews which suit this purpose well, companies should consider other reasonable options such as credible and neutral experts, including human rights defenders and other civil society actors.

There is still headway to be made in international auditing systems and certification criteria. The grocery trade should be actively involved in their further development and, if necessary, complement them through the companies' own additional measures. Such topics include a living wage, freedom of association in countries where legislation curbs the activities of trade unions, reasonable overtime and the responsible recruitment of migrant workers.

Audits are but one instrument in identifying the human rights situation in the supply chain. The actions carried out before and after audits are of primary importance when it comes to the implementation of

due diligence. It is essential to discuss the findings of audits with the supplier as well as monitor supplier's corrective action.

It behoves companies to sustain the proficiency of their staff through training so as to be able to successfully carry out risk assessments and monitoring.

A company's human rights responsibilities are not lowered when it is a member of a monitoring scheme. Nonetheless, when the company participates in such systems, and follows and implements their obligations along with improving its internal risk assessments and practices, it demonstrates a disposition towards working in accordance with due diligence and of trying to diminish its risk of involvement in adverse human rights impacts.

Actual adverse impacts

Should any adverse human rights impacts arise companies, in accordance with the degree of their involvement, must engage in the remediation of human rights impacts. Companies must have clear action plans for exposed adverse impacts.

When problems arise, orders should not automatically be cancelled from the supplier. Rather, it is better to engage in an active dialogue with the supplier to resolve and rectify the problems without delay. Such a dialogue can entail visits to the supplier or mutual correspondence, for example. When cancelling of orders is being considered, any potential negative consequences must also be weighed.

Among other things, the range of actions can include drafting an action plan or arranging regular meetings with the supplier and stakeholder groups.

The retailer must try to agree with its suppliers which actions are to be taken and in what time period, and then monitor their implementation. The more severe the human rights risk or actual impact, the more urgent the corrective action. The supplier must prove that it has taken corrective action on the revealed shortcomings by providing verifiable clarifications to the retailer.

If the company does not possess much leverage on its own, it should try to gain more leverage by cooperating with other relevant actors. For example, it is possible to seek leverage through collaborating with other business enterprises under different responsibility regimes, taking into account the constraints of competition law.

Issues of context

23. In all contexts, business enterprises should:

- (a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;
- (b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;
- (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

24. Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.

UN Guiding Principles on Business and Human Rights, no. 23-24.

The responsibility to respect human rights applies in all situations. However, human rights risks associated with business operations and relationships often vary, depending on the operating conditions. These conditions can pose special challenges to companies when they are trying to meet their obligations.

Even though a State fails to enforce the appropriate national laws or its international human rights obligations, or if it violates human rights through its action or by inaction, business enterprises are still expected to respect human rights. When operating in countries where national legislation and decrees and/or practices are incompatible with internationally recognised human rights, companies should nonetheless find the means for respecting human rights as far as possible, albeit, without violating local legislation. Such cases are, however, quite rare. The prohibition of free association could be mentioned as an example. Even then, one should try to provide other appropriate means for employee involvement. It is also important to emphasise that exceeding the requirements of legislation does not constitute a violation of legislation.

Business enterprises should be extra careful when they operate in conflict areas or when they make purchases from companies operating in such areas, as the potential risk of becoming involved in severe human rights violations is heightened. Conflicts can be associated with, inter alia, controlling land areas or entire states, or natural resources. Among other things, in their human rights risk assessments companies should pay attention to the reports of the UN human rights monitoring system and, when possible, to the reports and decisions of regional human rights monitoring mechanisms.

3.4 Communication

21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

- (a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;
- (b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;
- (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.

UN Guiding Principles on Business and Human Rights, no. 21.

Organising the responsibility practices of supply chains

Companies must communicate how their own responsibility practices are organised: i.e. who is ultimately in charge for responsibility; how their functional units incorporate responsibility in their guidelines and procedures; and how and through which medium the company provides information to its stakeholder groups as regards the company's responsibility practices.

Transparency

Companies must, upon request and within the framework of their existing contractual obligations and competition law, make every effort to determine and provide information on the raw materials, producers, manufacturers and processors of the products that they market. Transparency is important to the company's stakeholder groups so that they can receive information about the company's supply chain and, in return, are able to inform the company of any potential human rights violations in relation to its supply chain.

3.5 Grievance mechanisms

29. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

UN Guiding Principles on Business and Human Rights, no. 29.

Discussions during the drafting of this paper came to the conclusion that the grievance mechanisms of companies are still in their early stages. Moreover, they still include unresolved challenges due to issues

such as long supply chains. Companies and trade unions, NGOs and the authorities are urged to actively develop effective grievance mechanisms so that they would encompass more than just individual factories or customers.

4. FURTHER MEASURES

In the autumn of 2016 the parties that participated in the grocery trade round-table discussions will reconvene and assess the viability of this paper as a guideline for complying with due diligence as per the UN Guiding Principles. The Ministry of Employment and the Economy together with the Ministry for Foreign Affairs will arrange the meeting.

During the abovementioned assessment it will also be possible to discuss further development of the guidelines or extending them to cover activities beyond supply chains. The parties that participated in the round-table discussions are also encouraged to engage in other cooperation and dialogue regarding questions associated with business enterprises and human rights, both among themselves and with other relevant stakeholder groups.

The representatives that participated in the discussions also invite other parties to join in and share this common view on complying with due diligence in the supply chains of the grocery trade.

THE COMMON VIEW IS SHARED BY

<i>Businesses</i>	<i>Organisations</i>	<i>Ministries</i>
Kesko Corporation	FIBS CR Network	Ministry of Employment and the Economy (MEE)
SOK Corporation	Finnwatch	Ministry for Foreign Affairs (MFA)
Tuko Logistics Cooperative	Finnish Commerce Federation Service Union United PAM Fairtrade Finland The Trade Union Solidarity Centre of Finland SASK	

¹ In this paper the terms ‘purchasing chain’ and ‘supply chain’ are used as synonyms.

² Representatives at the round-table discussions included:

- Members from the business community (Kesko: Matti Kalervo, Vice President for Responsibility and Product Safety and Marjut Lovio, Corporate Responsibility Advisor; SOK: Sanni Pekkala, Corporate Responsibility Manager and Lea Rankinen, Corporate Responsibility Director; Tuko Logistics, Pirjo Heiskanen, Quality Assurance Manager).
- Organisations (FIBS: Ulla Roiha, Manager and Mikko Routti, Executive Director; Finnwatch: Sonja Vartiala, Executive Director; Finnish Commerce Federation: Tuula Loikkanen, CEO, Fashion Commerce in Finland; Service Union United PAM: Mari Taivainen, Coordinator for International Relations and Mikko Hietaranta, Advisor; Fairtrade Finland: Janne Sivonen, Executive Director; the Trade Union Solidarity Centre of Finland SASK: Henri Lindholm, Chairman of the Board, Jukka Pääkkönen, Communications Manager and Janne Ronkainen, Executive Director)
- The authorities (MEE: Jorma Immonen, Ministerial Adviser and Linda Piirto, Senior Adviser; MFA: Linda Ekholm, Senior Adviser - Development Policy, Marjaana Hyppönen, Attaché, Ilkka Saarinen, Deputy Director General, Suvi Virkkunen, Senior Adviser - Development Policy and Kent Wilska, Commercial Counsellor).

Kristiina Kouros, Director (Acting) of the Human Rights Centre, was the Chair for the round-table discussions. Kent Wilska, MFA, was the Vice-Chair. A public round of consultations on the paper was organised in April-May of 2015; the comments were taken into consideration in the final version of the document.

³ *Guiding Principles on Business and Human rights – Implementing the United Nations “Protect, Respect and Remedy” Framework* (MEE 36/2013). When it comes to any sections open to interpretation, the original English text applies alongside Finnish translations. The original English version can be found at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

⁴ *The Corporate Responsibility to Respect Human Rights – An Interpretive Guide*. Human Rights Centre, Helsinki 2014.