
Episode 1: Business and Human Rights Developments in Portugal

Webinar Series: Business and Human Rights Developments in Southern Europe

15 September 2020



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Agenda

September 15, 2020

- About BSR
- French Law on the Corporate Duty of Vigilance – High-level presentation
- France – Portugal: 3 remarks looking ahead
- Human Rights Due Diligence in France and Vigilance Plan: 3 take-aways

About BSR

Global Nonprofit Business Network

We are a global non-profit organization that works with our network of more than 265 member companies and other partners to build a just and sustainable world. From our offices in Asia, Europe and North America, we develop sustainable business strategies and solutions through consulting, research and cross-sectoral collaboration.

- Copenhagen
- Guangzhou
- Hong Kong
- New York
- Paris
- San Francisco
- Shanghai
- Tokyo



Why BSR

Mission-Driven



We are a mission-driven non-profit, offering consulting services which focus on innovation, impact, and long-term positive change.

Deep Experience



We are experienced working across the full range of company operations, enabling us to connect points across the value chain.

Demonstrated Leadership



Our 25 years of sustainability experience offers members and clients unparalleled expertise and insight.

Diverse Backgrounds



Our global staff have backgrounds in business, civil society, consulting, investment, government, law, and policy, bringing innovative and diverse perspectives to sustainability challenges.

Industry Focus



Our consulting teams are organized by industry, creating expert teams that are familiar with industry-specific issues and trends.

Areas of Expertise



We work across six core areas: Climate Change, Human Rights, Inclusive Economy, Supply Chain Sustainability, Sustainability Management, and Women's Empowerment.

BSR Helps Companies Apply the UNGPs

Communications (Principle 21)

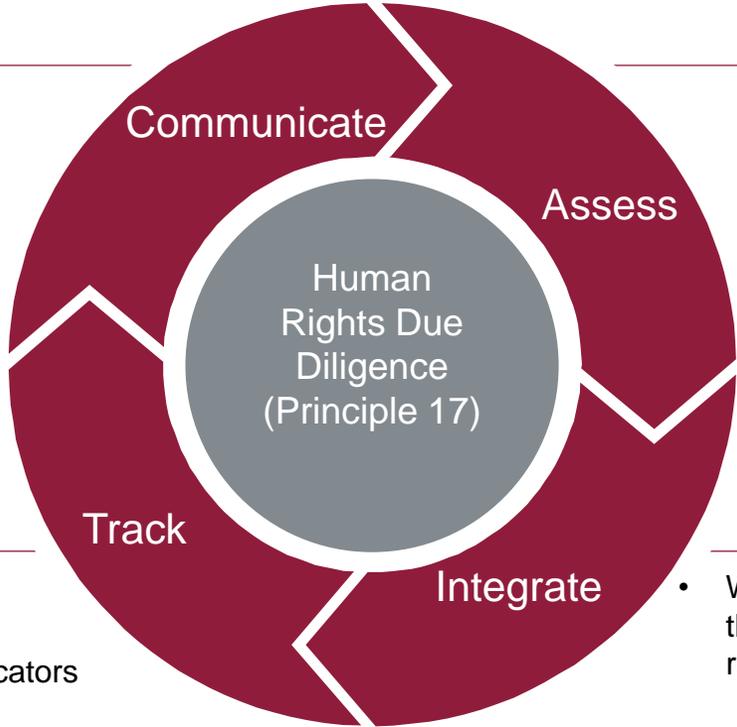
- We help companies create human rights disclosure and reporting strategies.
- We utilize frameworks such as the Global Reporting Initiative and the UNGPs Reporting Framework

Tracking (Principle 20)

- We help companies track human rights progress through the development of key performance indicators and human rights action plans.
- We help companies engage with rightsholders and stakeholders on human rights policies and performance.

Policy (Principle 16)

- We help **create human rights policies** meeting UNGP expectations.



Remedy (Principle 22)

- We help companies **address grievances** and assess pathways to effective remedy.

Assessing Impacts (Principle 18)

- We use a human rights impact assessment tool to help companies identify actual and potential human rights impacts at the company, country, site, or product level.
- Not all rights are relevant for each company. We get to the point quickly.

Integration and Action (Principle 19)

- We help companies develop human rights strategies that integrate findings from assessments across relevant functions and processes.
- Rather than replace existing policies and processes, we build on them by applying a human rights lens.
- We assist with integration by providing human rights training.

Context (Principle 23)

- We help companies **respect human rights when operating in conflict-affected areas.**

French Law on the Corporate Duty of Vigilance – High-level presentation

The French Law on the Corporate Duty of Vigilance– Law requirements

- The law, adopted on 27 March 2017, requires companies registered in France to **identify, prevent and address the severe impacts of their activities on human rights, health and safety of persons and the environment** in France and abroad.
- Companies are expected to publish an **annual, public due diligence plan (Vigilance Plan)**, effective from January 2018. This should include **impacts linked to their own activities, those of companies under their control, and those of suppliers and subcontractors**, with whom they have an established commercial relationship.

The Vigilance Plan should include...

- **A mapping of the risks** (risk identification and prioritization)
- **Procedures to regularly assess** how the company, subsidiaries and suppliers are performing against this risk mapping
- **Measures to prevent and mitigate serious impacts**
- **Grievance mechanism(s) to raise awareness and complaints about actual or potential risks and violations**, developed in partnership with trade union organizations
- **Monitoring mechanisms** to evaluate the implementation and effectiveness of the measures introduced
- **....and be developed in concertation with the company's relevant stakeholders**

France – Portugal: 3 remarks looking ahead

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- **Business landscape:**

- France and Portugal have a different business landscape. In comparison with France, Portugal's business landscape is composed mostly of small and medium-sized enterprises. Portugal has fewer number of large companies whose head office is situated in its territory.

- **Momentum is growing to link anti-corruption and human rights compliance:**

- In Portugal, there is a rise of anticorruption legislation since 2013. Portugal as also just released a National Strategy Against Corruption on September 2020.
- In France, similarities and overlapping requirements exist between the Anti-Corruption Sapin II Law and the French Law on the Corporate Duty of Vigilance to prevent corporate human rights abuses. Combined confidential grievance mechanisms and hotlines can be used by companies to identify corruption and human rights issues simultaneously.

- **Competent judge:** Duty of vigilance litigation in France still seeks its competent judge. The French law does not specify the competent judge to assess the irregularity of a vigilance plan and related human rights violations.

- **Total case in Uganda (30 January 2020):** In the first ever court decision based on the French law on duty of vigilance, the Civil High court declares itself incompetent in favor of the Commercial Court.

Human Rights Due Diligence in France and Vigilance Plan : 3 take-aways

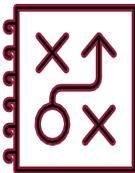
Human Rights Due Diligence and Vigilance Plan: 3 take-aways



There is no “one-size-fits-all” approach for companies to draft and implement a Vigilance Plan: The operational sector and context in which a company operates are essential to appreciate the severity of the impacts. In order to be adequate and efficient, the identification of severe risks for human rights and the environment and the related prevention and remediation measures need to be tailored to operational challenges.



Companies should put people at the core of their Vigilance Plan: the vigilance plan specifically aims to identify, analyze, assess and manage the risks of adverse impacts on individuals’ human rights and the environment. For human rights, the main issues companies mention are mostly fundamental rights of employees but there are still very few appropriate assessment of the human rights impacts on local communities affected by companies’ operations. Additionally, there are still too few companies that develop the vigilance plan in consultation with the representative trade union organizations.



Transparency, honesty and openness to sharing challenges are key expectations from the civil society: Stakeholders expect companies to explain the process undertaken to identify risks throughout their operations and value chain and provide details on reference methodology and criteria used to conduct the mapping and identify the salient issues. Leading vigilance plans are transparent on companies’ potential adverse impacts and share openly challenges from the risk mapping exercise, which increases stakeholders’ trust.

Thank You

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www.bsr.org

[**cpires@bsr.org**](mailto:cpires@bsr.org)



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