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SMES AND HUMAN RIGHTS: PATHWAYS FROM SELF- ASSESSMENT TO COMPLIANCE



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WORKING GROUP

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At the airport in Tunis I am waiting for my flight to Rome and I am sitting behind two businessmen from the Veneto region. The first says: "In the textile industry Tunisians aren't competitive any more. They have become too expensive. Bangladesh is the only place to go at the moment." The other answers "Yes, you're right. But have you seen how they make them work in Bangladesh?" Sitting down beside them to have a chat I realised that it was one of those rare moments in which I feel proud to be Italian.

That brief exchange of opinions, so essential, so typical of those who work in the field and have so little time to waste, does such an incredible job in summing up the conscience, but also a specific vision of respect for human dignity in business activities.

My two acquaintances knew nothing of the great work carried out by Professor J. Ruggie, and approved by the UN Human Rights Council, definitively attesting the direct responsibility of businesses for respecting human rights. To be sure, the proximity of SMEs to their own workers, to the consumers and to the human communities that surround them represents the foundational element of a sense of responsibility perceived as ingrained in the businessman's position, before and beyond a matter of national or international standards.

In my over thirty years of experience working with small and medium-sized enterprises, both in Italy and abroad, I have often had the opportunity to see how much they are - and feel - an integral part of society, because the human relationships that connect them to their employees, to their clients, and to the communities that live beside them are the basis of that 'social licence' which is so often discussed in the manuals and studies in this sector. Greater problems may arise when this proximity is actually attenuated, as happens in the place of subcontracts, for example when an entrepreneur commissions a foreign company to manufacture shirts or swimming costumes and does not see - or does not think he has the duty to see - the conditions of those working for the businesses operating on his behalf.

Today, all over the world, academics and entrepreneurs underline the substantial advantages that would be derived from respecting human rights: avoiding the risk of sentencing and of paying compensation to damaged individuals or groups when the violated standards are part of the State's codes (from civil law, to administrative law, to the penal code); avoiding the so-called reputational damage that is



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generated when the blame and indignation of public opinion towards the immoral and abusive behaviour, in terms of human rights, hits the business in its image, if not even in the quantity of sales; increasing consent among consumers and public opinion in terms of the company's products or services, both by reassuring them that they have been obtained with the utmost respect for human dignity and by using organic or socially sustainable markings. The spreading of products with organic or socially sustainable markings is proof of a growing interest in public opinion for these issues.

It is also worth mentioning a further element that could even be considered the most important for many: ethics. In a country like Italy, this concept is often brought up begrudgingly, with a sort of modesty or reluctance, or as a word emptied of all meaning in the numerous talk shows on television. And yet many businessmen, both large and small, set up their activities according to well-defined ethical principles, possibly deriving from moral or religious convictions. Perhaps the time has come - in our country as well - to establish an ethic of respect for human rights which is, and must be increasingly so in the future, at the foundation of the activities of those numerous small and medium-sized businesses that form the essential skeleton of our economy.

Being Italy the 'country of SMEs' the present document is the AVSI contribution to the Italian National Action Plan on Business and Human Rights.

Alessandro Costa



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PART I HUMAN RIGHTS AND SMALL AND MEDIUM-SIZED ENTERPRISES: AN INTRODUCTION

For many years now we have witnessed events with harmful consequences, mostly caused by multinational companies operating in developing countries. Large and very serious cases of environmental pollution (like oil spills in the sea or the pollution of ground water), of child labour in the manufacturing sector, of forced inhumane and demeaning work conditions (like in the textile industry in China and other parts of Asia, or the mining industry in Africa), of discrimination of gender, religion or ethnicity, and of the coercive displacement in order to make way for industrial plants or large infrastructures.

The respect of human dignity, sanctioned by the *Universal Declaration of Human Rights*, adopted by the United Nations (UN) in 1948, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 1966, as well as many national constitutions, therefore often remains on the paper, due to both an objective weakness of the political, administrative and judicial systems of many countries and the undeniable economic and contractual strength of companies, especially the largest ones. And this weakness of the State systems is definitely not found only in developing countries.

Just think of the Italian cases of the ILVA in Taranto, or the 'terra dei fuochi' ('land of fires') in the Campania region, or even the HIV-infected plasma in France and in Italy. The international obligation for States to enforce human rights was therefore at risk of becoming useless without a significant involvement of businesses. This is why the UN Secretary General thought it essential to nominate, in 2005, a special representative, Professor John Ruggie, of Harvard University, to study the role of businesses in the universal need to establish and enforce human rights in all countries around the globe.

Professor Ruggie's work developed over about 6 years, with the collaboration of experts, businesses and representatives of civil society, and led the UN Human Rights Council to adopt two fundamental documents for human rights. These are the "*Protect, Respect and Remedy*" Framework from 2008 and the corresponding *Guiding Principles on Business and Human Rights* from 2011.

The *Framework* - the basic reference document - is based on three fundamental pillars: **the State's obligation to protect human rights (protect)** against possible violations in businesses, **the companies' direct responsibility to respect them**



(respect) in carrying out their activities, and finally the right for individuals or communities damaged by violations to **obtain a remedy for the damage they suffered (remedy)**.

With the subsequent *Guiding Principles*, Ruggie intended to clarify and facilitate the application of the system, specifying - among other things - the content of the companies' responsibilities. In spite of this, the path that leads a business to operate with respect for human rights is not simple. One reason is the globalised market, which generates a merciless competitive regime, obliging manufacturers of goods and services to relocate their activities to countries where work is not as regulated (and therefore costs less) and countries that have less stringent standards in terms of protecting environment, workers and consumers. Furthermore, there are many human rights standards to comply with, and they differ in nature and are dispersed throughout a large number of international and national sources. Finally, one cannot forget that, in this field, using simple common sense might not be enough, and may even lead to misunderstandings or mistakes.

A. Why entering a process of human rights compliance

First of all, let us try to understand why a SME should start a process to achieve **compliance** with human rights norms.

- Firstly because - according to Ruggie's outlook - the responsibility of businesses concerning **respect for human rights belongs not only to the large companies, but to all businesses, including small and medium-sized ones**.
- Secondly, because **the risk of violating regulations and principles concerning human rights is not eliminated once the company can ensure compliance with the current laws in the country or location in which it is working**. While it may be true that by complying with current laws in Europe, for example concerning environmental conservation and labour issues, one can be almost certain of respecting human rights in these two sectors, this is not necessarily true in many other countries in the world, where current legislation and rules do not protect human rights sufficiently, or where authorities are incapable of applying them, due to a lack of resources or because of issues concerning



corruption. Subsequently, when one goes to produce, or commissions production in other countries (or even other areas of Italy) that have 'lower costs', it is best to beware: this may depend on the fact that these places allow demeaning work conditions, child labour, or the exploitation of vulnerable groups, like prisoners, women, immigrants, or other weak communities. Otherwise the advantage may be derived from a lower level of environmental conservation. In any case the company would run the risk of committing violations of human rights under their direct responsibility.

For example

Let us suppose that the right for workers to assemble is not ensured by the juridical system of the country in which one is working or, in spite of being within their rights, it is made difficult or impossible by the collaboration or inertia of the authorities. A company that denies or in any other way makes exercising that right difficult would still be responsible for violating one of the workers' fundamental rights.

Or

In spite of local law, the collaboration or inertia of the designated authorities permit the company to discharge internal waste water considered pollutant by the most advanced environmental laws, the company might be considered directly responsible for violating the health rights of the communities that use those polluted waters.

- Finally, despite what would seem to be most logical, **a company may certainly be held responsible, for actions or events that did not directly cause, as accomplice.**

As a matter of fact, it is increasingly widely accepted in public opinion that to purchase a product, a component or a service obtained through the violation of human rights is the same as participating as an accomplice in the abuse committed by the manufacturer or the supplier.

For example

The company commissions production to a subcontractor that uses child labour, or applies inhuman or degrading conditions to their own workers, or entrusts the treatment of their toxic waste to operators who abandon it in illegal dumping sites, or entrusts the safety and custody of their productive apparatus to people or companies who are responsible for violent behaviour towards the workers, their representatives, or the surrounding community.

Indeed it is relatively more difficult to set up a compliance process in a company that is already operating, and this is why this brief introduction concentrates mainly on SMEs that are already active. The process for compliance with human rights standards is much easier if it is planned at the beginning of an



investment or anyway before opening a business. It is simply a matter of adding to the traditional economic, financial, market and environment analyses, an assessment of the state of the protection of human rights in the country, the area or the sector in which one intends to operate.

The country profiles supplied by certain organisations and international NGOs, as well as those offering a risk rating for specific countries and areas are a great help. These sources of information make it possible to identify the greatest risks, such as those that derive from poor attention to environmental conservation or to the working conditions in the country or area in which one intends to operate. But what is even more important, they make it possible to understand which of these risks may be prevented directly by the company and which, on the other hand, will presumably be beyond their control. The company may certainly eliminate a source of pollution, but it may not be as easy to hire personnel of different gender, ethnicity or culture if the local traditions are discriminating.

B. Beyond the standards: CSR and Human Rights

Before the Ruggie Report definitively confirmed the direct responsibility of companies in respecting human rights, ethical business rules were already progressively enforced under the name of Corporate Social Responsibility (CSR), which resulted in the development of numerous voluntary codes of conduct and 'standards'.

Naturally, many CSR practices contain clauses and references to human rights and, with the introduction of Ruggie's Guiding Principles, the gap between the two dimensions has narrowed significantly. However, respect for human rights has a different connotation in relation to CSR standards: if in the latter case the company decides which issues to regulate within their own company strategy, human rights are now entirely under the company's direct responsibility, practically an obligation. Therefore, if the company can now have a corporate responsibility code that is an expression of the company philosophy, it is still obliged to respect human rights.



C. Navigating the jungle of rules

In spite of Ruggie's work, there is still no single 'code' or law that contains the complete list of human rights that the company is to respect. For a business, especially a small or medium-sized one, with limited human and financial resources, clarity in terms of rules is essential. By getting companies to apply a more substantial and suitable approach to understanding, Ruggie has tried to limit, as much as possible, the sources of international norms and standards with which one must comply: the Universal Declaration of Human Rights of 1948, the two International Covenants of 1966, the ILO Declaration on Fundamental Principles and Rights at Work and the OECD Guidelines for Multinational Enterprises from 2011. However, these are certainly still too many, and rather confused and repetitive, even though the Universal Declaration and the Covenants still represent the fundamental 'codes'. Furthermore it would make no sense to forget or underestimate the numerous specific and sector standards, with which many companies voluntarily comply in order to demonstrate their will to respect human rights. These apply to the most diverse sectors, from crude oil to palm oil, from diamonds to the large infrastructures built with project financing. These are small 'codes'

containing the fundamental standards that a company is committed to respecting in their activities. The best-known and most common example is without a doubt the Global Compact, promoted by the United Nations in 2000 and which has been endorsed by about 12,000 companies and civil organisations so far. The following is a summary of the main **legal sources** and most important **standards**:

> At International level:

International Bill of Human Rights

This is a sort of 'international code' of human rights and includes the Universal Declaration of 1948 and the two international Covenants of 1966 (and their protocols).

ILO Declaration on fundamental principles and rights at work (1988)

Contains the fundamental principles of the ILO's 8 key Conventions in defence of work.

Global Compact (2000)

A collection of 10 principles on corporate social responsibility divided into 4 categories: human rights, work, the environment and the fight against corruption. In 2007 Global Compact published the "Operational Guide for Small Scale Enterprises" providing a 'step by step' guide in implementing the 10 principles¹.

¹ Under the UN Global Compact has been designed the "Global Compact Self Assessment Tool" with the aim to help companies of all sizes and sectors in identify the due diligence processes to conduct throughout their activity and at each level of right (the four areas are human rights, labour, environment and anti-corruption) in line with the UN Guiding Principles on Business and Human Rights. The Tool consists of 45 questions with a set of 3-9 indicators for each question, and is available at <http://www.ungc.org/aboutthistool/accessthetool>.



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OECD Guidelines for Multinational

Enterprises (2011) Recommendations from governments addressed to multinational enterprises for the application of socially responsible behaviour and respect for human rights.

Ruggie's Guiding Principles (2011)

These define the practical application of the 2008 Framework entitled "Protect, Respect and Remedy" and in particular: the states' duty to guarantee the protection of human rights, the companies' responsibility to respect them, and the need to guarantee remedy to those who are affected by violations.

GRI (Global Reporting Initiative) (2013)

International Guidelines acknowledged for writing up sustainability reports and economic, social and environmental reports for organisations.

ISO 26000 (2010) Guidelines that offer support to those organisations that wish to take a responsible path both socially and environmentally. Among the principles they contain are ethical behaviour, respect for human rights and for the interests of the stakeholders.

AA1000 Standards concerning accounting,

auditing, and social and ethical reporting processes. Contains criteria for assessing the company sustainability balance and includes a process for consulting and involving the stakeholders.

SA8000 Identifies a standard for ethical certification of respect for the worker's rights (health and safety in the workplace, child labour, freedom of association, collective bargaining, etc.).

- At **Regional level**, the EU Commission has published in 2012 an introductory guide to human rights for SMEs, in order to provide practical guidance to SMEs in implementation and endorsement of Guiding Principles within their business activity². In UK the Equality and Rights Commission launched a report in 2010 providing advice and guidance to business, including SMEs, in business and human rights sector, by reviewing both international and national law from a business and human rights perspective³. Furthermore, many other are the European examples supporting business in the adoption of CSR strategies, commending enterprises' best practices in the field, or offering online tools designed

² European Commission, "My business and human rights: A guide to human rights for SMEs" (2013). Available at: http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/human-rights-smeguide-final_en.pdf. The Guide sets six basic steps a company should follow to conduct its risk assessment.

³ UK Equality and Human Rights Commission's SME Guide on human rights at: http://www.equalityhumanrights.com/uploaded_files/sme_hr.pdf. Equality and Rights Commission also published "The Equality act: Guidance for Small Business" offering advice in managing complex business issues, such as discrimination and harassment in the workplace.



to support SMEs in the identification and conduction of due diligence processes⁴.

- At **national level**, both the Ministry of Economic Development, other Ministries and many Italian Public Administrations, jointly with business associations and research centres are developing and have already developed and promoted different CSR standards, guides and codes of conduct to facilitate the process of approaching human rights compliance through the concepts of social responsibility and sustainability⁵, including:

The National Action Plan on the “UN Guiding Principles on Business and Human Rights” (The Italian Inter-Ministerial Committee for Human Right) The Italian Plan of Action for the implementation of Guiding Principles on Business and Human Rights.

The National Plan of Action 2012-2014 on corporate social responsibility (Ministry of Economic Development) The Italian Plan of Action for the development of corporate social responsibility.

Platform of corporate social responsibility indicators (Ministry of Economic Development and Ministry of Labour)

A project launched by an inter-regional work group made up of the regional authorities, the Ministry of Economic Development, the Ministry of Labour, the Ministry of Agricultural and Forestry Policies, INEA (the National Institute of Agricultural Economics) and INAIL (the National Institute for Insurance against Accidents at Work). The initiative is aimed at becoming an instrument for facilitating relations between businesses and Public Administration. The system contains a tool kit for companies to assess their own behaviour in terms of responsibility in issues concerning social and environmental sustainability.

The Inter-regional Project entitled “Creating a network to spread corporate social

responsibility” This project was initiated by the Veneto and Liguria regions (and currently includes about 16 regions) in order to spread the culture of corporate social responsibility and at the same time favour the process of mutual information between public administrations on the issue of CSR⁶.

4 Initiatives to support CSR in small and medium sized enterprises are: the UK Trading for Good Initiative to support CSR in SMEs; the Courses and Guidance for responsible business conduct through the Regional Business Development Centers in Denmark; CSR self-assessment tool in Finland; CSR performance indicator through the ‘CSR Thermometer’ in Netherlands. One of the most relevant online free tool at European level is the one developed in Denmark since 2005 through ‘CSR Compass’ which help companies in the management of a responsible supply chain.

5 The Italian Law on International Cooperation recently adopted (L. 125/14) institutionalized for the first time the role of private sectors in international cooperation activities and also established that the private subjects admitted under the law are those adhering to the international standards on corporate social responsibility, environment protection and human rights norms for international investments.

6 In the area of the Interregional Project Creating a network to spread Corporate Social Responsibility it has been developed, jointly the Italian Ministry of Economic Development and the University of Genoa, the Italian platform of CSR actions and indicators for a strategic, innovative, socially and environmentally oriented competitiveness. The instrument has the aim of providing a common shared framework on CSR, supporting business in the adoption of CSR strategies and commending enterprises’ best practices in this field.



Study on sustainable management of the supply chain in the textile industry (Ministry of Economic Development - NCP)

The Tuscan Regional Authorities and the OECD's National Contact Point (NCP), in collaboration with the Chamber of Commerce of Prato, carried out a survey on social responsibility in the supply chain in the textile industry, in order to identify cases of best practices and the greatest obstacles to the application of a socially responsible culture.

Guide to Due Diligence in the Supply Chain (Ministry of Economic Development) (2011)

An instrument that intends offering a guide for the management of the supply chain in a socially responsible manner to multinational companies and SMEs.

Online Instrument of Corporate Social Responsibility Best Practices Prepared by Centromarca-IBC (Industrie dei Beni di Consumo) in cooperation with the Ministry of Economic Development, which - in line with OECD Guidelines - supports enterprises in being sustainable and socially responsible in a more efficient way.

D. So then, in practical terms, which human rights standards and principles must a company abide by?

In order to clarify things let us attempt - with a few simplifications and without assuming to be thorough - to identify the main standards for business concerning human rights. This identification has been structured under 3 'macro-areas', which simplify (but do not complete) the business impact on human rights, with the aim of representing those 'potential impacts' which are more likely to verify as regard of SMEs business activity.

DIRECT (VERTICAL)

1 - Environmental impact

The right to protection and integrity of the environment, which prohibits:

- all forms of pollution, of any origin, such as those that may be caused by the operation of productive apparatus, infrastructures, or waste and emissions;
- all those business activities that damage the natural environment, its ecosystems and its biodiversity;
- the sale of harmful products or services.

2 - Labour impact

The workers' rights, which prohibit:

- making employees work in unhealthy conditions;
- applying inhumane or demeaning working



conditions - instead, it is necessary to agree to fair salaries and working conditions that can ensure the worker and his/her family have a dignified lifestyle;

- hampering or denying the right to assemble, create associations or access collective bargaining;
- using child labour;
- taking advantage of the work of vulnerable components of society, such as prisoners, women and ethnic minorities;
- discriminating on the basis of gender, race, culture, religion or ethnic origin, guaranteeing instead equal treatment to all those with the same qualifications and roles.

3 - Social impact

The right for local indigenous communities to defend and preserve their environment, culture and traditional sources of sustenance, which prohibit:

- the forceful movement of individuals or groups without a fair compensation and the restoration of their traditional living conditions and sustenance.

INDIRECT (HORIZONTAL)

1 - Corruption

The ban on corrupting public authorities (with money, but also with gifts or other favours);

- although it is not strictly part of human rights, corruption is largely an instrument aimed at commissioning violence or actuating discriminations.

2 - Suppliers

A firm could be held responsible of human rights violation by its suppliers through the different patterns of complicity

- avoiding the risk of complicity implies that the company assesses and puts in place human rights across all its operations and supply chain.

3 - Clients and consumers - *Complicity may occur also referring to the behaviour of clients and consumers*

- avoiding the risk of complicity implies that the company is aware of any abusive way that their clients may use as regards the goods, supplies or services the company supplies.



E. Crime and punishment

It is certainly inevitable, and one may even say natural, for the feared consequences of the violation of a standard or principle to be the application of some form of punishment. Therefore, the question "*what does a company risk when it violates human rights?*" is certainly legitimate. The international standards on human rights issues do not include sanctions, which, on the other hand, are applied in the case of violations of national standards for the protection of labour, the environment, minorities, etc. Even if one were to consider only national standards, the American lawyer's statement, in a film a few years ago, that a law has no value without a punishment, seems to be not only immoral, but above all no longer realistic. As a matter of fact, the so-called reputational damage is taking on, progressively and increasingly fast, concrete and measurable dimensions even in a country like Italy where the inquiries carried out by the Media stimulate, if not replace, those of the police and the judiciary.

For example

Inquiries by 'Striscia La Notizia', 'Report' - and many other Italian TV shows - report illegal or immoral behaviour among individuals and businesses, often occurring in the inertia of public authorities. The target is the behaviour or businesses that generate environmental pollution or damage, the application of inhuman working conditions among workers - as we often find in the textile and agricultural sectors - or acts of corruption damaging, for example, equality

in the treatment of participants in tender processes. The reaction of blame and shame in public opinion may cause consequences in terms of product sales, but also on the behaviour of suppliers and sponsors. More and more frequently even cruelty to animals is causing great indignation in public opinion.

It is therefore often precisely as a result of pressure from the media that the competent authorities take action, and this is nothing new. In Italy, human rights are amply protected by current legislation - as long as it is applied substantially and rapidly. But the sanctions due to violations of human rights are no longer only those resulting from the enforcement of legal rights or from damage compensation to the victims. Public opinion, especially thanks to the current web-based means of communication, such as social networks, is increasingly capable of rapidly knowing and reacting to not only acts that may be illegal, but even acts that are considered immoral or contrary to ethics. In an increasing number of countries and markets, these 'blame and shame' campaigns have resulted in boycotting the products and services of the accused businesses. As a matter of fact, the risk of starting a chain reaction is increasingly real: not only can the



final consumers stop or diminish their purchases, but an equally serious issue is the fact that agents, distributors and other intermediaries may change their mind about the product, dreading it won't longer be appealing to the final consumers. The banks' reaction may be even more serious. It may not always be explicit and visible, but it is true that a business that has been blamed and criticised by public opinion runs the risk of losing clients, reducing turnover, raising the interest of public authorities (maybe even the tax authorities) and therefore becoming more 'risky' for the bank that finances it.

For example

A company attends an international seminar on reducing carbon dioxide emissions. Company's representatives are amazed to find that certain banks are participating in the seminar, so they ask one of them why they are there. The answer they receive is significant: companies that respect the environment are good clients for the bank, while those that are accused of pollution become 'risky' clients.

Reputational damage is therefore increasingly less 'virtual' and is no longer just a problem for big companies (the ones listed on the stock market): in fact in more limited areas and social environments, accusations of violating human rights or other kinds of abuse are increasingly concrete and

noticeable: the activity of a smaller company is much more visible due to its proximity to employees and surrounded communities. It also has fewer resources by which to protect itself and therefore the community can evaluate and measure it with a more immediate effect.

For example

In a town or village where a company works a rumour spreads about dangerous factory waste being disposed of directly in a normal dump. The truck drivers that transport the waste live in the area and tell their wives, who in turn are members of a local association to protect nature, and the accusation ends up on the desk of the mayor or of the Police's commanding officer. The company risks heavy fines, a block to the business and a conspicuous and unpredictable payment for damage compensation. Even before the court hearing against the company takes place, however, the manager of the local branch of an important bank has already called the owner to ask him to pay back the company's credit immediately.

Realistically, and in order to better identify the risk one runs when violating human rights, it is useful to reflect on the contributing factors.

- First of all, public opinion is increasingly aware and is better equipped to discover and report abuse. Beyond the traditional defence structures, such as trade unions or consumer associations, there



is an increasing number of civil society organisations, non-profit organisations and various other types of associations that contribute substantially to social control over the companies' activities.

- The idea that one can be more at ease by relocating services or production to countries or areas that offer less environmental and labour protection, also because of the weakness or corruptness of the local authorities, is becoming increasingly less realistic. Even in those countries and areas there are associations and organisations - or even local branches of the largest NGOs that protect human rights, such as Amnesty International or Human Rights Watch - that have the means to make their voices heard both nationally and internationally.
- Even in countries or in areas of the world where public authorities were traditionally considered less active in protecting human rights, we witness an increasing number of 'aggressive judges' or public officials who, encouraged by the support of public opinion, even accuse the work of multinational corporations, never mind the little companies!

In Italy, as in other OECD member countries, National Contact Points (NCPs) have been set up for anyone to turn to -

whether an individual or a group - if they feel they have fallen victim to a violation of human rights. These Points do not make obligatory decisions, but they carry out investigations and issue suggestions for the solution of problems that have an undisputed importance for the companies involved.

1. The cost of Courts and Tribunals

Beside the reputational damage, there is also a material damage to consider, which is the one deriving from the potential legal costs incurred when involved in a lawsuit. When a company violates the law, it incurs in corporate liability or, in certain cases, in liability of its officers. Companies involved in violations of workers' rights, discrimination, or any other provision of law may indeed incur the risk of facing litigation before national courts. Traditionally jurisdiction is territorial, in the sense that national Courts are empowered to judge on violations committed in the territory of the state, or by subjects domiciled therein. However, during the 20th century, with regard to 'corporate liability' for human rights violations, has emerged a new trend that tries to use civil claims before courts of western societies in seeking to obtain justice for violations occurred in



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foreign countries and by meaning of foreign companies⁷. More recently, attempts to affirm such 'extra-territorial' jurisdiction took place also in the European Union, where multinational corporations have been prosecuted in their home countries for their harmful activities abroad (the oil company Shell has been prosecuted before the UK and Netherland Courts for human rights

violations occurred in Nigeria). Therefore, the risk of being sued for activities abroad it is increasing, and, needless to say, a SME is much more vulnerable and defenceless than a multinational company. This is equivalent to say that, in addition to reputational, also litigation risk is increasing especially for a small firm, so confirming the need for pursuing human rights compliance.

⁷ The instrument of this legal development has been provided by the Alien Tort Statute (ATS), a US Federal Statute allowing foreign citizens to seek tort (civil) remedies in American Courts for human rights violations occurred outside US. ATS has been used since 1990s as a legal basis for tort claims before US federal courts for human rights violations occurred anywhere in the world although the Supreme Court in the Kiobel case has recently put a stop to such extraterritorial jurisdiction, the opinion of the US Courts could change any time, especially when public opinion pressure becomes very strong.



PART II THE ROAD TO RESPECT FOR HUMAN RIGHTS

"The road to hell is paved with good intentions". There is no truer saying in this field. It is not enough to feel up to standard, at peace with one's conscience. It is more useful to establish a path to follow, aware of the fact that respect for human rights, in most cases, will not be an immediate effect, but rather - and more realistically - the result of a well defined program, capable of leading to concrete and stable results, through the acquisition of a company culture that permeates all of the company's activities as well as its managers. This will ensure, among other things, a positive and synergic relationship with the surrounding human communities, thus benefiting the company's image and, as a result, the image of its products and services.

The path includes a few fundamental steps. The first is most certainly to **take a look in the mirror**, to analyse and diagnose the current situation in terms of respect for human rights within the company's activities. The second step, on the other hand, is more about **what others think of us**, in order to get an idea of how employees, suppliers, clients, consumers, public authorities and, in general, the human communities surrounding our business consider our company and its activities, its behaviour, its products and its services. The third step is to take a look at **thus do they all**. This should offer us a view of our competitors' behaviour, which is

very useful in understanding common problems and suitable synergies. The next step is all about keeping our **ears open**, which will allow us to identify the best methods for being available to listen to all those who have relations with the company, thus helping us to prevent violations of human rights or to limit the consequences of problems that we may already have encountered. Finally, the program may end with a process of **prevention and mitigation to realize compliance through feasible solutions**, which identifies the way to realize compliance through the indication of that is to say with the identification of the road to travel, the problems to face, and the improvements and changes in our behaviour, products and services that make the company truly respect human rights.

In order to analyse and identify the right step in the pathways to human rights compliance, the Ruggie's approach suggests companies to conduct a due diligence process, which is usually - and especially in case of companies with limited human and financial resources such as SMEs - very costly and cumbersome. Hence it would be much worthwhile conduct process here described first, and opting for a due diligence on a second stage, whereas the '5-steps road' does not work out or does not bring the expected results to eliminate or manage the risk of human rights violation.



THE PATH AND ITS STEPS

1. Take a look in the mirror

The first operation necessary to begin the path to update the company's activities to human rights principles and standards is a diagnosis, a self-assessment that must allow the entrepreneur to take a picture of the company's situation in reference to human rights. In order to facilitate this self-assessment it is useful to respond to the following questions, with the purpose of uncovering the main problems to consider in the path to compliance. The purpose is to emphasise only those questions that identify a problem for the company (that is to say a risk of violating human rights), skipping those in which the company already appears to be compliant.

1. Environmental Impact

- 1.1 Does the energy used for the productive processes compromise, in anyway, the energy needs of other users in the region or area where the company is operating?
- 1.2 Does the water used for the productive processes compromise, in any way, the water requirements of other users in the region or area where the company is operating?
- 1.3 Do the productive processes create permanent damage to the flora in the region or area where the company is operating?
- 1.4 Do the productive processes create permanent damage to the fauna in the region or area where the company is operating?

- 1.5 Do the products or packaging the company uses contain plastic or other non-biodegradable materials?
- 1.6 Do the productive processes generate pollutant gases in quantities that exceed European (or equivalent) standards?
- 1.7 Does the wastewater from productive processes contain pollutant elements in quantities that exceed the European (or equivalent) standards?
- 1.8 Would the solid waste from productive processes be considered hazardous waste according to European standards?
- 1.9 Do components, preservatives, and colorants found in the product sold for consumption comply with European (or equivalent) standards?
- 1.10 In the country or area, are the emissions and/or waste suitably treated?

2. Workers' Rights

Forced labour, child labour, slavery

- 2.1 Are workers under the age of 18 used? If this is the case, what is their role and how many hours do they work per day?
- 2.2 Are any of the workers forced to work against their will or are there any workers under detention or other restrictions of personal liberty at different work and pay conditions from those of all the other workers?
- 2.3 Is the employee hired with a work contract or a written document specifying pay and other conditions?



2.4 Have there been cases of abuse by workers or employees towards other workers or employees?

2.5 Does the personnel in charge of surveillance over workers or guarding and safety of the plants abstain from physical or psychological threats or restrictive or violent behaviour towards employees or third parties?

Discrimination and unfair treatment

2.6 With equal roles and levels of competence, are all workers subject to the same salaries and working conditions without discrimination of gender, race, religion, ethnicity, culture, political opinions, sexual orientation, nationality or disability?

2.7 Is the procedure for selecting workers carried out on the basis of professional qualifications and experience, without discrimination of gender, race, religion, ethnicity, culture, political opinions, sexual orientation, nationality or disability?

2.8 If hiring must take place through set channels (employment offices, trade unions, or other local authorities), is it reasonable to believe that the criteria for selection used by these offices or authorities do not allow discrimination of any kind?

Collective bargaining and labour relations

2.9 Are the workers free to assemble or join trade unions and express their representatives?

2.10 Has the company ever prevented or hindered the employees' participation in political activities?

2.11 In the company's relations with the workers, do they bargain with representatives elected by the workers on issues such as salaries and working conditions?

2.12 Does the company allow access to collective bargaining?

Social protection

2.13 Based on the living standards in the country or area where the company is operating, can the workers' salary be considered fair? Does it guarantee a dignified lifestyle for the worker and his/her family?

2.14 Do the working hours comply with current international practices in relation to the sector and the type of work?

2.15 Is any provision made for suitable rests and breaks in relation to the sector and the type of work?

2.16 Is overtime paid?

2.17 Does the length of overtime comply with current practices in relation to the sector and the type of work?

2.18 Are workers allowed an annual period of leave, the duration of which is in line with current international practices in relation to the sector and the type of work?

2.19 Do workers receive suitable health insurance in the country or area where the company is operating?



2.20 Do workers receive a suitable pension in the country or area where the company is operating?

2.21 Does the company fulfil its duty in terms of paying social security taxes?

2.22 Does the company fulfil its duty in terms of paying pension taxes?

2.23 Are female workers allowed maternity leave in line with current international practices in relation to the sector and the type of work?

Health and safety at the workplace

2.24 Does operating the machinery or productive plants expose workers to risks for their health that are not suitably prevented or substantially diminished by the safety measures in force in the plant?

2.25 May all or some of the workers be exposed to gas emissions or contact with chemical products that may damage their health and that are not suitably prevented or substantially diminished by the safety measures in force in the plants?

2.26 Does the safety apparatus used in the productive processes comply with European standards (or equivalent standards) in the sector?

2.27 Has the company nominated a security personnel for the plant?

2.28 If there have been accidents, has the company taken corrective measures?

2.29 Does the company provide training to its

personnel through training initiatives or apprenticeships?

2.30 Does the company prevent personnel from participating in training programs outside of their working hours?

3. Social/Community Impact

3.1 Can the productive activities or services used by the company cause disturbances or damage to the local communities living and working nearby?

3.2 Did the construction of the productive plant or the necessary infrastructures require the relocation of individuals or groups that were living in and taken their livelihood from the areas involved?

3.3 If the company did not directly purchase the land necessary for the construction of the plant or infrastructures (like dams, pipelines, ports, etc), is it reasonable to believe that the methods used to acquire the land (prior informed consent and fair compensation) were respectful of the dignity of the communities involved?

3.4 If the company did not directly purchase the land necessary for the construction of the plant or infrastructures, are they aware of the methods used by the local authorities to relocate the individuals or groups involved?

3.5 Did the relocation of the individuals or groups involved compromise their lifestyle or their livelihood?



3.6 Did the company finance or actuate initiatives or projects in favour of the local communities (local administrations or authorities, business associations, civil society organisations, etc.), like the realisation of infrastructures, the creation or refurbishment of schools or hospitals, the supply of materials or equipment for artisans, agriculture, etc.?

3.7 Does the construction of the plant or an infrastructure in any way prevent or hinder access to places or areas of particular value (religious, cultural, etc.) for the local communities?

4. Suppliers

4.1 In order to avoid accusation of complicity, if the company purchases raw materials, components, finished products, semi-finished products or services, or commissions production to third parties (subcontractors), can they reasonably believe that the productive methods and standards used by the suppliers and subcontractors of the products or services in question are in line with the protection of human rights as expressed in this questionnaire?

4.2 Does the company consider it appropriate to get to know their suppliers or subcontractors better in order to find out if they violate human rights, especially in relation to the countries or geographical areas in which they operate?

4.3 Does the company conduct any activities of

supervision and/or monitoring of its suppliers/subcontractors throughout the business relationship?

5. Corruption

5.1 Does the company have a policy aimed at avoiding corruption of public authorities, with money, gifts, or other favours?

5.2 Has any action ever been taken to prevent or hinder workers' access to means of legal protection?

6. Clients and consumers

6.1 Are the products and/or services offered by the company in line with European (or equivalent) standards, so as to avoid causing any damage to the physical and/or mental health of consumers and clients?

6.2 In order to avoid the risk of complicity in violating human rights, is the company aware of any abusive way that their clients may use as regards the goods, supplies or services the company supplies?

7. Preventing human rights violations

7.1 Does the company have a specific instrument (policy, code of conduct, CSR statement) defining the company's values and rules and conduct?

7.2 Has the company written up a code of conduct or do they comply with a sector-specific code of conduct?



- 7.3** Has the company endorsed ISO standards or other standards/certifications for social responsibility?
- 7.4** Does the company spread awareness of its participation in codes of conduct, standards, programs and projects aimed at avoiding violations of human rights both among their employees and among third parties?

8. Monitoring and surveying human rights violations

- 8.1** Does the company have a specific instrument to detect problems, employee's difficulties or abuse towards them (for example hotmail, whistle blowing or a confidential telephone line)?
- 8.2** Does the company have a specific instrument to detect problems, difficulties or complaints from clients or third parties?
- 8.3** Is there a person or group responsible for investigating reported problems or violations and for implementing solutions?
- 8.4** Has the company ever heard of problems, employees' difficulties or abuse towards them occasionally and by unofficial means, that is to say through rumours or reports from the managers?
- 8.5** If the company does not already have one, would they consider it useful to provide a specific method to allow personnel to express problems and difficulties or report abuses?
- 8.6** If the company does not already have one, would they consider it useful to provide a specific

method to allow clients or third parties to express problems and difficulties or report abuse?

- 8.7** Has the company ever discussed the risks derived from violations of human rights referred to in this questionnaire with other companies or in business associations?

9. Privacy

- 9.1** Which instruments does the company apply in order to avoid confidential information on workers, clients, suppliers and subcontractors being leaked to third parties without their consent?
- 9.2** Did the company apply rules for their workers concerning the use of computer systems, Internet access and using cell phones during working hours?

The idea behind this quick self assessment is to allow the entrepreneur to acquire an initial overview of the aspects in the company's activities that may be considered in violation of human rights, but also, and above all, to prevent future violations, as well as attenuating current violations, through suitable remedy measures. If the results of the self-assessment are unclear, unconvincing or not useful in terms of identifying a plan of action, before continuing with the steps that follow in the path it might be advisable to have recourse to the services of consultants or experts. If,



on the other hand, the self-assessment has not identified serious problems in relation to human rights violations, the entrepreneur may continue with the process.

Aside from the entrepreneur (owner), it would also be important for the self-assessment to be carried out independently by the managers and highest-ranking clerk officials (those that are closest to the operational activities, the employees and the local communities). The comparison of the self-assessments carried out by these managers will allow a cross examination of the situation, ensuring a higher level of certainty and reliability of the results. In case the decision has been made to continue along this path, the detected problems will be compared with those identified by other subjects and groups as suggested in the following paragraph.

2. What do others think of us?

During the previous phase, the self-assessments will have made it possible to analyse the problems concerning respect for human rights by the company from the inside, and more precisely from those who manage and direct its activities.

This initial assessment may obviously be insufficient or partial. Nowadays, more than ever, it is believed that every company holds a great deal of

responsibility, not only towards the owners and shareholders, but also towards all those for whom the company produces advantages, or causes problems or even damage (as in the case of pollution for those who live in the affected area).

The company is therefore held 'socially responsible' towards certain main groups or types of individuals involved - for various reasons and to various degrees - in its activities, both positively and negatively. These individuals are called 'stakeholders' in technical terms.

For a real and reliable evaluation of the company's respect for human rights, it is therefore essential to analyse the position of the main categories of groups and individuals involved, also considering that sometimes their position may not be based on real elements, but could be the result of a mere perception of the company's activities and their effects.

For example

The fine dust that settles in the homes and on the crops in the communities surrounding a productive plant may be attributed by local communities to the movement of trucks and apparatus used by the company. This phenomenon, on the other hand, may more correctly be the result of the combined action of the wind and of the soil erosion.



But which exactly are the categories of individuals involved, the stakeholders? There are at least twelve kinds: owners and investors, financiers, public authorities, workers, clients and consumers, suppliers (and subcontractors), the media, the civil society, associations, trade unions, local communities and groups that live in the part of the territory that is directly affected by the company's activities. Other than these traditional categories, we can naturally add other specific individuals or groups depending on the country, the area or the activity carried out by the company. It is useful to think of some questions the entrepreneur may ask both internal stakeholders and stakeholders outside the company, that is to say all those individuals we have mentioned with whom the company management has contact on various levels and who may be either part of the company's staff or outsiders. As a matter of fact, the most important questions are general and broad, and therefore applicable to all stakeholder categories, while those addressed to more specific individuals should be more limited and precise.

In international practice, especially large companies and multinational corporations entrust all or a part of this analysis (known as 'due diligence') to consultants and

consulting firms outside of the company. In the case of an SME this procedure can definitely be carried out by the owner or by the top managers, but it is important to keep in mind that the intervention of an impartial third party is always very useful in ascertaining the level of coherence in the answers, in order to verify interviews and especially to validate the results and suggest a road map and the measures to be taken.

For all stakeholders

- 1.** How do you consider the relationship between our company and the institution, the community, the business, or the group you represent?
- 2.** Does the institution, community, business or group that you represent have collaborative relations with other institutions, communities, businesses or groups that collaborate, work or have contacts with our company concerning respect for the environment, the worker, the local communities, etc.? (For example with local and/or national public authorities, suppliers, business associations, NGOs, the media, local communities, etc.)
- 3.** If such relations exist with one or more of the aforementioned individuals or groups, which do you believe could have the greatest positive or negative impact



on our business in terms of environmental conservation, workers' and consumers' rights, protection of local communities, corruption, etc.?

4. Are you aware of any initiatives (programs, projects, meetings, etc.) that our company has planned, is organising or has organised in favour of the institution, community, business or group that you represent for the implementation of initiatives aimed at environmental conservation, guaranteeing the health and safety of workers and consumers, protecting the rights of local communities, sustaining the fight against corruption, etc.?

5. Are you aware of the participation of our company in initiatives (programs, projects, meetings, etc.) promoted by the institution, community, business or group that you represent, with the purpose of promoting environmental conservation, guaranteeing the health and safety of workers and consumers, protecting the rights of local communities, sustaining the fight against corruption, etc.?

6. Are you aware of problems concerning environmental conservation, protection of workers and consumers, safeguarding the local communities, corruption, etc. that may have occurred and in which our company is believed to be involved or for which it is believed to be responsible?

7. Do you believe that the opinion of our company held by the institution, the community, the business or the group you represent is positive? If not for which problems (of any kind) do you believe that our company may be considered negatively?

8. Are you aware of cases of human rights violations in the area or in the country by companies you know?

For local and/or national public authorities

9. Do you find or anyway believe that our business complies with current regulations concerning the environment, health and safety of workers and consumers, relations with local communities, the fight against corruption, etc.?

10. Beyond the matter of compliance with current regulations, do you think it is important for our company to apply further measures to prevent damages to the environment, to workers, to consumers, to local communities, etc.?

For the investors, owners and financiers of the business

11. Beyond the matter of compliance with current regulations, do you think it is important for our company to apply further measures to prevent damage to the



environment, to workers, to consumers, to local communities, etc.?

12. And, in your opinion, which are the sectors with the highest risk levels, in which it would be more necessary and urgent to apply these measures?

For the consumers

13. Do you feel that the quality and safety standards of our products or services are sufficient to suitably protect the safety and health of consumers?

14. Do you think it would be useful to make improvements to our products and services in order to make them more transparent and anyway more suitable for the consumer's fruition, safety and health?

For suppliers (or subcontractors)

15. Are you aware of the fact that our company complies, in the production of goods or the supply of services, with standards for the protection of the environment, the workers, the consumers and the local communities and to prevent corruption, in line with European (or equivalent) standards?

For the workers

16. Do you believe that our company suitably guarantees the safety and health of its workers?

17. Do you believe that the workers in our company are protected against behaviour from managers, other workers or security personnel that may be damaging to their safety, their physical or mental health, their freedom to assemble or other forms of abuse?

18. Do you believe that workers are sufficiently protected against behaviour by managers, other workers or security personnel that may be damaging to your safety, your physical or mental integrity, your freedom to assemble, or other forms of abuse?

19. Do you believe that you or any of your colleagues have been subjected to behaviour from managers, other workers or security personnel that may be damaging to your/their physical or mental health, your/their freedom to assemble or other forms of abuse?

20. Have you been informed who is the reference person within the company for any complaints or communications?

For the trade unions

21. Do you believe that our company suitably guarantees the safety and health of its workers?

22. Do you know if there is a reference person in our company responsible for communications and complaints about employees?



23. Do you believe that our company or our workers should participate in initiatives/projects/programs you promote?

For business associations

24. Has your association applied/promoted Codes of Conduct or other Standards in order to guarantee CSR or respect for human rights?

25. Do you believe that our company suitably guarantees the environment, the safety and health of its workers and consumers, relations with local communities, the fight against corruption, etc. in relation to the Standards you have applied?

26. Do you believe that the workers in our company are sufficiently protected against behaviour by managers, other workers or security personnel that may be damaging to their safety, their physical or mental integrity, their freedom to assemble, or other forms of abuse?

27. Do you know that there is a reference person in our company responsible for communications and complaints?

28. Do you think that our company or our workers should participate in initiatives/projects/programs you promote?

29. Which risks deriving from environmental damage, the violation of workers' and consumers' rights, the violation of the local communities' rights, corruption,

etc. do you believe to be most serious for our company or for those operating in the same area or country?

For local communities

30. Do you feel that our activities are suitable for maintaining the living conditions and livelihood of the local population/community?

31. Do you believe that the construction of our plant or infrastructure has caused problems in relation to the living conditions and livelihood of the local population/community?

32. Are there any initiatives/programs/projects that would contribute to improving the living conditions and sustenance of the local population/community?

33. Have you been informed of who is the reference person within the company for any communications?

For civil society organisations

34. Do you feel that our activities are suitable for maintaining the living conditions and livelihood of the local population/community?

35. Do you believe that the construction of our plant or infrastructures has caused problems in relation to the living conditions and livelihood of the local population/community?

36. Are there any initiatives/programs/



projects that would contribute to improving the living conditions and livelihood of the local population/community?

37. Do you believe that our company suitably guarantees the safety and health of its workers?

38. Do you believe that the workers in our company are sufficiently protected against behaviour by managers, other workers or security personnel that may be damaging to their safety, their physical or mental integrity, their freedom to assemble, or other forms of abuse?

39. Do you believe that our company suitably guarantees protection of the environment?

40. Do you believe that our company suitably guarantees the protection of its consumers?

41. Can you suggest any actions our company may take to improve its relations with the civil society?

42. Have you been informed of who is the reference person within the company for any communications?

For the media

43. Does our company activity ever raise your interest in the past?

44. Are you aware of any criticism in public opinion concerning the activities of

our company?

45. Are you aware of initiatives/programs/projects that our company promotes for the protection of the environment, the safety and health of our workers and consumers, to support local communities, or to fight corruption?

46. Have you been informed of who is the reference person within the company for any communications?

3. Thus do they all⁸

As we will see later on (when discussing the preventive measures), there are certainly problems that can create relevant risks of violation of human rights that a single company, especially a SME, would have trouble solving alone, also considering the economic and human resources available.

For example

One significant case is in countries or areas where suppliers of services that the company requires have monopolised the area. The company may have no alternative in choosing a shipping company, or may actually be induced to see to the local police's needs in order to ensure the safety of their plants. This means that if the shipping company is notorious for violating their workers' rights, or the police behave arbitrarily or violently towards the company's workers or the surrounding communities

⁸ From the title of the famous Mozart's opera



(perhaps in order to safeguard the interests of the company itself), replacing the shipping company could be difficult - but perhaps not impossible - while compromising relations with the local police could turn out to be a disastrous move.

or

The company may cause pollution in spite of its best intentions when it is forced to send its waste to an unsuitable treatment plant (if it is the only plant available) and the local public authorities do not intervene to make the plant work properly, either due to a lack of economic resources or just out of laziness.

Basing on the cases surveyed, it can be very important (and make a world of difference) for the company to assess the behaviour of other businesses operating in the same area and in the same sector.

Where and from whom do colleagues and competitors get their supplies? Which suppliers of goods or services do they use? In what conditions do their employees work? How do they manage their relations with the local authorities? Do they already feel the need to deal with problems that can result in risks of human rights violations that involve their responsibility as companies?

Answering these questions could make it possible to identify common problems, the ones that should or could be dealt

with collectively, possibly through local business associations, Chambers of Commerce or even groups created specifically to deal with one or more common problems, with national and local public authorities, but also with suppliers of goods and services.

This information may naturally be the result of formal and/or institutional meetings (such as business associations meetings, or business meetings), but it may also be obtained through informal interviews and contacts.

In many countries around the world, in single regions or more limited areas, many companies are not yet capable of appreciating the risks that are derived from being involved in violations of human rights; but this can happen only in the case of well-known risks, that are not dealt with sufficiently because they are underestimated, or because "thus do they all", or finally also because one thinks there is no way to solve them.

It is therefore necessary in these cases to stimulate the creation or the consolidation of a shared awareness, which will form the first step towards a collective action. How much and when this action may be



institutionalised, through associations or groups, may be decided only case by case, based on the size of the problem, the severity of the risk of violating human rights, the counterparts (public authorities, suppliers or other individuals) and obviously on the negotiating power - the leverage - of the companies involved. Whatever the case, in no way must one underestimate the importance of actions proposed collectively by groups of companies, mainly for two types of reasons: first, because all the possible counterparts will certainly be more open to listening to businesses which, combined, offer the local communities important opportunities for employment, ensuring better living conditions for many families; second, because the public authorities, and particularly the judges and all those responsible for watching over the companies' activities (as well as, naturally, those non-governmental associations dedicated to the protection of local communities), when called to assess the behaviour of a company, will certainly take into account its participation in activities for the respect and protection of human rights.

4. Ears open

It is easy to understand the essential need for businesses and their managers to be as informed as possible of actions or situations that could cause violations of the human rights of the company's employees, its suppliers, clients and consumers, but also of the surrounding communities.

However, since it may be dangerous for a single individual to raise problems or complaints that necessarily involve the responsibility of other, often higher ranking individuals, the international practice suggests activating confidential channels through which all those who are interested can bring to the management's attention any problems and difficulties of any kind and, therefore, also those that represent risks of violation of human rights for which the company may be held responsible.

These confidential whistleblowing channels are mainly activated in 3 ways: the first, without a doubt, is a 'hotline', a confidential telephone line available to those who wish to notify company managers of problems or complaints as well as to report abuses. To this purpose one may also use specific mail addresses,



both ordinary and electronic, or the older and more traditional box in which those who are interested can put notes containing complaints or suggestions. However, one must not forget to also use specific times for listening directly to personnel, as well as consumers, clients and communities living around the business: these could be sports or leisure activities, but also assemblies and meetings organised specifically for the purpose. It is true that in many cases these instruments become the container for individual frustrations and conflicts. However, their careful consideration and selection has allowed many companies to avoid problems or correct inadequate behaviours, towards employees, consumers, and all the other individuals or groups involved. Naturally, the positive effects of these instruments can only be obtained if there is a structured verification procedure, preferably entrusted to at least 3 people, representing the entrepreneur, the managers and the workers.⁹

5. Prevention and mitigation: realizing compliance through feasible solutions

It is possible that, on completion of the previous phases, the company has not encountered problems. It is still important to complete the path, and this is for three main reasons.

- First of all, even if, to date, the company's procedures have been kept in line with the standards and principles of human rights, respect for them must be seen as an obligation, or better, company operating rules and not as a simple result of ethics, morals and good will. In this way all the workers and the other stakeholders will be aware of the company's intention to really respect these rights and, conversely, the company will be fully entitled to eventually enforce his rights in respect of the workers and the other stakeholders.
- Secondly, completion of the path is important proof of a corporate culture, 'culture of compliance', that can make all the difference if the company is ever accused of violations in front of judges or other public authorities or organisations of civil society.
- Finally, because the respect for human rights is a continuous process

⁹ In Italy, a proposal for a new law on whistleblowing is currently under debate before Parliament: the bill provides for a stronger protection of the employees who denounces corruption in public offices, but it deals with protection of whistleblowers in the private sector as well.



that implies constant attention and surveillance. These actions involve everyone, both inside and outside the company.

A. Dealing with violations

Upon completion of the above path, let's suppose as often happens - that the self-assessments (the 'selfies' of the owner of the business and the top management) have resulted in the identification of certain problems that may cause further risks of violating human rights, with possible damaging repercussions for the company itself. It is necessary, and sometimes urgent, to eliminate them, or at least deal with them effectively, to this purpose it is useful to divide the problems/risks into two categories:

- **those that can be dealt with immediately**, or at least very quickly, by taking concrete measures in order to deal with them or by putting a stop to risky behavior or action.

For example

A productive process causes the discharge of liquid waste - considered pollutant by European (or equivalent) standards - into the sewer. The business purchases and commissions a suitable filtration system, thus reducing the level of pollution in the waste-water.

or

Under a careful accounting audit, it is found that three female employees with roles and qualifications equal to those of male employees receive a salary that is 15% lower. The company therefore increases the salary of the three female employees in order to bring it up to the level of the male employees with the same qualifications and roles.

or

A company manager or a security personnel behaving abusively or violently may first be warned and then sacked.

These actions, which appear to be simple and depend only on the company itself, might not necessarily be taken immediately, since in the limited environments in which SMEs generally operate, it is best to explain all changes, so that they can be shared as much as possible. Needless to say, then, that these precise measures should possibly be inserted into a program, in the path to compliance with human rights standards, in order to make them understandable and acceptable to the communities and individuals involved.

- **those that cannot be dealt with immediately**, and for which a suitable and effective solution cannot be supplied autonomously in the short term.



For example

The company operates in a country or area where there is widespread corruption and, not wishing to participate, it may be heavily penalised or be forced to close and find a new location.

or

A large part of the companies in a specific manufacturing sector, located in a specific country or area, all use the same supplier for a raw material or a standard semi-finished component. After accurate analysis, the company discovers that this supplier, working in a country known for the availability of low-cost labour, has frequently been accused of violating their employees' rights. Unfortunately, this supplier has the monopoly since it is the only one who can supply the component at competitive prices. This means that to replace them would be very difficult, without the risk of lowering the competitiveness of the company's product as a result of the increase in the cost of the raw material of the semi-finished component in question.

or

The company in question and others operating in the same area or the same country, use a freighter that is found to be the most organised, best equipped and most effective. In spite of this the company discovers that the freighter subjects the truck drivers working for him to exhausting hours and their pay is well below the level of fair wage. In the area or the country, however, there are no other freighters capable of guaranteeing a valid and effective service and therefore, if they no longer wished to make use of this freighter, the company would run the risk of encountering serious difficulty in delivering the product to their clients.

Obviously, the two situations described are a simplification. In reality, single cases may present aspects that are more or less relevant than others. Fighting alone against a generally corrupt system may turn out to be virtually impossible, while replacing a supplier of goods or services may turn out to be only relatively more expensive.

Furthermore, while it is correct to say that the examples above may occur to a multinational corporation as it may occur to a small artisan's business, one cannot ignore that the bargaining power - leverage - that the former has is not even nearly comparable to the bargaining power of the latter. A large corporation can, in fact, communicate directly with the government or the public authorities in the country or area where they are working. This would be incredibly difficult, and possibly even risky, for a SME to attempt.

It is easy to understand how it would be impossible and illogical to set up or suggest standard responses. The situations are so diverse, the sectors of activity of each business are so different, as are the countries and areas where they work. In spite of this it is definitely useful to supply a few suggestions derived from our case survey.



In deep remedies belong to two groups: first aid measures and therapies.

First aid measures

There are measures or actions that, as soon as they are taken, guarantee prevention of a possible violation of human rights or their immediate termination. It is surely the company's responsibility, if not even its obligation, to put them into practice. As we have already mentioned, if someone encounters discrimination in salaries based on gender or ethnicity, for example, it is certainly possible to solve that problem immediately, by updating the salary of the penalised person.

Therapies

But there often are more complex situations. Assume that during the process for hiring employees or workers the company uses a local employment agency (or similar facility), and the agency strangely only offers male personnel, or personnel belonging to specific ethnic or religious groups: it may be more difficult to solve the problem. It may in fact be possible to hire directly, but wherever local legislation doesn't allow this option, it may be necessary to open a dialogue with the employment agency, expressing the desire to offer the chance for employment indiscriminately to all those who have the necessary professional qualifications. Such considerations can be valid also for specific areas of industrialised countries (including Italy) where discrimination may affect vulnerable or weak groups such as immigrants, or people of Islamic faith.

B. Prevention tools to realize compliance

Numerous times throughout this introductory guide we have mentioned the fact that the adoption of a system for the protection of human rights will be, in most cases, more the result of the development of a path than the application of a single act or company decision. It is obviously impossible to indicate a standard path, but it is useful to attract the companies' attention to the most important prevention tools, that also are at the foundation of the progressive compliance of a small or medium-sized business to the universal system of human rights. Needless to say preventive actions are often much less expensive than remedies to be adopted once violation had already occurred.

They are the following:

1. policy development and

communication, which means elaborate a 'corporate's commitment' describing those values endorsed and the human rights respected by the company that will be communicated afterwards to employees, clients and consumers.

2. planning informative and

training actions, with the purpose of increasing awareness among



managers and the personnel of the meaning and methods of compliance with human rights that the company intends to apply;

3. the creation and/or reinforcement of **instruments for monitoring and reporting violations**, available to the personnel and to third parties;
4. **attracting the attention of business associations or other business groups** to the problems that the company cannot deal with or solve on its own;
5. **realizing 'engagement' activities**, that is to say activities involving collaboration and social commitment in relation to groups and communities near to the business - all those who are in some way involved in its activities.

I Policy development and communication

The Human Rights Policy is a public statement representing the first step that a company takes in its pathway to human rights compliance. It usually includes the main human rights laws and standards the company abides by and defines how the company intends to integrate those provisions within its sectors and operational activities.

In order to identify which human rights principles/standards most apply to business activity, it may be useful to conduct a mapping analysis that identifies what are the human rights more likely to be impacted.

The Policy may be structured under the form of a code of conduct, a value statement, a corporate social responsibility policy or even communicated 'orally': as a matter of fact, in most of the SMEs (which for their size may lack human and financial resources) those policies are expressed orally or through the attitude of the management or the owner. Once the policy is developed, it is essential to communicate it both internally (employees and personnel) and externally (sub-contractors, clients, consumers, business partners, etc.)

II. Informative and training actions to increase awareness among managers and personnel

The company may have started the activities to ascertain its position in relation to respect for human rights because it was already convinced and motivated to obtain compliance. This may be for various reasons, for example in order to avoid the risks of material



and reputational damage, or for ethical reasons. But the company may also have started this ascertainment simply in order to evaluate the importance of the problem or, better yet, to understand if, and to what extent, it is worth their while to start a compliance process.

Whatever the case, once the company has made the decision to comply with the human rights system, the information, the awareness and the personal involvement are necessary in order to ensure success in the path to compliance. The company will therefore organise staff meetings in order to inform them of the need to respect human rights in the company's activities, illustrating the ethical and material advantages, and appealing to both managers and employees to offer their complete support in creating a program for reaching compliance.

In many companies it has been very useful to turn to outside experts (or representatives from other companies) who confirm the importance of compliance with these standards, not only in order to avoid the risks, but also in order to increase social consent on the company's products or services.

It may be quite different for a company that has not already decided to

implement a path to compliance with the human rights system, but only launched an initial analysis in order to assess risks and benefits. In this second case, it would be best to avoid the information activities and involve the personnel only once the decision has been made to start the compliance process.

It is essential, in fact, to point out how once the path has been laid down and shared with the staff, it becomes practically irreversible. The company may certainly encounter difficulties, delays and suspensions, but these problems may be owing to objective difficulties and not to facts that the employees may interpret as the company having second thoughts. Disappointment arising from unfulfilled expectations may actually turn out to be extremely harmful to relations between the company and its workers, as well as with the surrounding communities.

III. Surveillance and reporting instruments

Once the path to compliance has been decided, especially once it has been introduced to the staff, it is essential to activate surveillance, control and reporting instruments as soon as possible,



available to employees, but also to third parties (like consumers, representatives of local communities, civil society organisations) which allow the company to acknowledge the risk of violation of human rights and to fix the problem.

As we have already mentioned, these instruments are well known: confidential telephone lines, hot mail, and organising meetings in which to listen directly to the comments and expectations of employees and third parties. It is necessary to point out how the presence of these reporting systems not only allows companies to effectively monitor the situation (especially during the development of a path to compliance), but also gives public authorities, and in particular judicial authorities in the event of controversies, concrete proof of the company's will to respect human rights. In this way the company demonstrates that it considers human rights to be fundamental parameters in their activities. And in many countries around the world the proof of this kind of company culture represents an essential element in defining and assessing the company's responsibility in the event of violations or presumed violations of human rights.

IV. Involving business associations and other business groups

As already mentioned, it is unfortunately true that very often avoiding or solving human rights violations does not depend on the company's will alone, but also on market situations and judicial and social conditions in the country or area in which the company is operating.

A supplier or subcontractor suspected of violating human rights can easily be replaced in the presence of another supplier or subcontractor capable of offering the same product or service in equivalent conditions. If, on the other hand, this were not the case, replacing the supplier (or subcontractor) would cause serious, sometimes irreparable damage to the company. In many cases the problem could be dealt with positively if it could be solved by a group of businesses or an association representing them. A single company's needs may not justify the choice of a new supplier of raw materials or semi-finished products, but if that choice was made by a number of companies, the replacement may become economically feasible. If all the companies operating in a country or in



a specific area asked the employment agency, together, to offer employees and workers without discrimination of gender, culture, religion or ethnicity, the agency would most likely take more notice of the request than in the case of a single company. As proven very well by certain cases in Italy, where there is an active presence of organised crime, the collective reaction of businesses in the area is found to be much more effective than all the reports and other actions taken individually. Let us not forget that in many countries or areas, a group of companies may represent the livelihood for a significant portion of the population, thus substantially reinforcing their bargaining power in relation to public authorities or economic and commercial counterparts.

V. Initiating 'engagement' actions

By this term we intend all those social activities, often implemented by companies to benefit the communities closest to them. Many companies are used to implement philanthropic or charity activities, for example when helping vulnerable and poor components, such as orphans,

widows, or disadvantaged indigenous groups. Most of such actions, are also proactive instruments for ensuring the surrounding communities enjoy human rights.

For example

Kindergartens allow women to work in the factories, so enforcing equality with men, whilst professional training schools that create workers for the business strongly support the allowing them to become suppliers or subcontractors for goods and services.

Obviously, these socially committed activities do not constitute an obligation, nor are they technically part of a path towards compliance with human rights standards. However, the success of many large companies that have implemented vast and significant engagement programs in their relations with civil society, clearly demonstrates how important they are for an actual and positive integration of the company in the social context in which it operates.



CONCLUSION

No medicine, remedy or preventive action can be a true panacea. If the poor or malfunctioning of a machine is a risk for the workers' safety, then the remedy is easy and definitive. It is enough to repair it. But if certain staff units are subject to abuse and vexation due to their race, religion, or sexual orientation, finding a remedy to this bad behaviour may require actions to increase awareness, with longer time scales and uncertain results. Finally, sometimes it may not be possible to solve the problem, and things go back to the way they were. If the trucks that transport products and materials for the company cause loud and annoying noise levels for the inhabitants that didn't exist before, and especially a danger to children who are used to playing in the street, if there are no alternative routes the problem may not have a solution. Here the company may develop engagement actions to

compensate somehow for the nuisance and the risks that they have created. They may repair the local school or supply educational material for the students, or maybe a new school bus so that the children do not have to use the street. Indeed no approach or solution fit for all.

It is therefore almost obvious that the possible remedies are as diverse and numerous as the diverse and numerous situations that they are required to deal with. As a matter of fact establishing a right based relation with the human communities and the other stakeholders always proved to be an effective way to avoid, mitigate and manage the firms risks and problems through the setting up with them of a positive and constructive environment which would certainly reveal very helpful for the firms, their image and their products or services.



WHO IS AVSI

The AVSI Foundation *The AVSI Foundation is a Non-Governmental Organisation (NPO), established in 1972 and acknowledged by the Economic and Social Council of the United Nations. Its mission is to promote personal dignity through activities for cooperation in development, with special attention to education, according to the Catholic Social Teaching. In 2013, it created 136 projects in 37 countries in Africa, Latin America, the Caribbean, the Middle East, Eastern Europe and Asia and has accompanied 28,531 children with long-distance support programs.*



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