

IMPLICATIONS OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS FOR THE FAIR LABOR ASSOCIATION¹

BACKGROUND

In June 2011, the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights—the result of a six-year effort led by the then Special Representative of the UN Secretary—General for Business and Human Rights, Professor John Ruggie. The Guiding Principles are based on the UN Protect, Respect and Remedy Framework, which includes the following three pillars:

1. The state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication;
2. The corporate responsibility to respect human rights, that is, to act with due diligence to avoid infringing on the rights of others and address adverse impacts with which they are involved; and
3. The need for greater access by victims to effective remedy, both judicial and non-judicial.

Following the adoption of the UN Guiding Principles on Business and Human Rights, the FLA asked Shift to conduct a review of the implications of the Guiding Principles for its own work. The review was conducted through a high-level desk-based analysis of the FLA's written policies and procedures, its programs, complaints mechanism, governance structures, and information on its website portal to identify correlations, strengths and weaknesses with regard to the UN Guiding Principles. This review is not an assessment of the impact of the FLA's work on the lives of workers; nor is it an assessment of how far company participants in the FLA meet the UN Guiding Principles. Rather, it focuses on what the FLA itself requires of its Participating Companies and how it knows and shows whether they meet those requirements in practice.

FINDINGS AND RECOMMENDATIONS²

There are many ways in which the FLA's policies, processes and practices are well aligned with the UN Guiding Principles. The revised Workplace Code of Conduct provides a clear set of labor rights outcomes, with considerable detail provided through the Compliance Benchmarks.

The Principles of Fair Labor and Responsible Sourcing in most regards closely parallel the UN Guiding Principles' six core requirements of policy commitment, four due diligence steps and remediation. The inclusion in the Principles of Fair Labor and Responsible Sourcing of key aspects of purchasing/sourcing practices is notable in filling a previous gap with regard to embedding respect for human rights across all relevant company departments.

¹ This text is excerpted and adapted from the report by Shift, "Implications of the UN Guiding Principles on Business and Human Rights for the Fair Labor Association." New York, 2012.

² The complete report by Shift is available at www.fairlabor.org.

The FLA's requirements regarding reporting from Participating Companies on their internal compliance program and access to their documentation of supplier audits provides significant insights into achievements and challenges in implementation. This has been further reinforced by the independence of the FLA's own external monitoring program and the public reporting and verification of those visits and remediation requirements.

The FLA is notable for its transparency in posting the results of its Independent External Monitoring visits. Its Third Party Complaints Mechanism has also provided for significant transparency, providing public updates on the progress of complaints that have been accepted, and their outcomes.

Also noteworthy is the FLA's recent move away from pure compliance auditing towards the incorporation of more root cause analysis and capacity building approaches, aimed at more effective and sustainable mitigation of risks to workers' rights.

It has been clear that where non-compliance by a Participating Company has been identified, this has real consequences in terms of membership suspension and public notification. This reinforces the seriousness of the commitments that affiliation with the FLA entails.

**IN ORDER TO ACHIEVE FURTHER ALIGNMENT WITH THE UN GUIDING PRINCIPLES,
SHIFT RECOMMENDS THAT THE FLA:**

- improve its ability to track the performance of Participating Companies with regard to the Principles of Fair Labor and Responsible Sourcing
- pay particular attention to the role that performance incentives for staff making purchasing decisions play in driving respect for labor rights compliance in the supply chain
- define a process for coming into line with its own Charter commitments with regard to reporting on the performance of Participating Companies
- clarify the grievance mechanism requirements in the Workplace Code
- provide greater clarity on what Participating Companies should themselves provide by way of grievance reporting channels for workers
- ensure a full description of the FLA's Third Party Complaints process is again made available on its website in key languages
- ensure that the FLA Charter is updated to be consistent with revised FLA policies and principles