Conducting Stakeholder Engagement

Guide 5 of the Responsible AI Practitioner Guides for Taking a Human Rights-Based Approach to Generative AI

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BSR®

Summary

This paper provides guidance for Responsible AI practitioners about how to conduct stakeholder engagement throughout the design, development, deployment, and oversight of generative AI (genAI) products and services, as well as how to identify and address impacts to people and society. It includes the following sections:

1 **Human Rights Foundations for Stakeholder Engagement:** Describes the stakeholder engagement requirements of international standards, what stakeholder engagement can look like, and why it is important.

2 **Stakeholder Engagement in AI:** Summarizes guidance on how to conduct stakeholder engagement as part of AI product development, discusses challenges associated with carrying out stakeholder engagement as part of genAI system/product development, and provides tips and best practices.

3 **Stakeholder Engagement Across the GenAI Value Chain:** Provides examples of situations or topics for which stakeholder engagement is relevant for each component of the genAI value chain.

4 **Key Resources**

Key Points

- The UN Guiding Principles on Business and Human Rights (UNGPs) and OECD Due Diligence Guidelines require companies to engage with affected stakeholders to inform their human rights due diligence and remedy processes. There is ample guidance on how companies should conduct meaningful stakeholder engagement linked in this guide.

- Practical reasons for engaging with stakeholders include gaining insights to refine and improve products and services; building trust, reputation, and brand image; helping to identify risks and challenges before they escalate to major concerns; and meeting legal and regulatory requirements that require stakeholder engagement.

ACCOMPANYING RESOURCES

A HRA of the GenerativeAI Value Chain

Overview of the Practitioner Guide

Guide 1: Human Rights Fundamentals

Guide 2: Governance and Management

Guide 3: Impact Assessment

Guide 4: Risk Mitigation

Guide 5: Stakeholder Engagement

Guide 6: Policies and Enforcement

Guide 7: Transparency and Disclosures

Guide 8: Remedy for GenAI Related Harms

- All parts of the genAI value chain can and should conduct stakeholder engagement to inform and assist them in best identifying and addressing impacts to people and society.

- ECNL's Framework for Meaningful Engagement in AI contains detailed guidance and tools for organizations conducting stakeholder engagement as part of AI product development. It is grounded in three elements: a shared purpose, a trustworthy process, and visible impact.

- Challenges in conducting stakeholder engagement related to genAI include the volume of potential stakeholders, scalability of processes, navigating technical expertise vs. lived experience of stakeholders, and nondisclosure agreements.

- Practical tips for stakeholder engagement include engaging at multiple levels, identifying and empowering staff to own engagement, preparing well before engaging, building and maintaining relationships with external stakeholders, and offering compensation.

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1. Human Rights Foundations For Stakeholder Engagement

Within the Responsible AI field there is increasing acknowledgment of the importance of involving affected stakeholders throughout the design, development, deployment, and oversight of AI products and services, as well as any impact assessment processes. For example, there is growing research on "participatory methods in AI," including in the development of genAI foundation models. Engagement with affected stakeholders is a foundational part of the corporate responsibility to respect human rights, and there has been significant learning and best practice development over the years that Responsible AI practitioners can draw from.

Both the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Due Diligence Guidance state that companies should engage with potentially affected stakeholders as part of their human rights due diligence and remedy processes, including to inform impact assessments and tracking the effectiveness of mitigations.[1] When carrying out stakeholder engagement as part of a human rights assessment, for example, engagement might take the form of interview-style consultations where the stakeholder is asked questions about the impacts or issues they are concerned about or adverse impacts they have experienced.

While ideally companies should consult with affected stakeholders directly, this is not always possible given the volume of people that can be impacted by tech products and services, including genAI tools. In these cases the UNGPs state that companies should engage reasonable alternatives, such as independent experts, civil society organizations, and human rights defenders.[2]

Beyond human rights expectations, there are many practical reasons for engaging with stakeholders, such as gaining insights that help refine and improve products and services for users; to build trust, reputation, and brand image; to help identify impacts and challenges before they escalate to major concerns; and to meet legal and regulatory requirements to engage with certain stakeholders.

This guide focuses on stakeholder engagement in the context of genAI. There is ample guidance about how companies should conduct stakeholder engagement more broadly, which this guide will not repeat. For further exploration, check out the UNPGs, the OECD Due Diligence Guide

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1   See Principles 18, 20, 21, and 31 of the UNGPs.
2   See Principle 18 of the UNGPs.

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on Responsible Business Conduct, BSR's <u>FAQ on Stakeholder Engagement</u>, and the UN B-Tech Project's paper on <u>Improving Stakeholder Engagement in Tech Company Due Diligence</u>.

KEY TERMS

The following key terms have a common understanding in the business and human rights field, and are also relevant for Responsible AI practitioners.

A **stakeholder** is an individual, group, or entity that directly or indirectly affects or is affected by a company's operations, activities, products, or services, and can be either internal or external to the company. Common stakeholders include employees, customers, users, consumers, suppliers, business partners, investors, trade unions, civil society organizations (CSOs), policymakers, regulators, and the communities impacted by operations.

The terms **rightsholder** and **affected stakeholder** are used for individuals or groups whose rights are or could be directly impacted by business activities, products, or services. This is distinct, but not mutually exclusive, from other stakeholders (such as CSOs) that may have interest, insights, expertise, and awareness relevant for rightsholder interests, but that may or may not themselves be rightsholders. All rightsholders are stakeholders.

The OECD defines **stakeholder engagement** as an "interactive process of company engagement with relevant stakeholders." Stakeholder engagement guidance for companies stipulates, that companies need to conduct "meaningful" stakeholder engagement. The OECD characterizes "meaningful engagement" as two-way communication based on the good faith of participants on both sides, and that meaningful stakeholder engagement is proactive, responsive, and ongoing, and is often conducted before business decisions are made.

Stakeholders that choose to engage with companies or other entities generally expect the interaction to generate change, so engagement should be treated as a dialogue, not a one-way information dissemination or extraction process. This means that the entity engages with the genuine intention to understand how stakeholders are affected by its activities and is prepared to both pursue opportunities identified and address adverse impacts.

Meaningful engagement is largely focused on the process of stakeholder engagement rather than the outcomes. Given their resources, position of power, and role in convening engagement, companies bear the primary responsibility for ensuring stakeholder engagement is meaningful. For this reason, it's also important for engagement to be effective. <u>"Effective engagement"</u> occurs when both the company/other entity and the CSOs involved are satisfied with how a given engagement or series of engagements was carried out and what was achieved. It is inherently meaningful, but also achieves desirable outcomes for both sides. or series of engagements was carried out and what was achieved. It is inherently meaningful, but also achieves desirable outcomes for both sides.

2. Stakeholder Engagement In AI

Many technology companies conduct stakeholder engagement for the purposes of understanding and addressing impacts to people and society. A description of how this often works can be found in BSR's guide for civil society on effective engagement with technology companies. It is best practice for certain teams to be empowered to engage with stakeholders as part of their day-to-day roles. Engagement can be on a specific topic, as part of an impact assessment (such as an HRA), or it can be broad and open-ended. It can also be one-off or ongoing, and insights collected in one engagement can be utilized more broadly. However, it can be particularly challenging to engage stakeholders as part of product development due to the speed and scale of the product development process.

To help address this challenge, the European Center for Not-for-Profit Law (ECNL) developed a detailed Framework for Meaningful Engagement in AI for organizations seeking to engage with stakeholders as part of AI product design, development, and deployment, including for genAI. Responsible AI practitioners should consult this framework for further detail and guidance about how to conduct stakeholder engagement as part of product development. Key points from the framework are summarized below.

Summary of ECNL's Framework for Meaningful Engagement in AI

Meaningful stakeholder engagement in AI should involve **three key elements: a shared purpose, a trustworthy process, and visible impact**. The framework contains detailed guidance and tools for achieving these elements through the following steps. Responsible AI practitioners should consult this guide when planning stakeholder engagement.

- **Defining the purpose of the engagement** in collaboration with internal and external stakeholders, and ensuring internal buy-in of everyone needed to analyze and respond to the engagement findings, including key decision-makers.

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- **Understanding and addressing worries about barriers and limitations,** such as constraints on outcomes, funding, resources, capacity, knowledge, or concerns about competitiveness and corporate confidentiality.

- **Deciding when to engage** based on the purpose and objectives, ensuring engagement occurs where stakeholder contributions are most influential. This could occur at any point during the AI product lifecycle, from ideation phases focused on identifying the purpose and desired impact of the product to the product design phase, training and testing, deployment, and ongoing use. It could be a one-off engagement or iterative across product phases over time.

- **Deciding who to engage** through stakeholder identification based on who is impacted, who will be involved in the value chain of the product, and who has expertise on the subject, with a focus on those from marginalized or vulnerable groups.

- **Choosing engagement methods** based on the purpose, from one-on-one meetings, discussion groups, surveys, or other methods, and ensuring the process is trustworthy.

- **Analyzing findings and evaluating responses** in collaboration with relevant internal stakeholders.

- **Communicating and engaging around impact** to provide a feedback loop for stakeholders about what input was or was not incorporated, the rationale behind decision-making, and next steps.

- **Reflecting and acting on stakeholder input** about responses and decision-making, which may raise new issues to address or recommendations to incorporate into the product.

- **Evaluating** the entire stakeholder engagement process, including seeking feedback from stakeholders as well as an internal discussion.

Challenges in Conducting Stakeholder Engagement for GenAI

There are many known challenges for stakeholder engagement in the technology industry.[3] In order to conduct stakeholder effectively, it is important to recognize these challenges. Below are challenges that are particularly salient for actors across the genAI value chain:

- **Volume of potential stakeholders:** Because genAI can impact such a wide variety of human rights depending on the deployment context and use case, there are a huge number of relevant issues and organizations that actors across the genAI value chain could engage with and limited allocated resources to do so.

- **Stakeholder fatigue:** Many stakeholders—particularly well-known civil society organizations and independent experts—may experience an unmanageable volume of requests to

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3   These are explored in detail in BSR's effective engagement guide for civil society.

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engage from companies and may also have limited funding or capacity to engage, even if they would like to.

- **Scalability:** Effective, meaningful stakeholder engagement requires time, resources, and expertise to carry out. However, it is challenging and resource intensive to implement product-level stakeholder engagement at scale. Many companies in the genAI value chain are developing and deploying a large volume of products quickly according to agile software development practices, and therefore it may not be feasible to carry out robust stakeholder engagement for every new or updated product or feature.

- **Navigating technical expertise vs. lived experience:** Technical expertise or background on AI is less common among certain groups of external stakeholders, which companies may view as a barrier to engagement on the more technical aspects of genAI development. Lived experience and contextual expertise (e.g., geographic, issue area) is valuable; however, Responsible AI practitioners are not always well equipped to effectively draw it out and utilize it.

- **Nondisclosure Agreements (NDAs):** Product development inside companies is often a highly confidential process, and so NDAs may be necessary for in-depth engagement. Seeking to protect intellectual property and sensitive commercial information is a legitimate business interest, and NDAs can create space for more information sharing and candid dialogue. However, NDAs can be overbroad and limit the ability of stakeholders— particularly those in civil society—to do their work by preventing them from sharing insights with colleagues or from publicly advocating on similar issues. Some CSOs therefore have a policy of refusing to sign NDAs, which may preclude important stakeholders from participating in engagement.

Practical Tips for Stakeholder Engagement

Over several years of experience with stakeholder engagement in the technology sector and consulting with people across both tech companies and civil society, BSR has collected a range of tips and best practices.[4] The tips highlighted below are especially relevant for Responsible AI practitioners.

- **Engage at multiple levels:** Having multiple levels of stakeholder engagement at increasing levels of specificity (i.e., from the organization-wide level to specific product development) can help address the scalability challenge. This will necessarily look different for a given genAI value chain entity based on its size and complexity, speed of business development, capacity for engagement, and posture toward confidentiality, among other factors. However, the following is an example of a layered stakeholder engagement structure:

  - **Ongoing engagement at the organizational level:** This might take the form of an external stakeholder advisory group that the organization regularly consults with on a wide variety of issues. This ensures that there is a steady stream of stakeholder feed-

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4   These are also explored in detail in BSR's effective engagement guide for civil society.

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back that can be shared throughout the organization and applied as relevant to more specific cases.

– **One-off, time-bound engagement on an issue** can be helpful for gathering more specific feedback from a targeted group of stakeholders with particular experience or expertise, which can also be filtered through the organization where relevant. There are a variety of circumstances in which this could be useful, such as to gather feedback on a new policy, a new type of genAI product or use case (particularly when it is higher risk— see Guide 3: A Human Rights-Based Approach to Impact Assessment to review this concept), a particular problem with a product, or as part of a higher-level impact assessment process. Note that it is important to ensure there are still feedback loops to engaged stakeholders, so that they understand how their insights were utilized. See this collaboration between ECNL and Discord for an example of this type of engagement.

– **Prioritized product-level engagement based on risk:** Engaging with stakeholders as part of the product development process, including to inform impact assessments of products, should be done whenever possible. The most feasible way to do this at scale is as part of existing user research, product testing, or user feedback collection processes. However, bespoke engagement on human rights issues with a curated group of stakeholders may be necessary for high-risk products, use cases, or deployment contexts.

- **Identify and empower dedicated staff to own engagement:** Not everyone who engages with external stakeholders can be an expert on stakeholder engagement. However, ensuring stakeholder engagement is meaningful and effective requires trained staff who are empowered and sufficiently resourced. While engineers, product managers, legal teams, and others can be involved, stakeholder engagement should be managed and led by designated staff with the appropriate skillset, who know how to ensure engagement is meaningful and can act as translators between the technical and nontechnical. It's also important to have a process in place for tracking engagement to avoid duplicative outreach from uncoordinated teams and to ensure learnings are shared across the organization.

- **Prepare well before engaging:** Before engaging, learn about meaningful and effective stakeholder engagement by reading the resources above. This preparation is needed to ensure the engagement goes smoothly and positive relationships are developed.

- **Build and maintain relationships with stakeholders:** The most effective stakeholder engagement is ongoing and built on a foundation of trust and mutual benefit. It is therefore important to invest in building and maintaining good relationships with external stakeholders over time through trust and mutual respect. This is also important for ensuring that engagement does not become extractive. The references linked in this paper provide detailed guidance about how to do this in practice.

- **Consider offering compensation:** Offering compensation to external stakeholders for their time and expertise is important, particularly when they participate in-depth engagements that require time and work. External stakeholders often feel that they provide free consulting to companies, with companies regularly extracting unpaid labor from often under-resourced

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and overworked organizations. However, many stakeholders—particularly those in civil society—also feel that accepting compensation from companies or other entities would compromise their independence. Thinking creatively about compensation—e.g., by sharing information with civil society about a topic of interest—can help address this issue.

STAKEHOLDER ENGAGEMENT IN THE ERA OF REGULATION

Several recent regulations focused on the technology industry include requirements to conduct and document stakeholder engagement—notably, the EU Digital Services Act and the UK Online Safety Act. These regulations include the use of genAI by any online platform in scope for these regulations.

With the move to stakeholder engagement being required by regulation, a wider variety of teams that have not traditionally conducted stakeholder engagement—such as legal, compliance, and trust and safety—are increasingly becoming involved.

It is important to ensure that these teams are trained and prepared in stakeholder engagement best practices to ensure that documentation of stakeholder engagement is carried out ethically. For example, not attributing specific comments to specific stakeholders and making sure stakeholders participating in a documented engagement understand and consent to how their participation will be recorded and communicated to the regulator.

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3. Stakeholder Engagement Across The Generative AI Value Chain

All parts of the genAI value chain can and should conduct stakeholder engagement to inform and assist them in best identifying and addressing impacts to people and society. Stakeholder engagement will necessarily vary across entities within the genAI value chain. For example, engagement related to specific uses of genAI systems is most relevant for downstream developers and deployers. However, below are illustrative situations and topics for which stakeholder engagement is especially valuable.

Value Chain Component	Stakeholder Engagement Contexts
Suppliers	• As part of data collection and dataset creation, to assess impacts stemming from dataset-related issues, and to consult about what sufficient representation in datasets for a stated use case or application domain may entail • To provide feedback on data annotation guidelines (e.g., engaging with experts in the domain that a genAI tool is being developed for) • To inform understanding and actions to address impacts related to labor rights and labor conditions of data enrichment workers

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Foundation Model Developers	• To inform impact assessment and mitigation, both generally and related to specific issues areas • To inform model development • To inform model release approaches • To inform approaches to downstream developer access • As part of efforts to identify and address impacts related to downstream developer use of models, as well as deployment and use
Downstream Developers	• As part of future product ideation, to inform the direction of product development • As part of product development impact assessment and mitigation • As part of efforts to identify and address adverse impacts related to deployment and use • Before expanding business operations or product deployment in a new market
Deployers	• To inform procurement of a genAI system/product, especially for products with higher human rights risk • To inform responsible integration of genAI products into existing systems and/or workflows • As part of a product testing or review phase • As part of efforts to identify impacts related to products pre-or-post deployment • Before expanding product deployment in a new context (e.g., market, use case)

4. Key Resources

For further information related to stakeholder engagement, see the following resources:

Guidance on Stakeholder Engagement in the Technology Sector / Related to Technology:

- **Framework for Meaningful Engagement in AI (ECNL):** A framework and guidance for organizations seeking to engage with stakeholders as part of AI product design, development, and deployment, including for genAI.

- **Effective Engagement with Technology Companies: A Guide for Civil Society (BSR):** A guide for civil society about how to engage with technology companies, including an overview of the state of play of engagement in the tech sector, challenges, characteristics of effective engagement, and practical tips and best practices.

- **Improving Stakeholder Engagement in Tech Company Due Diligence (UN B-Tech Project):** Describes why stakeholder engagement is important for technology companies, identifies key best practices, and makes recommendations to companies about how to improve their engagement.

- **Dismantling the Facade: A Global South Perspective on the State of Engagement with Tech Companies (BHRRC):** Describes the unique challenges faced by global south civil society in engaging with tech companies, provides case studies of effective engagement, and makes recommendations for improving engagement moving forward.

General Guidance on Stakeholder Engagement for Companies:

- **The UNGPs Interpretive Guide:** Explains why and how stakeholder engagement fits into the corporate responsibility to respect human rights, including as part of carrying out human rights due diligence and providing remediation.

- **The OECD Due Diligence Guide on Responsible Business Conduct:** The section on meaningful engagement defines the term and explains why it is important for responsible business conduct.

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- **OECD Due Diligence Guidance for Responsible AI** (forthcoming): Builds on OECD Due Diligence Guidance to provide guidance for companies developing and using AI, including on meaningful stakeholder engagement.

- **BSR's FAQ on Stakeholder Engagement:** Answers common questions about stakeholder engagement for companies, including defining key terms and providing high-level best practices.

- **DIHR's guidance on stakeholder engagement during human rights assessment processes:** Provides guidance about how stakeholder engagement should be conducted as part of human rights assessments.

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