

chapter 1

**Who is this
guidance for
and why is it
important?**



1.1 Who is this guidance for?

This guidance is for company staff who want to understand what “doing business with respect for human rights” means. It is for anyone who faces – or could face – scenarios in which their function, department or company could be connected to harm to people, or what this guidance calls “negative impacts on human rights”. This includes staff well beyond the sustainability or corporate social responsibility (CSR) function; it could include staff in corporate functions like procurement, sales, legal, public affairs or risk, and in different areas of operations, including business units and country subsidiaries.

Your company may have experienced a major human rights incident or allegation, be facing a campaign from a non-governmental organisation (NGO) or trade union, or have received questions from an important customer or investor. Your company may recently have committed to the United Nations (UN) Global Compact’s Ten Principles, or may want to develop a stand-alone human rights statement, or understand what a human rights ‘lens’ could add to the company’s existing code of conduct. Or you may be considering a comprehensive review of your company’s policies and processes to better align with the authoritative global standard in this space: the UN Guiding Principles on Business and Human Rights.

As an individual, you care about people’s dignity and their human rights. You want to know more about how human rights are relevant to business, what your company can reasonably be expected to do about them, and how to do it.

This guidance, and its accompanying website www.businessrespecthumanrights.org, are for you.

1.2 What is the aim of this guidance?

This guidance is intended to equip you with practical advice, experiences and insights to get started or build on existing efforts by your company to respect human rights throughout its operations. It can’t answer every question you might have, but it should set some parameters that can help guide you on what constitutes a credible approach to preventing and addressing human rights impacts.

This guidance aims to help companies understand the key expectations of the UN Guiding Principles on Business and Human Rights: what to do – and what to avoid – in trying to ensure respect for human rights. It also aims to provide inspiration through examples from a variety of companies, from a range of industries and country contexts, on how to go about it. We hope you will read this guidance and feel informed and equipped to tackle human rights challenges. At the same

You are the sourcing manager for a clothing company in Turkey. You are worried about the traceability of your supply chain and keen to build better relationships with your suppliers to help ensure they meet human rights standards. What can you do?

LEARN MORE IN THE

TURKEY CASE STORY AT

BUSINESSRESPECTHUMANRIGHTS.ORG

time, you are not expected to do this alone. Most probably, you will need help from colleagues in other functions and departments in your company. You will probably also need help from credible partners and expert organisations outside the company, including NGOs, trade unions, international organisations or multi-stakeholder initiatives. As part of the process, you will need to engage with those stakeholders who may be directly affected by your company's operations, listen to them, and take their perspective into account in your company's decision-making processes.

1.3 Why is it important for business to respect human rights?

Business is the major engine of economic growth and job creation. But business can also pose risks to human rights, harming people and also business itself. Today there is increasing awareness of and scrutiny on how companies impact people and communities around the world. This includes large and small companies in all industries – from a mining company resettling a community, to a retailer sourcing from a supplier that uses child labour, a manufacturer polluting a water supply, or a company relying on security forces that use excessive force.

You are the head of sustainability for a major Indonesian pulp and paper company. The company has a history of conflict with local communities related to the use of forest lands by its own operations and those of its suppliers. You know that this is bad for local communities, and bad for the company. What can you do?

LEARN MORE IN THE

INDONESIA CASE STORY AT

BUSINESSRESPECTHUMANRIGHTS.ORG

As the UN Guiding Principles make clear, respecting human rights is a responsibility that all companies share. It is also rapidly becoming the norm in practice. For example, various governments are taking action, including:

- A growing number are developing National Action Plans on business and human rights. As of 2016, a diverse group of over 35 countries had developed or were in the process of developing National Action Plans on the implementation of the UN Guiding Principles;¹
- Developments in national laws in countries such as the United Kingdom (UK) and the United States (US) now require disclosure of human rights due diligence efforts around the risks of slavery and human trafficking in global supply chains, or in relation to other high-risk activities such as the use of 'conflict minerals' in various consumer products. The European Union non-financial disclosure Directive, which EU member states are required to transpose into national law, will significantly strengthen corporate disclosure requirements on human rights across the EU;
- Stock exchanges and regulators in a growing number of jurisdictions, including India, Malaysia and South Africa, are requiring or encouraging greater disclosure on social – including human rights – issues;

1. Information on National Action Plans can be found on the website of the Office of the High Commissioner for Human Rights: www.goo.gl/itpqGj and on the Business & Human Rights Resource Centre's website: www.goo.gl/LKm7iH. ICAR and DIHR have produced a toolkit on National Action Plans, available at www.goo.gl/7auV8J.

- ▶ The Dutch government initiated a process of negotiated ‘covenants’ in a dozen different sectors involving industry associations, their members, NGOs, trade unions and the government itself to reach new agreements on how to better tackle human rights and other risks in those sectors’ global value chains;
- ▶ National export credit agencies and development finance institutions in a growing number of OECD countries are seeking to integrate human rights into their existing environmental and social due diligence;
- ▶ Regional organisations like the European Union, the Organization of American States and the Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights have affirmed the UN Guiding Principles as the authoritative global reference point when it comes to expectations of business regarding human rights;
- ▶ The International Labour Organization has begun debating the need for new initiatives and standards on supply chain responsibility, referencing the UN Guiding Principles.

Action by companies and other stakeholders include:

- ▶ A rapidly growing number of companies are making an explicit commitment to respect human rights, like the more than 9,000 companies that have signed on to the UN Global Compact’s Ten Principles² (see [Chapter 4](#) for an explanation of the relationship between the UN Global Compact and the UN Guiding Principles), the more than 340 companies that have published a human rights policy, or the growing number of companies that are comprehensively reporting on their human rights performance;³
- ▶ Leading international sustainability standards are now broadly aligned with the UN Guiding Principles, including the:
 - ▶ OECD Guidelines for Multinational Enterprises,
 - ▶ ISO 26000 Standard on Social Responsibility,
 - ▶ International Finance Corporation’s Sustainability Framework and Performance Standards;
- ▶ Socially responsible investors representing 4.8 trillion US dollars in assets under management are backing more robust human rights reporting frameworks as well as benchmarking efforts to assess companies against the UN Guiding Principles;⁴
- ▶ NGOs active at the global and local levels are increasingly holding companies to account using the Guiding Principles through campaigns;
- ▶ The International Bar Association has issued guidance for national bar associations and for all business lawyers on implementing the Guiding Principles in legal practice.⁵

You are the head of ethics for a South African bank. Your company already has some good systems in place but you know you need to do more to meet the company’s responsibility to respect human rights. How do you bring your colleagues along with you and strengthen existing systems?

LEARN MORE IN THE

SOUTH AFRICA CASE STORY AT

[BUSINESSRESPECTHUMANRIGHTS.ORG](https://www.businessrespecthumanrights.org)

2. As of June 2016: www.goo.gl/xIx2Nh.
 3. See www.goo.gl/GXK1oR.
 4. See www.goo.gl/jfRb6b.
 5. See www.goo.gl/HD4joF.

A level playing field is slowly emerging for companies on human rights. This is good news, because the risks for companies are real:

- **Business projects are delayed, suspended or cancelled** because of strong opposition by local communities that are concerned about impacts on their human rights – like the case of the proposed wind farm in described in the Mexico case story on the project’s website.
- The **costs of conflict with workers and local communities include ‘hidden costs’** such as staff time, including that of senior leaders, spent managing such conflicts. In one study of extractive sector projects this was found to be the most frequently overlooked cost of company–community conflicts (see box on this page).



LEARNING FROM PRACTICE

COSTS OF COMPANY-COMMUNITY CONFLICT IN THE EXTRACTIVE SECTOR⁶

An in-depth study by Harvard Kennedy School’s Corporate Responsibility Initiative, Shift and the University of Queensland showed that the costs to extractive companies of conflict with local communities are substantial when aggregated from across the budget lines in which they typically occur. The most frequent costs are those arising from lost productivity due to temporary shutdowns or delays. For a world-class mining operation in which a company has invested around 2 to 3 billion US dollars, this can mean a loss of 27 million dollars per week of delay in net present value terms. The greatest costs are the opportunity costs in terms of the lost value linked to future projects, expansion plans, or sales that did not go ahead. The most often overlooked costs are those resulting from staff time being diverted to managing conflict, particularly senior management time.

The study also produced a typology of costs that companies in other sectors beyond extractives have found helpful. They have used it to identify where they may be lacking information about costs they are actually experiencing but not capturing or aggregating across different budget lines.

- **Land tenure-related risks are becoming a recognised challenge for companies in a wide range of sectors.** A 2013 study of land concessions in emerging market economies suggests a three in ten chance that a given concession incurs risk for the company related to community disputes over their legal or customary title to land.⁷ Oxfam’s ‘Behind the Brands’ campaign has highlighted the relationship between land-grabbing and large brands,⁸ and companies like Coca-Cola, PepsiCo, Unilever and others are now starting to commit to ‘zero tolerance’ policies on land-grabbing, including in their supply chains.

6. Rachel Davis and Daniel M. Franks, ‘Costs of Company-Community Conflict in the Extractive Sector’, Corporate Responsibility Initiative Report No. 66, Harvard Kennedy School, 2014, available at www.goo.gl/9WGr55.

7. The Munden Project, ‘Global Capital, Local Concessions: A Data-Driven Examination of Land Tenure Risk and Industrial Concessions in Emerging Market Economies’, September 2013, p.2, available at www.goo.gl/CRsuc1.

8. See www.goo.gl/TSDedc.

- ▶ The use of **creative legal claims against companies** for alleged involvement with human rights abuses range from allegations of parent company liability on the part of a Canadian mining company for actions of its Guatemalan subsidiary, to the case against Tate & Lyle, an international sugar conglomerate, being sued in the UK High Court by Cambodian farmers over their alleged forced eviction from lands used by two of its sugar cane suppliers.⁹ Also of note are high-profile settlements in cases in the UK involving Shell, BP and Trafigura among others,¹⁰ and the filing of about 180 lawsuits in the US under the Alien Tort Statute and settlements estimated to be worth roughly 80 million US dollars.¹¹



Worker trust, motivation and productivity

The work of the Fair Wear Foundation in Turkish factories demonstrates the importance of establishing a complaint system that workers trust. Experience shows that where such a mechanism is based on dialogue with workers to solve problems, greater respect for workers' rights often follows, including through measures such as creating prayer rooms, ensuring full payment of benefits, installing better lighting at production sites to prevent eye strain, and providing sufficient clean drinking water.

In Turkey, companies have found that respecting workers' rights has also helped to boost their motivation and productivity. As a manager at one of the companies involved commented: "The speed and quality of production increased when workers felt they were being listened to," bringing benefits to the business as well as to the workers.

- ▶ Beyond litigation, **human rights complaints against companies under the OECD Guidelines for Multinational Enterprises** made to official state-based 'National Contact Points' in the 46 countries that adhere to the OECD Guidelines have been growing. Recent Harvard research shows that the large majority of complaints now relate to human rights issues.¹² The nature of the complaints has also diversified, extending beyond labour rights to include issues related to community consultations, impeding or destroying sources of livelihood, health and housing, and privacy rights, and to include cases in the agriculture, infrastructure and financial sectors.

Conversely, respecting human rights is **closely linked to business opportunities such as:**

- ▶ **Improved employee retention and recruitment rates**, including in recruiting the next generation of leaders who are increasingly focused on companies' performance in this area, as well as in retaining talented female staff;¹³

9. The company was also suspended from Bonsucro, a multi-stakeholder initiative to promote sustainable sugar cane.

10. For case profiles, see the Business & Human Rights Resource Centre's corporate legal accountability portal: www.goo.gl/w5ORfI.

11. Michael Goldhaber, 'Corporate Human Rights Litigation in Non-U.S. Courts: A Comparative Scorecard', 3 UC Irvine Law Review, 127, 2013.

12. John Ruggie and Tamaryn Nelson, 'Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementation Challenges', Harvard Kennedy School Corporate Responsibility Initiative Working Paper No. 66, May 2015, available at www.goo.gl/ZGyvVl.



The business case for APP

Jakarta-based Asia Pulp and Paper (APP) has begun to move towards better relationships with the communities around its own operations and those of its suppliers, including by integrating requirements for community consent into its policies. This was sparked by ongoing allegations of forest clearing, which affected local communities' livelihoods, and conflict that affected the company's business.

According to Aida Greenbury, Managing Director and Chief of Sustainability at APP: "If you talk about business then we talk about the long term. It's not about products for a year or 10 years; it's thinking about maybe 100 years. So if we compare the cost of preventing things from happening versus waiting for future conflict that may be even bigger scale and impact to your business – then we can understand that preventing conflict by respecting local people's rights to their lands will be lower cost in the near or long-term." Read more in the Indonesia case story on the project's website.

- **Greater access to business opportunities with governments, financiers and business customers** and buyers, who increasingly recognise the reduced risks when working with a company that effectively manages risks to human rights;
- **Greater access to capital** through growing recognition from socially responsible investors and lenders of the connection between good management of non-financial risks and good management of a company overall;
- **Improved relationships** with workers, communities and other stakeholders, resulting in greater trust and a stronger 'social licence to operate';
- **The creation of innovative new products and services by companies**, such as those developing ethically made phones or chocolate, or savings products that invest in specific sustainability themes (such as ensuring access to water).

1.4 Who else can benefit from this guidance?

This guidance is primarily aimed at companies, but we hope that others can benefit from it too. For example:

- For civil society organisations, the guidance provides in-depth information about the expectations set by the Guiding Principles in terms of what can reasonably be expected of companies in preventing and addressing human rights impacts, including in their supply chains, and what they can be held to account for.¹⁴
- For industry or multi-stakeholder initiatives that are increasingly interested in aligning with the Guiding Principles, the guidance can provide a helpful reference in reviewing the extent to which their own codes and expectations of their members align with the corporate responsibility to respect human rights.

13. Lauren McCarthy, Liz Kirk and Kate Grosser, 'Gender equality: it's your business', 2012, available at www.goo.gl/f8JmpJ.

14. For one NGO perspective on the Guiding Principles, see Oxfam International, 'Business and Human Rights: An Oxfam perspective on the UN Guiding Principles', 2013, available at www.goo.gl/olc25C.

- For investors, this guidance can help illustrate what a robust human rights risk management system would entail in practice and may help to inform their engagements with investees.
- For organisations of various kinds that are working directly with companies to help them meet their responsibility to respect human rights, this guidance provides information on how different companies organise responsibility for these issues and pinpoints where external input can be critical to the company's decision-making processes.



LEARNING FROM PRACTICE

THE BENEFITS AND CHALLENGES OF OBTAINING CONSENT

For companies, obtaining a licence to use land often involves a public consultation or consent process led by the government. All too often, initial consultation with a community reveals deep concern about a proposed project or use of certain land; yet the government moves ahead with the process, sometimes even speeding it up, and issues a permit to a company anyway. The company then tries to start operations but discovers that community resistance is so strong that it cannot do so.

This is a classic situation in which the company learns the hard way that it cannot simply rely on a state-led process to 'produce' community support or consent for a project.

Under the Guiding Principles, companies are expected to respect specific standards applying to potentially vulnerable or marginalised groups – this includes indigenous peoples' right to free, prior and informed consent (FPIC). As set out in the Declaration on the Rights of Indigenous Peoples, which has been endorsed by a large majority of states, FPIC is required if activities will affect indigenous peoples' lands, territories or other resources that they traditionally own, use or occupy.¹⁵

Some advocate that the right to consent – or consultation and negotiation consistent with the underlying principles of FPIC – should apply to any community that legally or traditionally uses or occupies land.¹⁶ An FPIC process can help reduce social conflict, as well as increase the legitimacy of a project in the eyes of all stakeholders, and can thus provide a critical foundation for sustainable development. A growing number of companies are making broader commitments to FPIC. For examples, see APP's approach in the Indonesia case story on the project's website, and Oxfam's analysis of extractive companies' commitments in its Community Consent Index.¹⁷

For advocacy organisations, you may find the guidance developed by the Centre for Research on Multinational Corporations (SOMO) particularly helpful: see SOMO, 'How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy' (2012).¹⁸ It was developed specifically for civil society organisations and is available in multiple languages.

15. The former Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, has set out what effective consent and consultation processes should involve: UN Doc No A/HRC/21/47 (6 July 2012), pp.16–18, available at www.goo.gl/s4lYCA.

16. See, for example, Oxfam Australia, 'Guide to Free, Prior and Informed Consent', 2014, available in multiple languages at www.goo.gl/llUQYI.

17. See www.goo.gl/vyfCs6. The results suggest increasing commitments to FPIC in the mining sector compared to the oil and gas sector, but also highlight some disappointing trends, for example, in relation to women's participation in decision-making.

18. www.goo.gl/1qdC4l

1.5 How was this guidance produced and what is special about it?

This guidance was produced in close collaboration with companies and their stakeholders. A first version of this guidance was produced by the Global Compact Network Netherlands in a project that ran from 2008 to 2010. In that project, 10 Dutch multinational companies piloted elements of what would later become the UN Guiding Principles, in particular, human rights due diligence. The results were shared publicly and launched at the UN Global Compact Leaders Summit in 2010 by Paul Polman, CEO of Unilever (one of the participating companies) and André van Heemstra, Chairman of the Global Compact Network Netherlands. That initial publication directly informed the development of the UN Guiding Principles.¹⁹ The publication was also picked up widely by companies and their stakeholders around the world. Several Global Compact local networks translated the document and asked the Global Compact Network Netherlands to collaborate in a follow-up project. Shift, Oxfam and GC Netherlands then conceived a new project in 2014: the Global Perspectives Project. The project was supported by the Dutch government as part of the follow-up to its National Action Plan on Business and Human Rights.

Together with country partners from Global Compact local networks and Oxfam affiliates in four countries, the project team organised business and human rights discussion and capacity-building workshops in Indonesia, Mexico, South Africa and Turkey. In these workshops, business and civil society representatives shared their experiences with – and perspectives on – the implementation of respect for human rights by businesses, including through local case stories. A number of these are included in this guidance and described in more depth on the accompanying project website: www.businessrespecthumanrights.org.

Across the four workshops, over 250 participants explored how to do business with respect for human rights in relation to key themes such as the rights to water and sanitation, land-related human rights impacts, minorities and indigenous peoples' rights, women's rights, innovative approaches to supply chain management, remedy and grievance mechanisms, and the cross-cutting theme of stakeholder engagement. Short summaries of each country workshop and context are included in [Appendix A](#) of this guidance.

The country workshops provided insights into the perspectives of companies operating in emerging economies and the Global South, and from civil society organisations that help protect workers and communities' rights in those contexts.

Country workshops in Indonesia, Mexico, South Africa and Turkey provided insights into the perspectives of over 250 participants from companies and civil society organisations on business and human rights topics.

19. In the final report by the former UN Special Representative containing the UN Guiding Principles, Ruggie referred to the project in paragraph 11: "Some of the Guiding Principles have been road-tested as well... The workability of the Guiding Principles' human rights due diligence provisions was tested internally by 10 companies."

They revealed a wide variety of stakeholder relationships, ranging from close cooperation in addressing specific issues in the supply chain, to highly adversarial relationships around extractive, infrastructure and other large-footprint projects.

All of this knowledge, together with the project partners' own experience, was brought together in The Hague in mid-2016 in a review workshop with representatives from the local networks and Oxfam affiliates, and eight GC Netherlands member companies (ABN AMRO, AkzoNobel, KPMG, Philips, Rabobank, Randstad, Shell and Unilever) who participated in the Global Perspectives Project. That workshop helped to distil the lessons that form the basis for this updated version of the guidance. The project website offers a more interactive way to access this learning, including through four case stories reflecting company and stakeholder perspectives on how to implement respect for human rights in company operations in diverse contexts.

Examples from real company practice are provided throughout this guide.

1.6 How is this guidance structured?

This guidance is structured so that different readers can dive into it at different places:

- For readers who are relatively new to the topic of business and human rights and are keen to learn more, [Chapter 2](#) explains what human rights are, how they connect to business, what the **key concepts in the UN Guiding Principles are and what they mean for companies in practice**.
- For readers who are focused on implementation and would like to learn about **specific steps** to take, [Chapter 3](#) offers a wide range of guidance points as well as 'pitfalls to avoid' **for each of the core elements that companies should have in place to meet their responsibility to respect human rights** (in short: a policy commitment that is embedded throughout the organisation; human rights due diligence processes; and processes for stakeholder engagement and remedy). Each section also contains 'suggestions for SMEs'²⁰ and sources of further information.
- [Chapter 4](#) provides brief **background information on two cross-cutting topics**: the complementary nature of the UN Guiding Principles and the UN Global Compact's Ten Principles, and how the UN Guiding Principles relate to the Sustainable Development Goals.
- **Throughout this guidance**, company **examples** are provided to illustrate the points made. There are four in-depth case stories from the four focus countries, supported by additional materials on the accompanying website: www.businessrespecthumanrights.org.

We hope this guidance helps you take action in support of respect for human rights by business. ◀

20. The European Commission has produced useful guidance for SMEs entitled 'My business and human rights': www.goo.gl/XGoKyq