

The background of the slide features a semi-transparent red overlay. Behind this overlay, there is a photograph of two women wearing hijabs, looking towards the camera. In the lower portion of the image, a map of Indonesia is visible, with a hand pointing to a specific region on the island of Sumatra.

chapter 2

An intro- duction to the core concepts in the UN Guiding Principles

2.1 How can business be connected to human rights impacts?

Talking to companies about the topic of human rights often raises the following kinds of questions: *What am I **really** responsible for as a business?... Isn't human rights the responsibility of the government?... But what if we want to do more than 'just' respect human rights?*

Because different stakeholders have had very different answers to these questions, the UN Guiding Principles on Business and Human Rights were developed to provide clarity. The Guiding Principles are an authoritative framework for what can reasonably be

expected of companies when it comes to preventing and addressing harm to people. Companies' actions and decisions can affect people's enjoyment of their human rights either positively or negatively. Companies can affect the human rights of their employees and contract workers, workers in their supply chains, communities around their operations and customers and end-users of their products or services. They can have an impact – directly or through their business relationships – on virtually the entire spectrum of human rights. The table below provides some examples of how a business may be involved in different human rights impacts.

Table: Examples of the connection between a business and human rights

Company function	Examples of relevant issues	Examples of human rights affected
Human resources	<ul style="list-style-type: none">▸ Are our female and male staff hired, paid and promoted based solely on their relevant competences for the job?▸ Are women and men paid the same wage for the same work?▸ How is sexual harassment in the workplace dealt with?	<ul style="list-style-type: none">▸ Freedom from discrimination▸ Women's rights
Health and safety	<ul style="list-style-type: none">▸ Are our workplaces safe when it comes to the mental and physical health of our staff?	<ul style="list-style-type: none">▸ Right to just and favourable conditions of work▸ Right to health
Procurement	<ul style="list-style-type: none">▸ Do our suppliers adhere to core labour standards including on child labour, forced labour, freedom of association and collective bargaining?	<ul style="list-style-type: none">▸ Right to form and join a trade union▸ Right to bargain collectively▸ Freedom from slavery▸ Children's rights
Product safety	<ul style="list-style-type: none">▸ Are any of our products potentially detrimental to our customers or end-users (for example, because they could harm their health or could involve the dissemination of sensitive personal information)?	<ul style="list-style-type: none">▸ Right to health▸ Right to privacy
Community relations	<ul style="list-style-type: none">▸ Are local communities around our operations or facilities affected by what we do (for example, as a result of pollution, excess dust or noise)?▸ Do any of our operations involve resettling people in a new location?	<ul style="list-style-type: none">▸ Right to an adequate standard of living▸ Rights to water and sanitation▸ Right to health▸ Indigenous peoples' rights including the right to free, prior and informed consent

The idea of human rights is as *simple* as it is *powerful*: that people have a right to be treated with *dignity*.

In practice, some rights are more at risk of negative impacts than others in particular industries and circumstances, and companies will need to pay more attention to them. But, in principle, any company could potentially be involved with a negative impact on any internationally recognized human right. This raises two initial questions: what are 'internationally recognized human rights' and what is a negative impact on human rights?

2.2 What are 'internationally recognized human rights'?²¹

The idea of human rights is as simple as it is powerful: that people have a right to be treated with dignity. Human rights are inherent in all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, race, religion, language or other status. Every individual is entitled to enjoy human rights without discrimination. These rights are all interrelated, interdependent and indivisible. International human rights law lays down obligations on states to act in certain ways or to refrain from certain acts, in order to promote and protect the human rights of individuals or groups. The 1948 Universal Declaration of Human Rights was drawn up by representatives from many nations to prevent a recurrence of the atrocities of the Second World War and is the cornerstone of modern human rights law. At the World Conference on Human Rights in Vienna in 1993, all 171 participating countries reaffirmed their commitment to the aspirations expressed in that document.

The Universal Declaration is codified in international law through the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of 1966. Each of the covenants has been ratified by over 150 states. Collectively, all three documents are known as the 'International Bill of Human Rights'. Regarding workers' human rights, the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work commits all its member states to four categories of principles and rights: freedom of association and the right to collective bargaining; the elimination of compulsory labour; the abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These are covered in more depth in the eight 'core conventions' of the ILO.

For a helpful summary of the rights contained in these core instruments and how business can impact them, see Annex A of the UN Guiding Principles Reporting Framework, available at <http://www.ungpreporting.org/resources/how-businesses-impact-human-rights/>.

21. The following text draws substantially from Shift and Mazars, UN Guiding Principles Reporting Framework, Chapter 4, available at www.UNGPreporting.org.

The Guiding Principles make clear that:

- The **International Bill of Human Rights** and the **ILO Declaration** provide the basic reference points for businesses in understanding what human rights are, how their own activities and business relationships may affect them, and how to ensure that they prevent or mitigate the risk of negative impacts on people.
- Depending on the circumstances of their operations, companies may need to consider **additional human rights standards** in order to ensure that they respect the human rights of people who may be disadvantaged, marginalised or excluded from society and, therefore, particularly vulnerable to impacts on their human rights, such as children, women,²² indigenous peoples, people belonging to national, ethnic, religious or linguistic minorities, or persons with disabilities. The table below lists these additional standards.

UN human rights instruments elaborating the rights of persons belonging to particular groups or populations²³

- International Convention on the Elimination of All Forms of Racial Discrimination
 - Convention on the Elimination of All Forms of Discrimination against Women
 - Convention on the Rights of the Child
 - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
 - Convention on the Rights of Persons with Disabilities
 - Declaration on the Rights of Indigenous Peoples
 - Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
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2.3 What are negative human rights impacts?

A negative human rights impact occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights. Several elements are important in this definition:

- **Negative:** removing or reducing the ability to enjoy human rights;
- **Action:** the activity (or inactivity) of the company itself or one of its business relationships that leads to or contributes to an impact;
- **An individual:** somebody affected or harmed (which the Guiding Principles refer to as “potentially affected stakeholders”);
- **Human rights:** the impact is on an internationally recognized human right or rights.

22. On impacts on women workers in supply chains, see Oxfam International, ‘Trading Away our Rights: Women Working in Global Supply Chains’, 2004, www.goo.gl/L1b4SC.

23. Reproduced from OHCHR, ‘The Corporate Responsibility to Respect Human Rights: An Interpretative Guide’, 2012, p.12, available at www.goo.gl/6Zjln7.

Table: Examples of negative human rights impacts on different stakeholders

On workers	On communities	On consumers or end-users
<ul style="list-style-type: none">Workers who are prevented from, or fired as a result of, joining a trade union are impacted in their right to <i>freedom of association</i>	<ul style="list-style-type: none">Companies polluting water or air quality may impact the surrounding community members' <i>right to health</i>	<ul style="list-style-type: none">A company's unsafe products may impact individual consumers' <i>right to health</i>
<ul style="list-style-type: none">Workers provided with inadequate protective equipment may be impacted in their <i>right to health</i>; women workers may be particularly vulnerable	<ul style="list-style-type: none">Companies causing water scarcity may impact farmers' <i>right to water</i>	<ul style="list-style-type: none">A company's loss of private information may impact end-users' <i>right to privacy</i>
<ul style="list-style-type: none">Workers provided with unhealthy dormitory housing may be impacted in their <i>right to an adequate standard of living</i>	<ul style="list-style-type: none">Increased company traffic that leads to noise, dust or safety concerns may affect the community's <i>rights to life and health</i>	<ul style="list-style-type: none">Inadequate safety in company stores may impact shoppers' <i>right to personal security</i>
<ul style="list-style-type: none">Excessive hours, unpaid overtime, or discrimination in pay or promotion may impact workers' <i>right to just and favourable conditions of work</i>	<ul style="list-style-type: none">Resettlement to make way for a new facility with inadequate consultation would violate the <i>right to free, prior and informed consent</i> of indigenous peoples that live on or use that land	<ul style="list-style-type: none">Companies promoting the irresponsible consumption of alcohol or high-sugar drinks (especially by young people) may impact their <i>right to health</i>
<ul style="list-style-type: none">Workers in forced or bonded labour conditions (for example, some migrant workers) are impacted in their <i>right not to be subjected to slavery, servitude or forced labour</i>	<ul style="list-style-type: none">Local community members' inability to find an alternative livelihood after resettlement may impact their <i>right to an adequate standard of living</i>	

2.4 Where do the UN Guiding Principles come from?²⁴

In 2005, the UN Secretary-General tasked Harvard Kennedy School Professor John Ruggie with moving beyond what had become a polarised debate over the human rights responsibilities of companies, and identifying practical ways to address business-related risks to human rights. Ruggie's goal was to build consensus among stakeholders on the ways to achieve this objective, by holding consultations around the world and conducting extensive research. Out of that process came the 'Protect, Respect and Remedy' Framework, which was unanimously welcomed by the UN Human Rights Council in 2008.

24. This section draws from a Shift briefing note on the UN Guiding Principles.

The UN Protect, Respect and Remedy Framework

The Framework rests on three complementary pillars:

1. States have a **duty to protect** people from human rights abuses by third parties, including business.
2. Business has a **responsibility to respect** human rights, which means to avoid infringing on the rights of others and to address negative impacts with which a business is involved.
3. There is a need for **greater access to effective remedy** for victims of business-related human rights abuse, both judicial and non-judicial.

The UN Human Rights Council extended Ruggie's mandate as Special Representative until 2011 with the task of operationalising and promoting the UN Framework.

The UN Guiding Principles

In June 2011, the UN Guiding Principles on Business and Human Rights were presented by Ruggie and unanimously endorsed by the Council. In brief, what do the Guiding Principles say?

1. The state duty to protect

The Guiding Principles for the first pillar provide recommendations on how states can create an environment that is conducive to business respect for human rights, including by:

- Striving for greater legal and policy coherence between the state's human rights obligations and actions with respect to business, including by enforcing existing laws, identifying any policy or regulatory gaps, and providing effective guidance to business;
- Fostering business respect for human rights both at home and abroad, including where there is a 'state-business nexus', such as through ownership or when a state conducts commercial transactions with business (for example, providing export credit support or procuring goods or services from business);
- Helping ensure that businesses operating in conflict-affected areas do not commit or contribute to human rights abuses; and
- Fulfilling their duty to protect when they participate in multilateral institutions.

2. The corporate responsibility to respect

The responsibility to respect is a global standard of expected conduct, affirmed by the UN Human Rights Council and reflected in a growing number of other international standards on responsible business conduct. It is the baseline expectation of all businesses in all situations.

The UN Guiding Principles are a baseline expectation of all businesses in all situations.

The Guiding Principles for the second pillar provide a blueprint for business on how to:

- Prevent and address adverse impacts on human rights throughout their operations – meaning in their own activities and through their business relationships – including where they cause or contribute to human rights impacts or where an impact is directly linked to their operations, products or services through a business relationship;
- ‘Know and show’ that they respect human rights, including through effective human rights due diligence processes; and
- Understand how the contexts where they operate may affect the risk of being involved in severe human rights harms.

The scope, boundaries and content of the responsibility to respect are discussed in detail later in this chapter.

3. Access to effective remedy

Even where states and business operate optimally, negative human rights impacts can still occur, and affected individuals and communities must be able to seek redress. Effective grievance mechanisms play an important role in both the state duty to protect and the corporate responsibility to respect. The Guiding Principles for the third pillar set out how such grievance mechanisms can be strengthened by states and businesses:

- As part of their duty to protect, states must take appropriate steps to ensure that when abuses occur, those affected have access to effective judicial and non-judicial remedy;
- Non-state-based mechanisms, including mechanisms at the operational level (such as companies’ own grievance mechanisms), industry level (such as complaints mechanisms established as part of multi-stakeholder initiatives), and international level (such as the grievance mechanisms of international financial institutions), should provide an effective complement to state-based mechanisms; and
- Non-judicial grievance mechanisms should meet key effectiveness criteria

These concepts are further described in [Chapter 3.8](#).

Since the UN Guiding Principles were endorsed, there has also been discussion within the UN Human Rights Council about the merits of a binding international treaty on business and human rights, and an intergovernmental working group has been created to explore the topic further.²⁵

2.5 Understanding the scope of the responsibility to respect

For many companies, understanding the implications of the UN Guiding Principles involves asking the following questions:

Which companies have to respect human rights?

The Guiding Principles provide the baseline expectations for all companies, everywhere—meaning they apply to companies of every size, industry, country of operation or domicile, ownership structure, and equally to production and services companies.

How far throughout the supply and value chain does the responsibility to respect apply?

The responsibility to respect extends beyond impacts a company causes or contributes to itself to wherever an impact may be linked to the company's operations, products or services through a business relationship. This can involve business relationships at any stage or tier of the supply or value chain.

However, while the UN Guiding Principles expand the scope of where companies need to look for impacts, they also put some boundaries on the kind of actions that are expected in response, depending on how a company is involved with an impact.

What action is required in which situation?

The Guiding Principles describe three ways in which a company can be involved with human rights impacts:

- a) It may **cause** an impact through its own activities;
- b) It may **contribute** to an impact either directly or through some outside entity (government, business or other);
- c) It may not do anything to cause or contribute to an impact, but an impact may be **linked** to its operations, products or services through a business relationship (or series of relationships).

Each scenario has different implications for the nature of a company's responsibility to take certain action – in particular, whether it has a role to play in remedy. These different scenarios are elaborated in [Chapter 3.4](#) through a range of practical examples.

What is the company's responsibility if a government does not protect human rights?

It is the duty of states to translate their international human rights law obligations into domestic law and provide for their enforcement. The laws of all states include various protections against human rights abuse by business, including in labour, non-discrimination, health and safety, environmental and consumer protection laws. In some states, human rights are explicitly protected in the constitution.

What is the company's responsibility if a government does not protect human rights?

At the same time, national laws may not address all internationally recognized human rights, they may be weak, they may not apply to all people, or they may not be enforced by governments and the courts. For example, labour inspectors may be corrupt or ineffective, or police may be underequipped or poorly trained. It is clear that, in such situations, respecting human rights is much more difficult for companies.

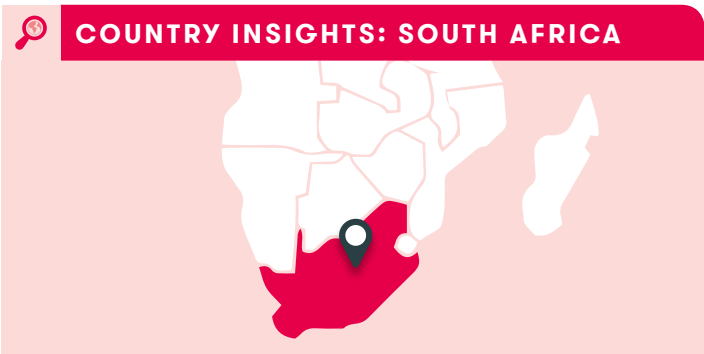
The UN Guiding Principles do not expect companies to step in for every government failure. But they make clear that where national laws fall below the standard of internationally recognized human rights, companies should respect the higher standard; and where national laws conflict with those standards, companies should seek ways to still honour the principles of those standards within the bounds of national law.

Why don't the UN Guiding Principles talk about 'promoting' human rights?

The Guiding Principles were developed to provide a baseline expectation for all companies everywhere. However, this doesn't mean that companies cannot go 'beyond' respect, and many choose to do so for a range of reasons. For example,

companies that have signed up to the Ten Principles of the UN Global Compact (see [Chapter 4](#)) have committed to also 'promote' or advance human rights. Other companies are making the Sustainable Development Goals the focus of their promotional efforts on human rights (for more on this, and on how positive actions to respect human rights connect to the promotion of human rights, see also [Chapter 4](#)).

However, companies need to pay close attention to ensure that human rights are equally respected in any such promotional activities. Moreover, as the Guiding Principles make clear, efforts to promote or support human rights cannot be used to 'offset' negative human rights impacts elsewhere in the company's



The legacy of apartheid and expectations on business

In South Africa, society's expectations of business to help address the shared legacy of apartheid mean that talking about the baseline standard of respect for human rights in the UN Guiding Principles cannot be done in isolation from a discussion of business's role in contributing to the promotion of human rights through broader social development and delivery of services. This is particularly important in communities where the government is still largely absent, such as around many mining operations and in agricultural contexts. What is needed to obtain or maintain a social licence to operate varies in different contexts; in South Africa, where society is still tackling the effects of gross historical injustices, the promotion of human rights needs to be part of the picture.

operations. For example, building a school for a local community cannot compensate for polluting their water source and negatively impacting people's health and livelihoods.

2.6 What elements are needed to put the responsibility to respect into practice?

The UN Guiding Principles make clear that companies should have the following elements in place:

- A statement of their **policy commitment** to respect human rights (discussed in Chapter 3.1) that is **embedded** throughout the organisation (3.2);
- **Human rights due diligence** processes to:
 - assess their actual and potential negative impacts on people (3.3);
 - integrate the findings and take action to prevent or mitigate potential impacts (3.4);
 - track their performance (3.5); and
 - communicate about their performance (3.6);
 - conduct **stakeholder engagement** as a cross-cutting theme throughout (3.7); and
- Processes to provide or enable **remedy** to those harmed, in the event that the company causes or contributes to a negative impact (3.8).

These elements are further elaborated through guidance points and practical examples in Chapter 3.

2.7 What is different about the responsibility to respect human rights?

Some of the main features that distinguish the responsibility to respect from prior understandings of corporate social responsibility, or CSR, include the following:

Risks to people, not just risks to the company

Human rights due diligence differs from traditional commercial, technical and financial risk management in that it focuses on risks to people, not just risks to the business. While there is increasing evidence that business risks converge with risks to people, especially in the medium to long term (see [Chapter 1](#)), this may not always be the case.

The UN Guiding Principles make clear that negative human rights impacts are to be evaluated and prioritised according to the severity of the risk to people. This means companies need to engage with 'potentially affected stakeholders' (sometimes also called 'rights holders'). These are individuals or groups who may be impacted by a company's operations and can include workers (the company's own staff as well as those working for suppliers), customers and end-users of the company's products or services, and communities located around the company's own facilities or its suppliers' facilities, among others.

Human rights due diligence *differs* from traditional risk management in that it *focuses* on risks to *people*, not just risks to the *business*.

All business relationships, not just first tier

Many companies are used to managing social and environmental risks in the first tier of their supply chain or in their immediate sales relationships. But going beyond this to consider risks to people at all stages of the value chain is a new concept – and a challenge – for many. For the first time, the UN Guiding Principles establish that all these business relationships are within the scope of a company's responsibility to respect human rights, although what companies can reasonably be expected to do about them will of course differ (discussed in [Chapter 3.4](#)).

Using leverage to address human rights risks

If companies can be connected to human rights impacts at any point in their value chain, then there needs to be greater attention to how they can work with business partners to improve their capacity to respect human rights. Leading companies are realising that engaging in a process of continuous improvement through capacity building, rather than immediately terminating a relationship when problems are found, can lead to better human rights outcomes overall. For example, if a supplier is found to be using child labour and is immediately terminated, the children that were working in the supplier's factory may be forced to make up for lost income through other even more harmful activities. In cases where systemic human rights impacts are concerned, where there is no easy solution, using leverage together with other actors – whether peers, industry associations, international organisations, or local trade unions or NGOs – may be the only way to achieve sustainable improvements. This is further discussed in [Chapter 3.4](#).

Knowing and showing

Human rights due diligence can help companies move from being 'named and shamed' by third parties for abusing human rights to 'knowing and showing' that they respect human rights in practice. Human rights due diligence helps companies understand how they can be connected to human rights impacts, develop strategies to mitigate this risk, and track and account for their efforts to do so. This can also put companies in a better position to engage with external stakeholders about their approach.

Human rights harms cannot be offset

A company cannot compensate for human rights harms on the one hand by performing good deeds on the other, for example, by building schools or providing free healthcare. This is a fundamental difference from traditional understandings of voluntary CSR or corporate philanthropy and is an important point to bear in mind as companies go about making commitments to implement the Sustainable Development Goals (discussed in [Chapter 4.2](#)). ◀