

Practical Guide for Business: Implementing the UN Guiding Principles on Business and Human Rights (UNGPs)



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The UN Guiding Principles on Business and Human Rights (UNGPs)¹ have become the global standard on how business should go about to respect human rights. They have influenced the expectations of companies, industry bodies, investors, regulators and other stakeholders, and are increasingly used in the formulation of new laws. In today's landscape, it is essential that all companies familiarise themselves with the UNGPs and how to apply these principles within their business.

What are the UNGPs?

The UNGPs were adopted unanimously by the UN Human Rights Council in 2011. They were authored through extensive stakeholder consultation by Prof John Ruggie, the then UN Special Representative in this area, and his team of experts. Although the UNGPs are not legally binding, they have become the influential standard and are increasingly being incorporated into "hard law" through regulation and case law.

The UNGPs have also been incorporated into the OECD Guidelines on Multinational Enterprises,² and the OECD Due Diligence Guidance for Responsible Business Conduct,³ as well as helpful guidance for various sectors.⁴

The three pillars of the UNGPs

The UNGPs are structured around three pillars:

Pillar I: The State duty to protect human rights

Pillar II: The corporate responsibility to respect human rights

¹ UN Guiding Principles on Business and Human Rights, available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

² OECD Guidelines for Multinational Enterprises, available at: <http://mneguidelines.oecd.org/guidelines/>.

³ OECD Due Diligence Guidance for Responsible Business Conduct, available at: <https://www.oecd.org/corporate/mne/due-diligence-guidance-for-responsible-business-conduct.htm>.

⁴ OECD Responsible Business Conduct Sectoral Guidance, available at: <http://mneguidelines.oecd.org/sectors/>.



Pillar III: Access to remedy for victims of human rights harms

This guidance note will focus on the implementation of the corporate responsibility to respect human rights, set out in Pillar II. However, the other two pillars are also relevant for business.

For example, the State responsibility to protect human rights includes expectations that the State will regulate and enforce the corporate responsibility to respect human rights, that it will adopt a “smart mix” of policy instruments, and that it will incorporate the UNGPs into its public procurement, export credit and other trade-focused requirement.

Similarly, the right to remedy discussed in Pillar III applies to both companies and the State, and particularly insofar as victims of human rights abuses should have a right to remedy against those companies that are responsible for the harm.

What is the corporate responsibility to respect human rights?

The corporate responsibility to respect human rights is described as a “global standard of expected conduct” that applies to all companies regardless of size, sector or country of operation. It means that companies should “avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”

The responsibility to respect applies to actual and potential adverse human rights impacts – so those that are already taking place, have already taken place, and are potentially going to take place in the future. This refers to “all internationally recognised human rights”, as companies may affect any of these rights.

The UNGPs set out three components of the corporate responsibility to respect human rights:

- 1) Having a **policy** on the company’s commitment to respect human rights;
- 2) A **human rights due diligence process** to identify, prevent, mitigate and account for how the company addresses its human rights impacts; and
- 3) Operational-level **grievance mechanisms** to remediate any adverse human rights impacts that the company causes or contributes to.

How do the UNGPs apply to my business relationships?

The responsibility to respect human rights applies beyond the company's own activities, and into the value chain, by requiring that companies should:

- Avoid causing or contributing to adverse human rights impacts **through their own** activities, and address such impacts when they occur;
- Seek to prevent or mitigate adverse human rights impacts that are **directly linked** to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

Where company may be contributing to, or be linked to human rights harms through a business relationship, the company should exercise the leverage it has over that entity to "effect change in the wrongful practices". If the company does not have enough leverage, it should seek to increase leverage, such as through capacity-building and working with other actors. A company should only terminate a business relationship as a last resort, and if this is done it should consider the human rights impacts of such termination.

What is human rights due diligence?

Human rights due diligence is defined as an ongoing process with four components:

1. **Assessing actual and potential adverse human rights impacts.** This includes an identification of the actual or potential risks and their severity. Risk assessment should go beyond risks to the company itself, to include risks to rights-holders.
2. **Integrating and acting upon the findings** of those impact assessments. This includes preventing or mitigating potential adverse impacts, and participating in the remediation of impacts that have already taken place.
3. **Tracking the effectiveness** of these systems and responses that seek to address the company's adverse human rights impact.
4. **Communicating** how impacts are addressed. This could include corporate reporting, but also other forms of communication with stakeholders.

These parts of human rights due diligence should be undertaken on an ongoing basis, recognising that human rights risks might change.



The corporate social responsibility activities that companies undertake to support and promote the enjoyment of human rights, such as through philanthropic or charitable activities, do not offset any failures to respect human rights throughout the company's operations.

Practical steps for meeting the corporate responsibility to respect human rights

There are various steps that companies of all sizes and from all sectors could and should take to meet the responsibility to respect human rights, in the company's own operations and in its value chain.

1. **Human rights policies:** The UNGPs state that a company policy should set out its human rights expectations of staff and third parties. The policy should be approved at the most senior level, informed by relevant expertise, publicly available and reflected in operational policies and processes "necessary to embed it throughout the business enterprise".
2. **Using a human rights lens and the UNGPs framework:** In a recent study, survey respondents indicated that after they used a human rights lens they realised that their previously existing processes were not sufficient and had overlooked certain human rights risks.⁵ Companies should not assume that they face certain human rights risks merely because they operate in specific sectors or regions. Instead, they should use a holistic human rights lens to understand the real-life risks and intersectional inequalities that people face in each relevant operating context.

⁵ McCorquodale, Smit, Neely and Brooks "Human Rights Due Diligence in Law and Practice: Good Practices and Challenges for Business Enterprises", *Business and Human Rights Journal* Volume 2 , Issue 2 , July 2017 , pp. 195 – 224.

3. **Effective integration into relevant functions and processes:** According to the UNGPs, effective integration of human rights requires that the company assigns responsibility to the “appropriate level and function within the company”, and that “internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.”⁶ This includes having integration of human rights in cross-functional teams, that may include members from legal, CSR, human resources, ethics and compliance, and operational departments such as those that deal with supplier on-boarding, procurement, and stakeholder relationships. Companies have highlighted that it is important for a coherent approach that “these functions are in communication, preferably through a cross-functional steering committee or working group with ties to the Board.”⁷
4. **Stakeholder engagement:** Companies should “seek to understand the concerns” of stakeholders by “consulting them directly in a manner that takes into account language and other potential barriers”.⁸ Where this is not possible, companies could alternatively consult with “credible, independent expert resources, including human rights defenders and others from civil society.”⁹
5. **Human rights experts:** The UNGPs state that “[t]he more complex the situation and its implications for human rights, the stronger is the case for the enterprise to draw on independent expert advice in deciding how to respond.” Companies have indicated the importance of having local experts “on the ground”, to provide insights about the local environment to centralised decision-makers, and to build more effective relationships with suppliers. These local experts can be external or internal to the company.¹⁰
6. **Codes of conduct and contractual clauses:** These are the most utilised tools for supply chain human rights due diligence.¹¹ However, care should be taken that contractual clauses do not merely shift risk and responsibility away from large multinationals to their suppliers. The American Bar Association has produced helpful model contractual clauses for human rights due diligence,¹² and the joint Ethical Trading Initiatives have produced guidance on buying responsibly and contracts with suppliers.¹³

⁶ UNGP 19.

⁷ Smit, Holly, McCorquodale and Neely “Human rights due diligence in global supply chains: evidence of corporate practices to inform a legal standard”, *International Journal of Human Rights* (2020), DOI: 10.1080/13642987.2020.1799196 at 23.

⁸ Commentary to UNGP 18.

⁹ Commentary to UNGP 18.

¹⁰ Smit et al above n 7 at 14-15.

¹¹ Smit et al (2020), *Study on Due Diligence Requirements Through the Supply Chain. FINAL REPORT*. 10.2838/39830, available at: <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en> at 63 and 66.

¹² American Bar Association, Contractual Clauses Project, available at: https://www.americanbar.org/groups/human_rights/business-human-rights-initiative/contractual-clauses-project/.

¹³ The Joint Ethical Trading Initiatives, Guide to buying responsibly, available at: <https://www.ethicaltrade.org/resources/guide-to-buying-responsibly>.

7. **Human rights-based audits:** While social audits are commonly used tools, audits on their own “have been found to be ‘ineffective tools for detecting, reporting, or correcting environmental and labour problems in supply chains’ and human rights impacts’ in the absence of a wider, ongoing process”.¹⁴ Companies have indicated that they are moving their risk management approach beyond audits towards “more comprehensive and embedded governance of [human rights due diligence], including proactive stakeholder partnerships”¹⁵ such as “education, training, and working with locals”.¹⁶
8. **Operational-level grievance mechanisms:** These should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue with the stakeholders they are intended for. Operational-level remediation by companies should be understood as complementary and supplementary to judicial remedies being available to victims in courts, which the UNGPs describe as “at the core of ensuring access to remedy.”¹⁷
9. **Training and ongoing learning:** Human rights training is an important part of human rights due diligence. Companies have highlighted the “importance of operationalizing or translating human rights for internal company staff who may not have a human rights background”.¹⁸ Various bespoke courses are increasingly offered in this area.¹⁹ The Business and Human Rights Resource Centre²⁰ is a free source of helpful tools, guidance and information for companies, including relating to sectors, issues or countries of operation.
10. **Reporting and rights-based transparency:** The UN Guiding Principles Reporting Framework²¹ by Shift and Mazars is available in six languages and sets out handy questions to guide companies not only through the reporting process, but also through the implementation of the UNGPs that is the focus of such reporting.

¹⁴ McCorquodale et al above n 5, referring to LeBaron and Lister, ‘Ethical Audits and the Supply Chains of Global Corporations’, Sheffield Political Economy Research Institute (2016) *Global Political Economy* Brief No. 1, 1.

¹⁵ Smit et al above n 7 at 16.

¹⁶ Ibid at 14.

¹⁷ Commentary to UNGP 26.

¹⁸ McCorquodale et al above n 5.

¹⁹ Including courses on human rights training for business by the Nova Centre for Business, Human Rights and the Environment, available here: <https://novabhre.novalaw.unl.pt/>, and the British Institute of International and Comparative Law, available here: <https://www.biiicl.org/training>.

²⁰ Business and Human Rights Resource Centre, available here: <https://www.business-humanrights.org/en/>.

²¹ Shift and Mazars, UN Guiding Principles Reporting Framework, available at: <https://www.ungpreporting.org/>.



About the practical guide

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The NOVA BHRE is an academic centre within the NOVA School of Law which seeks to contribute to fostering responsible business conduct that upholds respect for human rights, decent work and environmental standards throughout their global value chains, thereby also advancing the UN Sustainable Development Goals.

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