



(COP 6) HUMAN RIGHTS

A Definitions and applicability

Human rights are universal rights and freedoms regarded as belonging to all people without discrimination based on internationally recognised standards. At a minimum, the RJC understands human rights to mean those rights articulated in the International Bill of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work and Applicable Law.

Source:

- *United Nations Human Rights – What are Human Rights?*
www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx

The **Human Rights** section of the COP is applicable to all Members.

B Issue background

Human rights are relevant to all businesses, regardless of size, sector or country of operation. The kinds of rights which are regarded as human rights include:

- Social, cultural and economic rights – such as the right to participate in cultural activities, the right to food, the right to clean drinking water and sanitation, and the right to education;
- Labour rights – such as the right to freedom of association and effective recognition of the right to collective bargaining, and freedom from forced labor, child labour and discrimination;
- Civil and political rights – such as the right to life and liberty, freedom of expression, and equality before the law.

While some of these human rights might sound abstract from a business perspective, they are often the underlying rationale for a company's policies and procedures. For example, a company's health and safety procedures may not use 'human rights' language, but in effect respects employees' right to life, the right to just and favourable conditions of work and the right to health. A company policy on child labour in effect respects the right to protection of the child and the right to education.

SMALL BUSINESS

Even small businesses have a responsibility to respect human rights. However the way small businesses approach this responsibility will vary according to their size, sector, operational context and structure, as well as the risks of creating adverse human rights impacts. Smaller enterprises often have more informal processes and management structures than larger companies, so their policies and processes for respecting human rights can usually be more informal. But where smaller enterprises have severe human rights impacts, this will require corresponding measures irrespective of the size of the business.

Source: *UN Guiding Principles on Business and Human Rights - Principle 14*

B Issue background (cont)

In 2011, the United Nations (UN) Human Rights Council released the Guiding Principles on Business and Human Rights, to elaborate the UN Framework for business and human rights adopted in 2008. The UN's "Protect, Respect and Remedy" Framework rests on three pillars:

- State duty (requirement) to **protect** against human rights abuses by third parties including business through appropriate policies, regulation, and adjudication;
- Business responsibility (expectation) to **respect** human rights, which means to act with due diligence to avoid infringing on the rights of others and to address adverse impacts that are linked to their activities; and
- Access by victims to effective **remedy**, both judicial and non-judicial.

The Framework recognises that States' legal obligation to protect their citizens against human rights abuses is critical. Serious human rights abuses are unfortunately often associated with weak governance, high levels of corruption, conflict situations and low levels of development. While governments need to tackle these issues where present, businesses still have a responsibility to respect human rights wherever they operate. This starts with a baseline of legal compliance and is supported by proactive actions to prevent, mitigate and, where appropriate, remediate the business' involvement in adverse human rights impacts.

Respecting human rights is made more difficult in situations where national law or weak implementation means that national law does not go as far as, or conflicts with, internationally recognized rights. In these situations, companies should attempt to meet the principles of internationally recognized rights (i.e. intent) when faced with conflicting requirements while also complying with national law. Companies should also be aware of the broader legal and other risks outside of the country of operation. Indeed the UN Guiding Principles recommend that businesses treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue.

The UN Guiding Principles seeks to encompass potential human rights impacts of business directly and arising through business relationships. Where business enterprises have large numbers of entities in their value chains, the UN Guiding Principles recognises that it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. In this situation, business enterprises can identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers' or customers' operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence.

C Key regulations

INTERNATIONAL STANDARDS

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. The most well known international human rights instrument is the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948. Although the UDHR is a non-binding resolution, it is now considered to be a central component of international customary law, along with the International Covenant on Civil and Political Rights (CCPR) and the International Covenant on Economic, Social and Cultural Rights (CESCR). Together these form the International Bill of Human Rights. While these instruments are not directed at companies, the UN Guiding Principles (see below) recognise that companies have a responsibility to respect the rights outlined in them.

Coupled with these UN instruments, the International Labour Organisation (ILO) has identified fundamental labour principles in its Declaration on Fundamental Principles and Rights at Work. These rights are directly addressed in the RJC Code of Practices in the following provisions: [Child Labour](#), [Forced Labour](#), [Freedom of Association and Collective Bargaining](#) and [Non-Discrimination](#). More information on these can be found in the relevant chapters of the RJC Standards Guidance.

The UN Guiding Principles on Business and Human Rights (also known as the "Ruggie Principles") were adopted in 2011 and have become the primary reference for the private sector's responsibility to respect human rights. The Guiding Principles define respecting human rights as:

- a. Avoid causing or contributing to (e.g. causing in part) adverse human rights impacts through their own activities, and address such impacts where they occur; and
- b. 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.

C Key regulations (cont)

While the Guiding Principles do not create any new international laws or obligations, they elaborate the implications of existing standards and practices for States and businesses and integrate them within a single, comprehensive template. The Guiding Principles have been welcomed by all stakeholder groups. For example, the Guiding Principles have been incorporated into the revised OECD Guidelines for Multinational Enterprises, the ISO 26000 standard and the Performance Standards of the International Finance Cooperation (IFC). The European Union has also recognised the Guiding Principles as one of the cornerstones of an evolving global framework for corporate social responsibility.

The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas includes recommendations for companies in the gold supply chain to avoid contributing to or being associated with significant adverse impacts, including serious human rights abuses and conflict. The Guidance provides recommendations for due diligence for responsible supply chain management and aims to help companies to respect human rights through their sourcing decisions.

NATIONAL LAW

Human rights principles are also enshrined in the national law of most countries. It is essential to ensure that all business operations are aware of and comply with these legal principles and requirements. Most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases. Other laws including occupational health and safety, non-discrimination, privacy and environmental provisions may also entail protection for human rights. Some national courts have accepted or instigated lawsuits alleging that multinational companies based in their country have knowingly contributed to human rights violations in other countries. Government sanctions and restrictions may be applicable to commercial transactions with certain regions or countries. Members should strive to comply with all Applicable Laws and respect internationally recognized human rights wherever they operate.

D Suggested implementation approach

The Suggested implementation approach provides general guidance for implementing the mandatory requirements of the Code of Practices. The guidance is not normative and should be seen as a starting point for information and support.

The UN Guiding Principles on Business and Human Rights brings a new process for knowing and showing that companies respect human rights. The human rights due diligence process that is articulated in the Guiding Principles is based on a largely familiar risk management practice in business. However its application to human rights and business relationships will take time to implement in companies and Members and auditors should take into account the need for systems to be put in place over successive years as part of a continual improvement process.

The UN Guiding Principles on Business and Human Rights is the basis for many of the recommendation below, and can provide additional guidance to support the following approach:

COP 6.1 (A): WRITTEN POLICY:

Members shall respect Human Rights and observe the UN Guiding Principles on Business and Human Rights in ways appropriate to their size and circumstances, including as a minimum:

a. A policy commitment to respect Human Rights.

The policy statement can be a stand-alone policy or incorporated in the Policy and Implementation requirement (see Guidance). The policy statement should be:

- Approved at senior levels of the company;
- Informed by internal and/or external expertise, as appropriate;
- Clear on expectations of employees, contractors and business partners;
- Publicly available and communicated externally;
- Reflected in operational policies and procedures.

D Suggested implementation approach (cont)

COP 6.1 (B): CARRY OUT DUE DILIGENCE:

b. A Human Rights due diligence process that seeks to identify prevent, mitigate and account for how they address their impacts on human rights.

Human rights due diligence:

- Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities,
- Should seek to address adverse human rights impacts which may be directly linked to its operations, products or services by its business relationships;
- Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- Should be regularly updated, for example when starting a significant new activity or business relationship, recognizing that the human rights risks may change over time.

Points to consider:

- A Human Rights due diligence process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.
- Under the UN Guiding Principles, 'human rights risks' are understood to be potential adverse human rights impacts. Potential impacts should be addressed through prevention or mitigation. Actual impacts are those that have already occurred and should be subject to remediation (see COP 6.1c).
- Consider how to approach the assessment. Options include:
 - Human rights due diligence can be included within broader enterprise risk management systems, provided that it goes beyond simply identifying and managing material risks to the company itself, but also includes risks to rights-holders. Human rights due diligence needs to assess the risks and impacts to rights-holders (such as customers, employees, suppliers, communities and other stakeholders), not just risks to the company itself.

RJC has developed a stand-alone Human Rights Due Diligence Toolkit designed particularly for smaller businesses or those doing this process for the first time. The Toolkit draws on the European Commission's useful 2012 guide *My business and human rights*. A guide to human rights for small and medium-sized enterprises and other references. It aims to identify some of the actual and potential adverse human rights that may arise in the jewellery supply chain, and RJC anticipates continuous improvement of this Toolkit based on implementation feedback. However Members are free to use their own approach.

- RJC has also developed a more general Risk Assessment Toolkit which is designed to help integrate the various requirements of the RJC Code of Practices into one simple framework. This framework could thus also be used to assess 'human rights risks' (ie potential adverse human rights impacts), and/or identify actual impacts. Members are also free to use their own approach to risk assessment.
- Where using your own systems, considering integrating human rights due diligence into part of the assessment for Business Partners, or integrated into Know Your Customer assessments, or Impact Assessments. Integration, however achieved, increases the effectiveness of the due diligence process.
- The assessment, however approached, should have two main components.
 - First, review potential and actual impacts from your business' own activities, wherever it operates.
 - Second, review risks arising through business relationships including impacts to which you may contribute and impacts directly linked to your operations, products or services.
- Focus on the most severe human rights risk areas based on scale, scope and irremediable character. These could include (but may not be restricted to): security and human rights issues, child labour, forced labour and human trafficking, health and safety, freedom of association and effective recognition of the right to collective bargaining, discrimination and gender equity, disciplinary practices, working hours, remuneration, Indigenous Peoples, or sourcing from artisanal and small-scale mining or conflict-affected areas.
- It might not be feasible or practical to assess every single supply chain risk. Where it is necessary to prioritize, try to prevent and mitigate the most severe risk (again based on scale, scope and irremediable character).

D Suggested implementation approach (cont)

- Map key human rights risks related to your suppliers to find pointers to where the severe impacts may occur or are occurring. This may include looking at region, types of production or service processes, employee demographics, etc. Consider whether your purchasing practices might impact your suppliers – for example, seasonality of orders, lead times, pricing, etc. Note that the UN Guiding Principles is not intended to require enterprises to assess the human rights record of every entity with which they have a relationship.
- Remember that once the risks are assessed, the due diligence process includes integrating your risk assessment into business operations and tracking and communicating your impacts.

COP 6.1 (C): REMEDIATION PROCESS:

- c. Where Members identify that they have caused or contributed to adverse Human Rights impacts, they shall provide for or cooperate in legitimate processes to enable the remediation of those impacts.**

Points to consider:

- The remediation provision applies if your company has caused or contributed to an adverse human rights impact. The recognition of your involvement may have come from your own assessment or it may have been brought to your attention by others.
- The remediation process should be prioritised based on the severity of the identified adverse human rights impacts.
- Remediation can take many forms: acknowledgement and apology, undertaking steps to ensure the harm cannot recur, compensation (financial or other) for the harm, ceasing the activity or relationship, or some other form of remedy agreed by the parties.
- It may be appropriate for remediation to be provided by an entity other than the company, such as a government agency or court.
- Consider how to communicate progress and outcome of remediation processes, as part of [Reporting](#). To make it possible for grievances to be addressed early and remediated directly, Members should establish or participate in effective grievance mechanisms for individuals and communities who may be adversely impacted.
 - The RJC Complaints Mechanism has been designed as a rights-compatible mechanism through which any party can raise concerns about adverse human rights impacts. The RJC's process is applicable to all Members who are required to participate in its processes as a condition of Membership.
 - Businesses may also choose to establish their own operational-level grievance mechanism/s to make it possible for grievances to be remediated directly. Where complaints are raised with the RJC that can be resolved through engagement and dialogue at the operational level, they will be first directed to the RJC Member.
 - Members with Mining Facilities are required to have rights-compatible operational-level complaints or grievance mechanisms that are accessible to affected communities, under [Community Engagement](#).
 - See the UN Guiding Principles on Business and Human Rights, section III on 'Access to Remedy' (particularly Principle 31), for additional guidance on criteria for effective remediation processes.
 - Businesses shall also cooperate with legitimate state-based judicial and non-judicial mechanisms as well as other non-state mechanisms.

D *Suggested implementation approach (cont)*

COP 6.2: SOURCING FROM CONFLICT-AFFECTED AREAS:

Members, if operating in, or sourcing Diamonds, Gold or Platinum Group Metals directly from, a Conflict-Affected Area, shall use the Human Rights due diligence process to assess the heightened Risks of adverse Human Rights impacts.

- a. Review the heightened Risks of adverse Human Rights impacts.**
- b. Where Risks are identified, Members shall implement systems to manage and mitigate risks of causing or contributing to Conflict and adverse Human Rights impacts.**

Because of the focus on conflict risks in the jewellery supply chain, the Code of Practices includes a specific provision on sourcing from conflict-affected areas. This will require RJC Members to explicitly identify whether this provision is, or is not, applicable to them for the audit process. The provision builds on the general requirements of UN Guiding Principles discussed in this Guidance chapter, but also refers to other guidance and programs including the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. **For a Suggested Implementation Approach on COP 6.2, please read the separate Guidance Chapter [Conflict-Affected Areas](#).**

CHECK

- Can you show the auditor a written policy commitment to respect human rights? This could be a stand-alone policy or integrated in other policy/ies.
- Can you show the auditor how you have carried out a human rights due diligence process? This could be a stand-alone process, such as a risk assessment, or integrated in another process.
- Have you made efforts to integrate the results of your risk assessment into business operations?
- If you have caused or contributed to adverse human rights impacts, can you show how you have provided for or cooperated in remediation processes, and are tracking and communicating how impacts are addressed?

D Suggested implementation approach (cont)

Q&A: HUMAN RIGHTS

1. Do we have to use the term “human rights” in our policies?

Not necessarily, though external stakeholders may assume a company does not have a human rights position if the language is not used. For some businesses, particularly small to medium enterprises, it might be relevant to frame a human rights statement around the specific issues that have tangible meaning to employees, such as worker health and safety, labour rights, responsible business practices generally and/or responsible sourcing efforts. Appendix 2 to this Guidance includes some example language for a policy statement that discusses human rights which may be adapted where appropriate.

2. The RJC Code of Practices requires remediation where a business ‘causes’ or ‘contributes’ to adverse human rights impacts. Does a business (contractual) relationship necessarily mean that you have ‘contributed’ to any or all adverse impacts that they may cause?

The key issue is the actual impact itself, not the business relationship. If some action of yours impels the business partner to cause an adverse impact, you have “contributed” to that impact. For example, changing product requirements for suppliers at the eleventh hour without adjusting production deadlines and prices, may push suppliers to breach labour standards in order to deliver may be considered ‘contributing’ to that impact. However simply having a business relationship with that person/entity does not mean you have “contributed” to any or all adverse impacts that they may cause.

If you find you are at risk of involvement in an adverse impact solely because the impact is linked to your operations, products or services by a business relationship, you do not have responsibility for the impact itself:

that responsibility lies with the entity that caused or contributed to it. Your business relationship may, however, create leverage that you can potentially use to “seek to prevent or mitigate” future adverse impacts. This may involve working with the entity and/or with others who can help.

3. What if my business has no leverage with my suppliers? If I identify adverse human rights impacts by that supplier, what should I do?

Where adverse human rights impacts are being caused by a supplier, influence may be increased by offering capacity-building or other incentives to the related entity, for example. Alternatively, you may consider ending the supplier relationship, but in making this decision you should also assess the potential adverse human rights impacts of doing so. Ending the relationship might be difficult when the supplier provides a product or service that is essential and for which no reasonable alternative source exists. In this situation, you may decide to prolong the relationship, after careful review of the legal and non-legal consequences to your company and the severity of the human rights impact. However the more severe the impact, the quicker you should try to find an alternative.

4. Does human rights due diligence involve a full audit of all my business partners?

The UN Guiding Principles is not intended to require enterprises to assess the human rights record of every entity with which they have a relationship, and RJC does not require this. However for some situations where risks are high, businesses may choose to audit or visit business partners as part of their due diligence process. As due diligence is an ongoing process, it may also be relevant to look at mechanisms such as capacity building or contractual provisions to support prevention or mitigation of impacts.

5. What would a human rights due diligence process look like for a small business?

The RJC Human Rights Due Diligence toolkit provides a template for the due diligence process that has been designed for small business use. An integrated approach may work best for small businesses, such as considering human rights risks or impacts alongside the [Business Partners](#) assessment. The benefit of carrying out a due diligence of your own and linked activities is a better understanding of your business and broader supply chain risks. This enables you to answer customer and supplier questions with confidence.

E Further information

The following websites have been referenced for this guidance and/or provide further information on human rights:

- Alliance for Responsible Mining (ARM) – Approaching Artisanal and Small-Scale Mining Through the Lens of Human Rights A Call for International Action (2013)
www.communitymining.org/attachments/059_Human_Rights_and_ASM_full%20version.pdf
- Business and Human Rights – UN Guiding Principles Portal (6 languages)
www.business-humanrights.org/UNGuidingPrinciplesPortal/Home
- Business and Human Rights Resource Centre – Jewellery (2013)
www.business-humanrights.org/Categories/Sectors/Consumerproductsretail/Jewellery
- Business & Human Rights Initiative/Global Compact Network Netherlands - How to Do Business with Respect for Human Rights: A Guidance Tool for Companies (2010)
gcnetherlands.nl/report_business_human_rights.htm
- European Commission – My business and human rights. A guide to human rights for small and medium-sized enterprises (2012)
http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/human-rights-sme-guide-final_en.pdf
- Guide to Human Rights Impact Assessment and Management (2010)
http://www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Guide+to+Human+Rights+Impact+Assessment+and+Management/
- Harvard Kennedy School - Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and their Stakeholders(2008)
www.hks.harvard.edu/m-rcbg/CSRI/publications/Workingpaper_41_Rights-Compatible%20Grievance%20Mechanisms_May2008FNL.pdf
- Institute for Human Rights and Business and Global Business Initiative on Human Rights - State of Play: The Corporate Responsibility to Respect Human Rights in Business Relationships
<http://www.ihrb.org/pdf/state-of-play/State-of-Play-Full-Report.pdf>
- International Council on Mining and Metals (ICMM) - Human rights in the mining and metals industry: Integrating human rights due diligence into corporate risk management processes (2012)
www.icmm.com/page/75929/human-rights-in-the-mining-and-metals-industry-integrating-human-rights-due-diligence-into-corporate-risk-management-processes
- International Finance Corporation (IFC), Global Compact, International Business Leaders Forum (IBLF) - Guide to Human Rights Impact Assessment and Management (2010)
www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Guide+to+Human+Rights+Impact+Assessment+and+Management
- OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas – Supplement on Gold, Second Edition (2012)
www.oecd.org/fr/daf/inv/mne/mining.htm
- Rio Tinto - Why Human Rights Matter
http://www.riotinto.com/documents/ReportsPublications/Rio_Tinto_human_rights_guide_-_English_version.pdf
- Social Accountability International (SAI) and Interchurch Organization for Development Cooperation (ICCO) - United Nations Guiding Principles on Business and Human Rights: A Six-Step Approach to Supply Chain Implementation' (2012)
www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&pageId=1315
- UN Global Compact – Human Rights – Tools and Guidance
www.unglobalcompact.org/Issues/human_rights/Tools_and_Guidance_Materials.html
- United Nations Global Compact/PRI - Guidance on Responsible Business in Conflict-Affected and High-Risk Areas: A Resource for Companies and Investors (2010)
www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/Guidance_RB.pdf
- United Nations Office of the High Commissioner for Human Rights – What are human rights?
www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx
- United Nations Office of the High Commissioner for Human Rights – Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (2011)
www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
- United Nations Office of the High Commissioner for Human Rights – The corporate responsibility to respect human rights – an interpretive guide (2012)
http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf