

STANDARD GUIDANCE

(COP 6) Human Rights

A. Definitions and applicability

Human rights are universal rights and freedoms regarded as belonging to all people, above the laws of any individual nation. Human rights in the RJC Code of Practices specifically include those 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 sector or country of operation. The kinds of rights which are regarded as human rights include:

- Labour rights – such as the right to freedom of association and collective bargaining, and freedom from forced labor, child labour and discrimination;
- Social, cultural and economic rights – such as the right to participate in culture, the right to food, the right to work, and the right to education;
- 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.

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

- State duty to **protect** against human rights abuses through appropriate policies, regulation, and adjudication;
- Corporate responsibility 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.

Box X: 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)

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 adverse human rights impacts.

Respecting human rights is made more difficult in situations where national law or weak governance conflicts with international rights. In these situations, companies should attempt to meet the principles of internationally recognized rights when faced with conflicting requirements. The risk of human rights abuses should be treated as a legal risk.

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.

Coupled with these UN instruments, the International Labour Organisation (ILO) has identified eight Core Conventions on labour rights 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 this Standards Guidance.

The UN Guiding Principles on Business and Human Rights (also known as the "Ruggie Principles") was adopted in 2011 and has become the primary reference for the private sector's responsibility to respect human rights. While it does not create any new international laws or obligations, it elaborates the implications of existing standards and practices for States and businesses and integrates 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 the majority of countries. It is essential to ensure that all business operations are aware of and consistent with these legal principles. Most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases. Some national courts have accepted or instigated lawsuits alleging that multinational companies 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 UN Guiding Principles on Business and Human Rights brings an expanded set of human rights issues to the attention of business. This 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 can provide additional guidance to support the following approach:

- **COP 6.1 (a): Written policy:** *Members shall respect Human Rights and support implementation of Section II of 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 (also see example policy template in Appendix X). 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;
 - Publically available and communicated externally;
 - Reflected in operational policies and procedures.
- **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:
 - a. Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
 - b. 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;
 - c. 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.
- Human rights due diligence needs to assess the risks to rights-holders (such as customers, employees, suppliers, communities and other stakeholders), not just risks to the company itself.
- Divide the assessment into two parts. First, review risks in your business' own activities, wherever it operates. Second, review risks arising through activities directly linked to your operations, products or services through your business relationships.
 - Many of the identified risks and rights areas overlap with existing RJC Code of Practices provisions, so a human rights risk assessment can be used as an umbrella assessment for a comprehensive range of business risks, as part of the RJC Self Assessment process.
 - RJC has developed a Risk Assessment Toolkit designed particularly for smaller businesses or those doing risk assessments for the first time. The human rights section 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*. The RJC toolkit is designed to help integrate the various requirements of the RJC Code of Practices into one simple framework. However Members are free to use their own approach.
 - Alternatively, using your own systems, considering integrating this step into part of the assessment for **Business Partners**, or integrated into Know Your Customer assessments, or your own stand-alone assessment focusing particularly on human rights risks.

Comment [FS1]: In progress – being designed as an Excel toolkit, like the Self Assessment, that can be used to pull together the various risk assessment/due diligence requirements of the COP.

- Focus on the most salient risk areas, which are those most likely to affect you or your stakeholders. These could include (but may not be restricted to): child labour, forced labour and human trafficking, health and safety, freedom of association and 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 potentially severe or most severe or irremediable.
- Map your suppliers to find pointers to where the most likely or severe impacts will occur. Look 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.
- 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.*

Businesses in this situation need to establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted. The remediation process should be prioritised based on the scale and/or severity of the identified adverse human rights impacts. The RJC Complaints Mechanism has been designed as a rights-compatible mechanism that is available to Members for this purpose. Alternatively, businesses may establish their own mechanism, based on engagement and dialogue, to make it possible for grievances to be remediated directly. Businesses should also cooperate with legitimate state-based and judicial mechanisms.

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.
- 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.
- 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 appropriate remediation processes.
- Consider how to communicate progress and outcome of remediation processes, as part of [Reporting](#).

- **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.*

d) Review the heightened Risks of adverse Human Rights impacts.

e) Where Risks are identified, Members shall implement systems to manage and mitigate risks of causing or contributing to Conflict and adverse Human Rights impacts.

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?

Q&A: Human Rights

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

Not necessarily. For some businesses, particularly small to medium enterprises, it might be more relevant to frame the policy 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 Guiding Principles and 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. 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. The business relationship may, however, create leverage that you can potentially use to “seek to prevent or mitigate” future adverse impacts.

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, you may consider aligning with other customers to apply leverage on the supplier to prevent or mitigate the impacts. 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?

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.

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

Appendix X provides a template for the risk/assessment 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 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 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
- 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
- John Ruggie - Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (2011)
www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf
- 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
- 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