



State of Play

The Corporate Responsibility
to Respect Human Rights in
Business Relationships



GLOBAL BUSINESS INITIATIVE
ON HUMAN RIGHTS



Institute for
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The Institute for Human Rights and Business is dedicated to being a global centre of excellence and expertise on the relationship between business and internationally proclaimed human rights standards. The Institute works to raise corporate standards and strengthen public policy to ensure that the activities of companies do not contribute to human rights abuses, and in fact lead to positive outcomes.

The Global Business Initiative on Human Rights (GBI) exists to advance human rights in a business context around the world. The underlying vision is a global community of corporations from all sectors *knowing* and *showing* that they respect the dignity and rights of the people they impact and interact with. GBI is led by a group of 18 major corporations headquartered in Asia, Europe, Latin America, the Middle East, North Africa and North America.

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Foreword

In June 2011, the United Nations Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights, which I developed with support from all stakeholder groups. They were the final product of my six-year mandate as the Secretary-General's Special Representative on Business and Human Rights. This was the first time that the Human Rights Council issued authoritative guidance on business conduct in relation to human rights; it also marked the first time that the Council had ever "endorsed" a normative text that governments did not negotiate themselves.

The Guiding Principles lay out in some detail the steps required for states and businesses to implement the "Protect, Respect and Remedy" framework on business and human rights I had proposed to the Council in 2008, and which it welcomed. It reaffirms that states have a duty to protect human rights and prevent and sanction abuses by third parties, including business; it establishes that companies have a responsibility to respect human rights; and it stresses the need for greater access to effective remedy, both judicial and non-judicial, for victims of business-related human rights abuses.

Evidence that the Guiding Principles are taking hold can be seen in a range of developments. For example, the updated Guidelines for Multinational Enterprises of the Organisation for Economic Cooperation and Development (OECD) now include a specific chapter on human rights that draws on the Guiding Principles. Similarly, the International Standards Organisation's (ISO) 26000 social responsibility standard and the revised Performance Standards of the International Finance Corporation (IFC) have embraced the Guiding Principles as their benchmark in the area of human rights. The European Commission has invited all EU member states to submit national plans for implementation of the Guiding Principles. These and other initiatives at national and regional level are crucial for building further momentum. But the work of implementation has only just begun.

This new report by the Institute for Human Rights and Business (IHRB) and the Global Business Initiative on Human Rights (GBI) contributes to that goal by examining how the Guiding Principles can and should inform business relationships – the daily interactions between companies of all sizes in different sectors and locations across the world. Based on discussions with representatives of 14 international companies, the report describes how these companies are beginning to incorporate human rights issues and the Guiding Principles into their relationships, including the traditional focus on supply chains as well as joint ventures, mergers and acquisitions, licensing and franchising, among others.

I am grateful to the companies who shared their experience to date of seeking to apply the Guiding Principles in their operations and business relationships. They made this report possible. Their experience provides important insights into the challenges and opportunities that lie ahead. The report makes clear that companies must still take the actions needed to reinforce human rights policy commitments, align incentives, embed human rights into management systems, and build capacity with business partners to address adverse human rights impacts. But progress is being made.

Companies increasingly make reference to human rights issues in their business operations – in due diligence investigations, in contracts with partners, operational guidelines, and reports to investors and other stakeholders. All this, supported by the work of industry associations and multistakeholder initiatives and international organisations, is helping to build what the report calls “a culture of expected adherence to the UN Guiding Principles”.

Achieving this also requires understanding and action on the part of a much broader range of professional service advisers, including legal, accounting, consulting, lobbying, and tax specialists who advise businesses on their relationships. They too have a responsibility to respect human rights.

I wish to thank IHRB and GBI for providing intellectual leadership in this area. I hope all parties involved will continue their commitment to advancing the business and human rights agenda in coming years.

John G. Ruggie

*Berthold Beitz Professor in Human Rights and International Affairs, Harvard University
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Executive Summary

Context and Rationale

This report (the Report) takes stock of efforts by companies to address human rights impacts associated with their business relationships. Behind the macro trends and data of globalisation lies a complex array of individual business relationships, each with specific commercial objectives. This Report explores the implications of the United Nations (UN) Guiding Principles on Business and Human Rights (Guiding Principles)¹ for these relationships, looking at how responsible business commitments and practices are being integrated at the micro level.

Business relationships can spur economic growth, build efficiency, create access to technologies and services, and generate opportunities for formal, safer employment. Between enterprises, commercial relationships can transmit and implement new business practices and innovations regarding responsible business conduct. At the same time, the urgency to address adverse human rights impacts of business activities has emerged, for the most part, *precisely in the context of business relationships* – in particular in relation to supply chains. This is not surprising. Business transactions are now frequent in regions where the rule of law is limited or fragile, and regulatory and policy frameworks are silent or regressive with regard to international human rights standards. Business partners may have very diverse values, levels of capacity, or commitment to legal compliance or international standards of responsible behaviour.

A growing number of corporations recognise the business case for working with partners to integrate responsible business practices. Potential benefits include: reduced operational disruption; efficiency gains; diminished reputational risks (of actual or perceived involvement in human rights abuse); improved access to capital and markets; and the avoidance of legal claims. As a result, companies have taken action to establish socially sustainable business practices and value chains with their business partners in a range of sectors, and this is increasingly reflected in policy commitments, codes of conduct, and company assessments and audits. Industry-wide and multistakeholder initiatives have also been part of the same effort to address human rights in the context of business relationships.

Companies have a responsibility to respect human rights: which means to act with due diligence to avoid infringing on the human rights of others and to address adverse human rights impacts with which they are involved. This extends to addressing adverse human rights impacts with which a company is involved through its business relationships. This is one of the key messages that the UN Human Rights Council sent to all actors when it

1 Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, A/HRC/17/31, 21 March 2011. At: <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>.

unanimously adopted the UN Protect, Respect and Remedy Framework (PRR Framework)² for business and human rights in 2008, and subsequently the UN Guiding Principles in 2011.

The Guiding Principles make it clear that a company may be involved with adverse human rights impacts in different ways – through its own activities and through its business relationships. The Guiding Principles articulate that the responsibility to respect human rights extends to managing adverse human rights impacts through business relationships and provide guidance on how to prevent and address those impacts. **They put business relationships squarely on the business and human rights map.** The increasing number of references to the Guiding Principles in diverse contexts (e.g. in standards, in contracts between business partners, in industry association initiatives, guidance for companies and in multistakeholder initiatives) suggests that a culture of expected adherence to the Guiding Principles is developing. By extension, given this alignment, businesses are far more likely to face consistent expectations about their responsibility regarding human rights from business partners as well as from governments, investors, and wider society.

Report Focus and Key Findings

At the heart of this Report is a high-level review of how a group of 14 multinational companies in diverse industry-sectors³ address human rights in the context of their business relationships.

The Report:

- Sets out concepts in the Guiding Principles that are relevant to this exercise.
- Considers six types of business relationships: joint ventures; mergers, acquisitions and disposals; franchising and licensing; suppliers and service providers; direct customers; and state–investor relationships.
- Looks beyond the contractual aspects of business relationships because contracts often do not capture the whole picture of how human rights are or can be addressed in business relationships.
- Examines the entire “life cycle” of the business relationship, in line with the approach of the Guiding Principles.

The Report considers how the participating companies have begun to **embed** the responsibility to respect into their internal management structures, which in turn helps support efforts in extending their human rights expectations to their business

2 Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/8/5, 7 April 2008, <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>.

3 See Chapter 1.

partners. None of the companies interviewed claimed to have achieved full integration of human rights across all business functions, including those dealing with their business relationships. More work in this area is required. Key methods of reinforcing human rights in a company's internal culture and systems include: raising awareness through training; developing clear incentives and disincentives for staff and business partners; and providing clear guidance on how to address human rights in business relationships while balancing human rights considerations against other imperatives for the relationship.

The participating companies indicated clearly that, to assess and manage human rights impacts, they are integrating human rights in their existing management systems in preference to creating new stand-alone systems. This has the evident benefit that human rights become part of a company's daily business, including with partners; at the same time it has clear challenges in ensuring that the sum of the parts translates into a coherent and comprehensive approach. This challenge is not specific to human rights: companies that are as large and dispersed as those that participated in the research find that similar problems of coherence and coordination arise whenever they bring important new policy initiatives into established management systems and procedures.

When **starting business relationships**, companies emphasised that corporate values and business principles are the foundation, for human rights as for other matters. Companies are far more often communicating with their business partners about their own policies, principles and codes than they are about human rights directly, relying on the incorporation of human rights, implicitly or explicitly, into those documents. This has a clear value, in that company policies are part of a company's DNA and will be defended vigorously in business relationships. At the same time, it often means that businesses may apply a selected list of human rights that they find relevant, and as a result may miss key issues. Consequently, companies increasingly recognise a need to adopt a variety of tools and methods to assess human rights risk in business relationships and their human rights performance, but due diligence is rarely about human rights alone. Involving stakeholders in initial or on-going assessments in the context of business relationships remains a work in progress – whether it should be done, which business partner leads, and how this feeds into assessments about the relationship, if at all.

When **formalising their business relationships**, the companies interviewed for this Report are increasingly integrating human rights concerns into their contracts with business partners, despite identified challenges, because they understand that this creates leverage with business partners, can instil positive behaviour and enables companies to address issues if “things go wrong”. Companies also use other methods to extend and entrench respect for human rights in documents governing the relationship, including operational procedures. This said, human rights are rarely deal breakers. Problems are instead addressed in various ways, by excluding certain partners, countries or products up front, by imposing contractual requirements, building capacity or managing problems as the business relationship unfolds.

Expertise in **managing human rights in relationships** is most advanced in supply chains, where human rights problems relating to business originally became prominent. The existing supply chain model for selecting, contracting and monitoring suppliers and service providers (which the Report does not review in detail because it is well-covered in the existing literature) appears to be the learning template for some other types of relationship, especially franchising and licensing. Despite its other limitations, the model does reinforce a core expectation of the Guiding Principles, that companies should continuously assess human rights issues and their relationships (rather than make a single initial assessment at the start).

Given the large number of business partners the companies involved in the research have (often running well into the tens of thousands), all draw on the principled pragmatism of the Guiding Principles, using a risk-based approach to select partners and relationships for more in-depth review. Some companies are clearly on a path of re-adjusting their risk lens to look at risk to people and not just the company, in line with the Guiding Principles. Others, by their own admission, are just starting to think about how they might integrate this perspective in their risk management systems. Many businesses are at the start of designing and implementing grievance mechanisms at operational level, as called for by the Guiding Principles.

When **ending or renewing their business relationships**, companies recognise (as do the Guiding Principles) that human rights considerations can come into play. Terminating relationships (on human rights grounds or for other reasons) is rarely the preferred outcome for companies. Often for good reasons, they prefer to try to address concerns that arise, using incentives and training to resolve weaknesses of performance, including with regard to human rights. The reputational risks that arise at divestment and closure are increasingly recognised. Human rights are starting to be a consideration when companies divest, particularly where an asset strongly associated with a company is acquired by an organisation that does not have the same practices or values.

The six relationship types explored in the Report are quite different from each other. Each presents challenges and opportunities to companies that wish to respect human rights in their business relationships. A company can exert leverage on an acquisition in a way that is not possible over a supplier that has many other clients. A partner of a joint venture can second staff to monitor its implementation of health and safety and social standards, in a manner that is simply not feasible in most supplier relationships.

Conclusions and the Road Ahead

The Report's first key message is that companies *are* increasingly considering human rights impacts with which they are involved through their business relationships, and taking note of the UN Guiding Principles on Business and Human Rights and the corporate responsibility to respect framework as they do so. More tangibly, there are signs that addressing such impacts can find a place in business management systems. This includes the management of business relationships. More and more companies are recognising there are solid business reasons to work with partners to ensure respect for human rights in the delivery of operations, products and services to which they are linked. None of the participating companies have fully integrated human rights concerns into their business relationships or into every stage of their life cycle. Work is developing – but more is needed – to reinforce human rights policy commitments, align incentives, embed human rights into management systems, and build capacity. Progress is being made.

The Report's second key message is that the spotlight is increasingly reaching a wider range of relationships and actors. Initially, the attention given to human rights and business relationships focused almost exclusively on supply chain relationships. It is likely that the next five years will involve a deepening of attention, knowledge and practice regarding the relationship types addressed in this Report (joint ventures, mergers and acquisitions, supply chain and service providers, licensing and franchising, direct customer and investor-state) and others. Advocacy, expertise and good practice will no doubt deepen further in the next five years. Contract farming, contract manufacturing, business process outsourcing, sponsorship and advertising (especially for major sporting events), and financial services (investment, insurance, export credit) are likely to follow soon.

Moreover, not only businesses involved in production will come under the spotlight. Professional legal, accounting, consulting, lobbying, and tax advisers also have a responsibility to respect human rights as businesses in their own right. As highlighted in this Report, the responsibility extends to their operations and business relationships – i.e. the advice they give clients about business relationships.

The Report's third key message is sobering. It is true that a handful of companies are seriously engaging with human rights and attempting to address the impacts with which they are involved. However, due to lack of awareness, lack of capacity, unclear incentives or reluctance to address human rights among many companies around the world, it is too often a one-way flow of communication emanating from large companies, well versed in international standards and committed to respect human rights. The Guiding Principles state clearly that all businesses everywhere, large and small, have a responsibility to respect human rights. Consequently, when two or more companies come together in a business relationship, they have overlapping responsibilities to respect human rights that should mutually reinforce their commitment. Urgency and innovation are required from business, government and civil society to address this challenge.

The Report concludes by looking ahead. It offers ten *Themes for the Next Five Years*.

1. Multiple actors, including businesses, governments, multistakeholder initiatives, industry initiatives and civil society organisations, will shape what are considered reasonable expectations about adequate and effective human rights due diligence.
2. Demands for transparency and traceability around human rights conditions in value chains will also drive expectations about human rights in business relationships.
3. Governments will play an increasingly important role in stimulating demand for human rights due diligence, in their role as business partners.
4. Corporate commitment to respect human rights in business relationships may be driven by clearer and more tangible business opportunities, not just risk avoidance.
5. Entering markets undergoing political and economic transition responsibly will be a major focus of government, business and civil society and will help define what is considered effective due diligence with business partners in challenging circumstances.
6. “Access to Remedy” and allocation of liability will continue to be a matter of concern with respect to business relationships.
7. Understanding of risk will continue to broaden and will increasingly include human rights risk as a routine consideration in business relationships.
8. In order to address a wider range of business relationships, companies will increasingly align their practice across corporate functions, business units and locations.
9. Companies and their stakeholders will be interested in examples of how business can create and exercise leverage with business partners.
10. Companies will continue to look for ways to access credible information and engage stakeholders as part of due diligence in business relationships.

Business relationships – and the daily interaction between companies of every size, in their many sectors and locations – are a key avenue for spreading awareness and uptake of the core concepts of the responsibility to respect human rights. Some large multinationals are taking steps to incorporate human rights issues into the enormous webs of business relationships they manage around the world, often applying a pragmatic, risk-based approach. Over time, they will reach and influence an increasing number of businesses. This is an important mechanism for implementing the Guiding Principles and contributing to a more level playing field based on respect for human rights.

The Institute for Human Rights and Business and the Global Business Initiative on Human Rights welcome feedback from businesses, governments, civil society organisations, trade unions and scholars. The task of developing guidance, methodologies, and tools, for respecting human rights in business relationships, as well as for applying them, is too important for any single player; we all have an interest in its success.