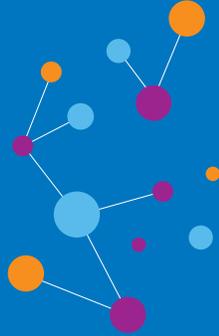


# Key Characteristics of Business Respect for Human Rights

## A B-Tech Foundational Paper



### OVERVIEW

Business **respect for human rights is about preventing harms to people** that are connected to business activities, with particular attention paid to those people who may be most seriously impacted. The *UN Guiding Principles on Business and Human Rights* (UNGPs) set out a **principled approach** for all companies to do this. For technology companies, this includes anticipating and mitigating harms that might occur related to the use of their products and services.

Taking pro-active steps to prevent the use of technology products or services that result in adverse human rights impacts is both the right thing to do and a route to ensuring that 21st Century technological advancements deliver value to all parts of society. And acting with human rights due diligence (HRDD)—as outlined by the UNGPs—should not be seen as a simplistic compliance exercise. On the contrary, **companies that take their commitment to respect human rights seriously will need to improve product design, pursue new research avenues, interrogate business models and collaborate with peers, governments and civil society.**

Meeting the global standard of conduct outlined in the UNGPs is increasingly important for technology companies and entrepreneurs for a number of reasons including: **sustaining user trust** and the company's social license to operate; **avoiding reputational and legal risks**; and being an attractive place to work for **current and future generations of talented researchers, data scientists and engineers.**

### ABOUT THIS PAPER

This paper is written for leaders across the technology sector, civil society, government and the investor community seeking to **understand the key characteristics of corporate respect for human rights as set out in the *United Nations Guiding Principles on Business and Human Rights***. It is part of the UN Human Rights *B-Tech Project* foundational paper series that re-state, explain and clarify the implications of the UNGPs for technology companies and States.

This series does not provide details about every aspects of human rights due diligence, nor does it seek to replace or replicate existing cross-industry guidance such as the [UN Guiding Principles Interpretive Guide](#) or the [OECD Due Diligence Guidance for Responsible Business Conduct](#).

The series of papers aims to provide a shared starting point for all stakeholders working to embed respect for human rights in the business of technology, including policy makers/regulators, civil society, investors and business. The papers will also set **a common framework of understanding to underpin B-Tech Project activities, guidance and recommendations** across the project's focus areas. They are the starting point, not the end, of the project's work.

Link to the foundational paper series

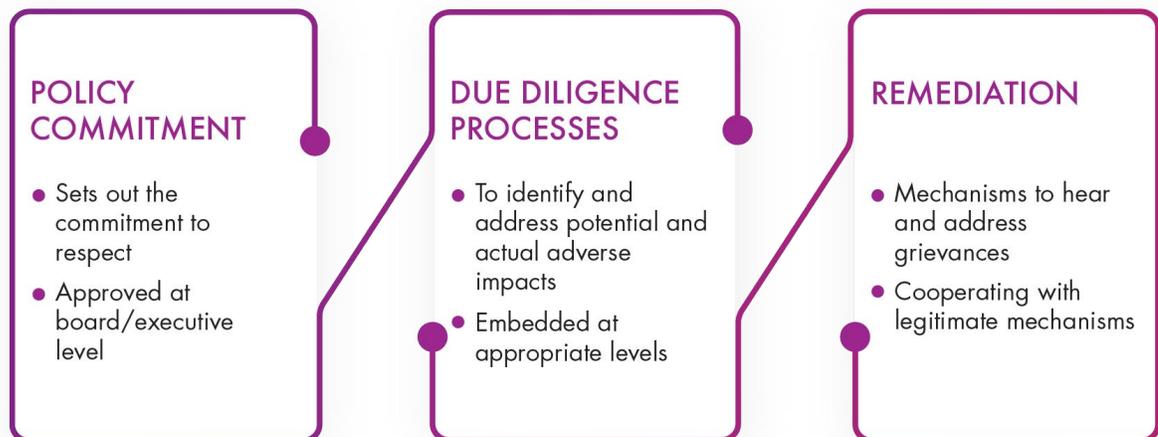
- Link to [B-Tech Project Portal](#)
- Link to the [UN Guiding Principles on Business and Human Rights](#)

## THE CORPORATE RESPONSIBILITY TO RESPECT



Business enterprises have an independent responsibility to respect human rights!

To meet their responsibility, companies should have in place appropriate policies and processes:



## HEADLINES

1. The *Corporate Responsibility to Respect Human Rights* applies to all companies, including technology companies. This includes **“knowing and showing” how they address adverse impacts** that may occur from the use of the products, services and solutions they provide.
2. The co-existent corporate responsibility of users of technology and investors to respect rights offer a lever to move the market and eco-system of technological development and use. At the same time **this does not diminish the critical responsibility of technology providers to act with due diligence.**
3. The UNGPs establish a ***standard of conduct*** with a focus on companies taking a principled approach to identifying and addressing human rights risks.
4. **Human rights due diligence should be “organisationally-embedded”** to enable timely and effective actions to address human rights risks.
5. Human Rights Due Diligence will look different in different organizations and contexts. Nonetheless, certain fundamentals of human rights due diligence are especially important when addressing risks to people connected to technology products, services and solutions. These include that
  - Human Rights Due Diligence should take **place early and often throughout product design, development and use.**
  - Human Rights Due Diligence will invariably require technology companies to **establish and use “leverage” to seek to influence the behaviours and practices** of other actors.
6. **Evaluating the effectiveness of their mitigating actions** to address human rights risks is something that companies are expected to do as part of human rights due diligence.
7. Companies are **expected to be transparent** about how they are addressing human rights risks, which it includes sharing progress and challenges.
8. Human Rights Due Diligence should **meaningfully involve external experts and affected stakeholders.**
9. Depending on the circumstances, where human rights harms have occurred related to the use of a company’s products and services, technology companies may **need to play a role in ensuring remedy is delivered to victims.**

### ONE

**The Corporate Responsibility to Respect Human Rights applies to all companies, including technology companies. This includes “knowing and showing” how they address adverse impacts that may occur from the use of the products, services and solutions they provide.**

Business respect for human rights as set out in Pillar II of the UNGPs means that companies should avoid infringing on the human rights of others and address adverse human rights impacts they are involved with (UNGP 11). It is important to note that the purpose of human rights due diligence is to prevent and mitigate risks to people not risks to business, even though these may converge.

UNGP 13 states that the corporate responsibility to respect human rights requires all business enterprises to:

- a. **avoid causing or contributing** to adverse human rights impacts through their own activities, and address such impacts when 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.

To meet their responsibility to respect human rights, all companies should have in place “policies and processes appropriate to their size and circumstances”, including a “human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights.” (UNGP 15). Effective due diligence should also be supported by efforts to embed human rights into policies and management systems and aims to enable companies to remediate adverse impacts that they cause or contribute to.

## THE HUMAN RIGHTS DUE DILIGENCE PROCESS



1. **Identifying and Assessing Impacts** to gauge the nature and extent of human rights risks
2. **Acting to prevent and mitigate risks to people**, including via integration within internal functions and processes
3. **Tracking of effectiveness of risk mitigation** responses over time; and
4. **Appropriate communication** of performance with respect to addressing human rights impacts

## TWO

**The co-existent corporate responsibility of users of technology and investors to respect rights offer levers to move the market and eco-system of technological development and use. At the same time this does not diminish the critical responsibility of technology providers to act with due diligence.**

The UNGPs apply to all business enterprises, **including** all enterprises within the technology industry, regardless of “size, sector, operational context, ownership and structure” (UNGP 14). **Equally, they apply to any enterprise from any other sector that makes use of a technology company’s products, services and solutions.** These other enterprises must conduct their own human rights due diligence to ensure that the procurement and use of technologies does not result in adverse human rights impacts. When States are the end-users, they must act in ways that are consistent with their human rights obligations.

**Investors, including venture capitalists and impact investors, also have a responsibility to respect human rights under the UNGPs** and should make investment decisions and engage tech entrepreneurs, start-ups, and established companies to incentivize and support them to conduct meaningful human rights due diligence.

At the same time, **the co-existent roles and responsibilities of other actors do not diminish the expectation that technology providers meet the standard of responsibility set out by the UNGPs.** This is especially important because technology companies will sometimes have the most knowledge, competence, and capability to devise meaningful steps to minimize the risk of their technology being used in ways that have an adverse impact on human rights. This may include working with customers in ways that help them avoid using technologies in ways that cause harm.

## THREE

**The UNGPs establish a standard of conduct with a focus on companies taking a principled approach to identifying and addressing human rights risks.**

As explained in the commentary to the first principle concerning the Corporate Responsibility to Respect Human Rights, **“The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate”.** In order to meet the standard of conduct, companies should meet the expectations set out by the UNGPs.

The standard of conduct set by the UNGPs arguably establishes a high bar for any company, notably that companies seek to influence how their products, services and solutions are used by third parties that they do not control. However, this is distinct from a standard of outcome, which would imply that companies are responsible for *any* harm at the end-use stage, irrespective of any reasonable and commensurate efforts to prevent or mitigate risks of harm. This would not be a reasonable standard given the complex and regularly shifting nature of global value chains and local operating context, and it is not what is expected under the UNGPs.

Instead, **the expectation is that a company conducts robust human rights due diligence to identify, prevent or mitigate risks of harmful impact.** If a company has met this standard and harm nevertheless

occurs, the company will likely not be considered under the UNGPs to have caused or contributed to it. If the standard has not been met, the company may be considered as having caused or contributed to the harm and would be expected to remediate. It is important to note that whether a company has met the global standard of expected conduct under the UNGPs is separate from questions of whether a company can be held legally liable under domestic law for any harm arising from its products, services and solutions.

It may be unlikely that tech companies—especially those whose innovations are commercially successful and/or widely integrated into how we live, work and govern—will be able to guarantee that their products, services and solutions will never be used in ways that lead to human rights harms. However, companies are expected to demonstrate that they have acted with due diligence and taken all reasonable steps to most effectively avoid such harms. Companies are more likely to meet societal thresholds of reasonableness when they engage the perspectives of experts and affected stakeholders in all aspects of human rights due diligence.

## FOUR

### **Human rights due diligence should be “organisationally-embedded” to enable timely and effective actions to address human rights risks.**

**The quality of a company’s human rights due diligence will increase when “knowing and showing” is supported by governance arrangements and leadership actions** to ensure that a company’s policy commitment to respect human rights is “embedded from the top of the business enterprise through all its functions, which otherwise may act without awareness or regard for human rights”. (Commentary to UNGP 16).

This will look very different for a start-up as compared to a major multinational corporation. And small technology firms may not describe how they set strategy, establish targets and allocate resources as “governance”. Nonetheless, these smaller firms may be able to embed a shared commitment to respect human rights relatively easily.

**Human rights due diligence will also be more meaningful when it involves all relevant internal experts—for example, functional leads, department heads, researchers, engineers, data scientists, product managers and product counsels.** Involvement of internal stakeholders is critical to develop an accurate and robust picture of human rights risks (UNGP 18). It can also aid with ensuring that findings from the assessment of human rights impacts are integrated across relevant functions and processes such as those related to responsible design, product safety, customer due diligence and marketing.

As noted by the UNGPs “Effective integration requires that: (i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise; and (ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts” (UNGP 19).

This does not mean that everyone in a given company must be familiar with the UNGPs or even the content of international human rights standards. In many cases, integration requires careful and targeted translation of expectations into terms and processes that relevant teams can most easily embrace.



#### EXPLAINER BOX

### Human Rights Due Diligence and Human Rights Impact Assessments

Implementing Human Rights Due Diligence in end-use contexts can be informed and reinforced by discrete Human Rights Impact Assessments (HRIAs). But this should not impede embedding the identification and mitigation of human rights risks within company processes.

There are many benefits to a company conducting or commissioning HRIAs as one tool within a wider due diligence tool-kit. They can act as an internal lightning rod to focus business leaders on specific end-use human rights risks. HRIA process can also build the competence of company practitioners to identify, and communicate about, human rights risks in ways that are consistent with the UNGPs. This is especially the case when they are led or supported by credible experts with human rights expertise. And they can produce outputs—most often in the form of reports—that companies can use to guide internal decision-making about how they will address human rights risks identified.

There are, however, also some pitfalls that those looking to conduct HRIAs should be wary of and seek to avoid. These include that:

- HRIAs, if not adequately integrated into wider due diligence processes, can reduce organization-wide ownership of the human rights risks identified, leading to lack of meaningful action to address those risks. This is especially the case if the company function commissioning HRIAs is isolated and lacks support from relevant decision-makers. **It is therefore important that internal owners of the HRIA activity gain support for the work from relevant leaders who will need to understand and act on HRIA findings, including those findings that require significant changes to strategic goals, commercial practices and company culture.**
- The push for HRIAs as the central activity by which a company engages with its human rights impacts can send the message to senior leaders and legal teams that respecting human rights is akin to a box-ticking compliance exercise focused on assessing risks or meeting disclosure expectations. **To avoid this, companies conducting HRIAs should simultaneously work to establish a strong internal understanding that respecting human rights is about taking meaningful steps to prevent adverse human rights impacts and remediate harms that have occurred.**
- Investment in producing HRIAs may take resource and attention away from a company addressing specific human rights risks and being transparent about the impact of those efforts. **Therefore, HRIAs should be complemented by activities and processes to track, evaluate and communicate to what extent past company actions have been effective in achieving improved human rights outcomes.**

- HRIAs become the sole mechanism through which companies engage with human rights experts and affected stakeholders about human rights risks, versus investing in ongoing relationship building and learning. This can be compounded when engagement is led by a third party commissioned to conduct the HRIA with limited company involvement. **In light of this, companies should aim to for engagement with stakeholders to inform HRIAs to be one aspect of ongoing, direct, two-way communication between the company and those stakeholders.**

**FIVE**

**Human Rights Due Diligence will look different in different organizations and contexts. Nonetheless, certain characteristics of human rights due diligence are especially important when addressing risks to people connected to technology products, services and solutions.**

The UNGPs recognize that human rights due diligence “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”. **Because the products, services and solutions of the technology industry are varied (spanning for example social media platforms, search engines, geo-location tools, AI research, cloud computing, internet security, facial recognition systems, autonomous vehicles, enterprise software solutions, wearables, internet-of-things devices, as well as telecommunications and network infrastructure) there will be variations in what human rights due diligence will look like in practice.**

At the same time, certain features of human rights due diligence are expected in all contexts and will prove especially important when seeking to address human rights risks related to the end-use of products and services:

- **Human Rights Due Diligence should take place early and often throughout product design, development and use:** It is intended to be preventative and should therefore be conducted early including in the idea, design, and development phase. This should include situations when so-called Minimum Viable Products are developed, tested and refined. As the UNGPs note “Human rights due diligence should be initiated as early as possible in the development of a new activity or relationship, given that human rights risks can be increased or mitigated” at that stage. (Commentary to UNGP 17).

Human rights due diligence should also be ongoing, not a one-off exercise. As the UNGPs note “Because human rights situations are dynamic, assessments of human rights impacts should be undertaken at regular intervals: prior to a new activity or relationship; prior to major decisions or changes in the operation (e.g. market entry, product launch, policy change, or wider changes to the business); in response to or anticipation of changes in the operating environment (e.g. rising social tensions); and periodically throughout the life of an activity or relationship” (Commentary to UNGP 18). In other words, human rights due diligence is a cognitive exercise whereby companies should demonstrate the ability to learn iteratively. It is not an exercise based on a pretence that everything is knowable and predictable.

- **In the context of end-use human rights risks, Human Rights Due Diligence will invariably require technology companies to establish and use “leverage” to seek to influence the behaviours and practices of other actors** that might be causing harm in relation to the technology company’s products, services and solutions. There may be a great deal that a company can do in the design, development, deployment and sales phases of technologies to prevent and mitigate adverse human rights impacts at the use phase. But ultimately, a third party may still use or misuse a product to cause harm. In such situations, companies will have to be prepared to use any leverage they may have or can establish—bilaterally or with others—to “effect change in the wrongful practices of an entity that causes a harm” (Commentary UNGP 19).

## SIX

### **Evaluating the effectiveness of their mitigating actions to address human rights risks is something that companies are expected to do as part of human rights due diligence.**

**Companies need to evaluate the effectiveness of their actions to address human rights risks.** As the third step in the Human Rights Due Diligence process, the UNGPs set the expectation that “In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should: (a) Be based on appropriate qualitative and quantitative indicators; (b) Draw on feedback from both internal and external sources, including affected stakeholders.”

This will take many different forms depending on, for example, the human rights issues being addressed, and the ways in which a given company measures other areas of business performance. The focus of tracking should be on whether a company’s actions—taken alone or with others—have reduced risks to the adverse human rights impacts they are intended to address, or whether outcomes for people have, in fact, been improved.

Effective tracking will ideally: i) aid a company in identifying strengths, weaknesses and unintended human rights consequences of company actions; ii) help senior management and others with the “big picture” by highlighting repeated problems that may require more systemic changes to policies or processes; and iii) help a company to identify best practices that can be disseminated across the enterprise to further reduce risk and improve performance.

## SEVEN

### **Companies are expected to be transparent about how they are addressing human rights risks, which it includes sharing progress and challenges.**

The UNGPs establish that companies should “account for how they address their human rights impacts’ and “be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders” (UNGP 21). The UNGPs state that “communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholders, and formal public reports”. The practical implications of these considerations in the

context of the use of a technology product or service would be useful to explore and elaborate through multi-stakeholder processes. A few things are clear:

- In light of the often-large knowledge and expertise gap between technology company personnel and the public about how many technology products, services and solutions work, effective communication will be a critical part of reinforcing trust from users, customers, society-at-large and policy makers.
- Communication and reporting should include a focus on how impacts have been identified and what impacts have been identified. But it must also involve transparency about the mitigation steps technology companies are taking to address impacts (whether in their own activities or via the use of leverage), and include an evaluation of the effectiveness of those steps. This will involve going beyond the valuable step of publishing findings from impact assessment processes.
- Certain considerations will be particularly important when companies are communicating about end-use scenarios including:
  - Not putting affected stakeholders or users at risk or in any way undermining their rights to privacy.
  - Not broadcasting technological solutions in ways that allow ill-meaning actors to then combat preventions and mitigation steps.
  - Ensuring that legitimate concerns about commercial sensitivity do not undermine the importance of accountability, transparency and shared learning.

## EIGHT

### Human Rights Due Diligence should meaningfully involve external experts and affected stakeholders.

This can help to ensure that the assessment of human rights risks, actions taken to address those risks and tracking of their effectiveness are comprehensive. **This can be especially important if a company lacks internal diversity or existing mechanisms to engage affected groups.** As per the UNGPs, “To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society”. (Commentary UNGP 18).

**Technology companies will need to establish ways to do this even in the context of fast-paced innovation while taking into account legitimate concerns about IP confidentiality and commercial sensitivity.** Just as “translation” of expectations and standards for internal stakeholders can be critical, external stakeholders will often need to be supported to learn about technical issues relevant to a company’s efforts to respect human rights.

**Depending on the circumstances, where human rights harms have occurred related to the use of a company's products and services, technology companies may need to play a role in ensuring remedy is delivered to victims.**

The UNGPs establish that “Where business enterprises identify that they have **caused or contributed to adverse impacts, they should provide for or cooperate in their remediation** through legitimate processes. (UNGP 22)”. In situations of linkage “the responsibility to respect human rights does not require that the enterprise itself provide for remediation, though it may take a role in doing so.” (Commentary to UNGP 22).

Delivering on access to remedy—whether through a company-led mechanism or otherwise—can be challenging no matter the industry or operating context. When it comes to the development and use of digital technologies, certain seemingly unique issues will need to be addressed such as guaranteeing remedy when abuses result from decisions made by machines and algorithms, rather than humans; the limitations of company-led grievance mechanisms when there may be vast numbers of adversely affected rights-holders; and safeguarding access to remedy when dozens of companies, rather than a single corporate actor, are linked to a human rights abuse via the interaction of different technology products and services.

Even though remediation is not one of the elements of Human Rights Due Diligence, it can bolster the quality of a company's human rights due diligence efforts. For example, when companies have in place credible and effective mechanisms for stakeholders to raise grievances, this can enhance the robustness of a company's efforts to identify and assess human rights impacts.

The further practical implications of this for technology companies will be addressed in the “Accountability and Remedy” focus area of the B-Tech project and will build on the UN Human Rights’ [Accountability and Remedy project](#) to deliver a set of resources tailored to issues, dilemmas and cases concerning new technologies.

 [b-techproject@ohchr.org](mailto:b-techproject@ohchr.org)

**UN Human Rights invites engagement from all stakeholders across all focus areas of the B-Tech Project.** For more information please see the project [Scoping Paper](#). Please contact us if you would like to engage with our work, including if you have recommendations for practical tools, case studies and guidance that will advance company, investor and State implementation of the *UN Guiding Principles on Business and Human Rights* in the business of technology.



September 2020