

# Business and Human Rights: Towards a Decade of Global Implementation

Elena Salgado Rodriguez, Author | Melany Wild, Author | Mariano De Lellis, Editor | Jvan Gaffuri, Advisor | Annelies Poolman, Data Analyst and Production Manager

**February 2021** — This year marks the 10th anniversary of the unanimous endorsement of the UN Guiding Principles on Business and Human Rights by the United Nations Human Rights Council. Since then, significant progress has been achieved in the realm of business and human rights: the UN Guiding Principles have been accepted as the authoritative standard for multinational companies, mandatory due diligence regulation has been introduced or announced in several jurisdictions, case law was developed in the field of human rights corporate accountability, and expectations have been driven by a broad stakeholder community including consumers and investors. The latter have significantly contributed to the advancement of the topic by putting pressure on companies to comply with human rights and to publicly report on their commitment and achievements.

But we are also looking back at a decade with grave human rights violations caused by companies: for example, the collapse of the Rana Plaza factory building in 2013, where 1132 garment workers died and thousands more were injured<sup>1</sup>, and the Brumadinho dam disaster, killing around 270 people and causing widespread environmental damages<sup>2</sup>. Revealing the true extent of the human toll that business activities can take, these tragic incidents make it clear that corporate accountability and remediation are complex issues and that numerous challenges and obstacles exist when it comes to the implementation of the UN Guiding Principles.

An analysis of the past trends on human rights performance by companies may provide valuable information to understand the level of integration

of the UN Guiding Principles provisions into companies' processes and commitment and may help identify existing challenges that would need to be addressed in the following years.

This paper looks at the trends on human rights performance that emerge from the analysis of 703 companies ("Participant Companies") that actively participated in the S&P Global Corporate Sustainability Assessment (CSA) from 2017 to 2020 and provides some insights into how companies are approaching human rights from different regions and industrial sectors. The CSA is an annual industry-specific evaluation of companies' sustainability practices. It was first launched in 1999 and forms the foundation for the S&P Dow Jones Sustainability Indices (DJSI), S&P ESG Index family and is used as well for the S&P Long-Term Value Creation Index and JPX/S&P CAPEX & Human Capital Index. The evaluation covers questions across the three ESG dimensions. On the topic of Human Rights, companies are assessed on the level of their human rights commitment, human rights due diligence framework, assessment of impacts, and the disclosure regarding those topics. The sectors referred to in this report are classified according to the Global Industry Classification Standard (GICS). Companies are either assessed based on their active participation or solely based on publicly reported information. The following results mainly focus on the data obtained from answers by companies that actively participated in the assessment, providing not only public disclosures but also private information. This approach will allow us also to show that the trends vary significantly if we only take into account public information on human rights or if we assess what companies do behind public scrutiny.

<sup>1</sup> [www.ilo.org/global/topics/geip/WCMS\\_614394/lang--en/index.htm](http://www.ilo.org/global/topics/geip/WCMS_614394/lang--en/index.htm)

<sup>2</sup> A/HRC/45/12/Add.2 Visit to Brazil — Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, 45th Session of the Human Rights Council, OHCHR, available at [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session45/Pages/ListReports.aspx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session45/Pages/ListReports.aspx)

## Human Rights Policy Commitment: The Goal Already Achieved

According to the UN Guiding Principles, a policy commitment to respect human rights is the starting point for a human rights strategy. Following the adoption of the UN Guiding Principles in 2011, a growing number of multinational enterprises started to have an active commitment to respect and protect human rights in their business relationships. Our data show that, by 2017, 66% of Participant Companies globally had a company-wide commitment to respect human rights in accordance with the UN Guiding Principles or other internationally accepted standard. This percentage has continuously increased since then, with 90% of companies actively committing to human rights in 2020.

As part of an effective human rights policy, companies ought to have relevant requirements in place applicable to their own operations, but also to suppliers and other business partners. Since 2017, policy coverage for own operations, suppliers and business partners increased. Unsurprisingly, fewer companies adopted relevant requirements for their suppliers and even fewer for their partners than for their own operations (in 2020 coverage of own operations was at 85%; suppliers, 71%; and business partners, 42%). Due to complex operating environments and lack of control and oversight, the implementation of a human rights policy applicable for suppliers and partners can be a challenging exercise for companies. While the UN Guiding Principles stipulate a responsibility for companies beyond their own operations, clear guidance is still missing. In the last few years, legislative frameworks considering human rights in global supply chains as well as industry-specific/multi-stakeholder initiatives (e.g., OECD Due Diligence Sectorial Guidance, UK Modern Slavery Act, French Law on Duty of Vigilance, EU Conflict Minerals regulations, and Clean Clothes Campaign) have played a crucial role in providing more clarity on the topic, which may explain why companies are more likely to have requirements for their suppliers than for other business partners.

## Human Rights Due Diligence: The Cardinal Process and Remaining Challenge

Human rights due diligence is considered to be the most important process for ensuring respect for human rights. Our analysis suggests that, although the pace seems to have slowed a bit, there is an encouraging growth in the number of companies that declare to have a human rights due diligence system in place — 74% of Participant Companies in 2020, compared to 56% in 2017.

A good human rights due diligence process should cover risks associated with the companies' own operations but also those that can be related with the supply chain or with other kinds of business relations. In this sense, there is also a significant increase in the number of Participant Companies that consider the human rights risks associated with their value chains — 57% more in 2020, compared to 2021.

Progress gap: 17% of the Participant Companies that had a public human rights policy in 2020 still failed to develop a human rights due diligence process.

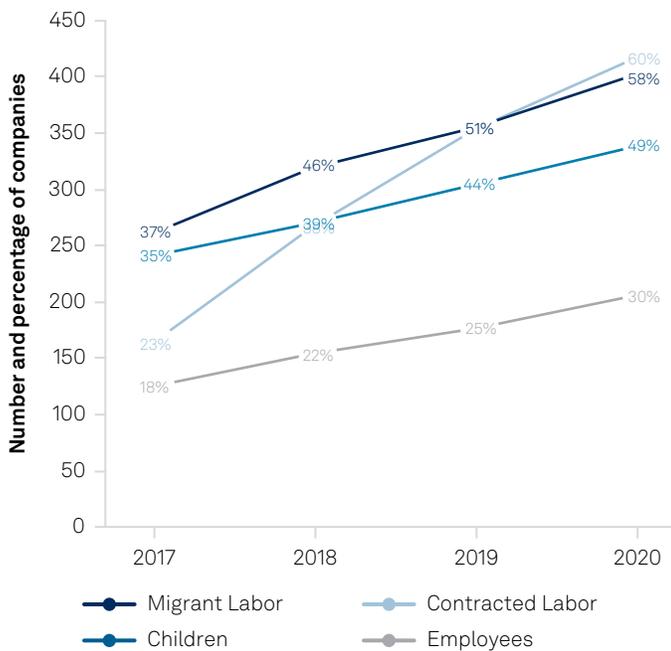
However, when comparing the results on policy commitments with those on due diligence, our analysis suggests the existence of a notable gap between the progress made: 17% of the Participant Companies that had a public human rights policy in 2020 still failed to develop a human rights due diligence process aimed at complying with those commitments. This gap exists despite the clarity of the UN Guiding Principles about the equal importance of both policies and processes as part of a good human rights framework. It also contradicts the approach introduced by recent regulations like the EU Non-Financial Reporting Directive on the disclosure of human rights due diligence or national laws like the French law on Duty of Vigilance.

As part of the due diligence process, a robust human rights risk assessment can be an effective tool to help companies identify instances when a negative business impact may materialize as a risk. We can see that a growing number of companies have been implementing a human rights risk assessment — 70% of assessed companies in 2017 compared to 86% in 2020.

As part of a human rights risk assessment, companies should indicate to what extent their own operations and supply chain have undergone such a process. Our analysis shows that, on average, for those Participant Companies that declared having done a human rights assessment, 90% of own operations were assessed over a period of three years. Looking at tier-1 suppliers, a similar trend can be identified; however, the coverage is lower — on average, only 76% of tier-1 suppliers were assessed over a period of three years. It is important to note that relevant developments may only be identified when considering a longer time frame as many companies conduct assessments in cycles over several years.

Moreover, companies need to adopt a tailored approach for their specific operating environment as well as for their relationships connected to those activities. To this end, companies were asked to report the vulnerable groups identified in their own operations and supply chain.

**Figure 1: Companies that specifically assess selected vulnerable groups**



Source: S&P Global Corporate Sustainability Assessment (CSA) 2017 — 2020  
Scope: 703 companies

The data show that Participant Companies have especially increased their focus on contracted labor. While, in 2017, contracted labor was only assessed by 23% of companies, this number increased by 2020 to 60%. It is also important to note that more companies specifically assess contracted labor over their own employees. This may as well be explained by the stronger focus on initiatives related to human rights in supply chains. Improvements are necessary when it comes to migrant labor, though. Migrant workers protection has become increasingly important as today's globalized economy has forced millions of people to seek employment beyond the borders of their home countries while the demand for cheap labor has increased. National human rights institutions and State actors play an important role in protecting the rights of migrant workers. Future developments may force companies to step up their game when it comes to respecting migrant labor rights.

## Access to Remedy: The Overlooked Third Pillar

When a company discovers the existence of risks that have the potential to impact certain human rights, it must put in place measures to prevent or mitigate the impact to avoid harming people. Also, when the impact is not preventable anymore because it has already materialized, the company needs to remediate its effects by providing the best possible solution to those that have been affected. Together with that, companies should implement measures that can prevent the same impact from happening again.

It is precisely in this aspect (equivalent to UN Guiding Principles Third Pillar) where there is still a general lack of public information despite a big improvement since 2017. We have found that companies are still reluctant to share public information on their approaches to remediation, even those involved in actual adverse human rights impacts. This caution may be connected with a lack of general understanding of the topic. Our data suggest that Participant Companies still struggle to differentiate between preventative measures and measures dedicated exclusively to alleviate a harm already suffered. Also, fear of publicly exposing company failures by acknowledging their own responsibility and the consequent exposure to reputational or legal risks may further explain why companies are still very hesitant to publicly report how they have tried to remediate a human rights violation linked to them.

When it comes to disclosing actual measures, companies are still very reluctant to publicly show their efforts.

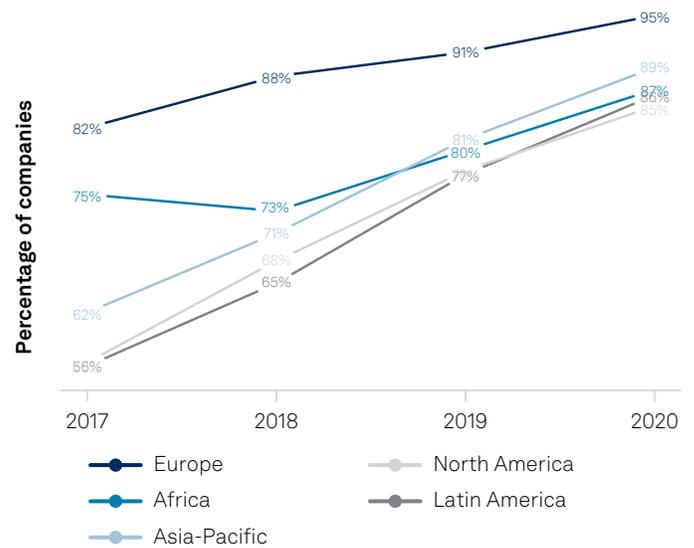
According to our assessment, the level of public disclosure has demonstrated to be clearly insufficient even though the number of companies publicly reporting this information has improved significantly, most considerably in relation with processes to identify and mitigate human rights issues. The number of companies reporting on their remediation actions (33% of companies disclosed this information in 2020) and their mitigation plans (23% of companies) shows that, when it comes to disclosing actual measures, companies are still very reluctant to publicly show their efforts.

Even though the UN Guiding Principles are very clear when it comes to explaining the difference between direct and indirect involvement, the reality of business operations shows that sometimes this difference becomes blurry. Also, the lack of specific guidance for companies on how exactly a remedy should be effectively provided and on how to implement effective grievance mechanisms remains a challenge. Particular attention should also be paid to compliance with reporting laws that mandate public disclosure around these actions.

## Inequalities on Human Rights Performance among Regions

**European companies** have been revealed as the frontrunners in every human rights question within the CSA. This might be linked with recent policy and regulatory business and human rights developments in the region, such as the Non-Financial Reporting Directive or the new Conflict Minerals Regulation. Also, there have been national mandatory human rights due diligence regulations developed in countries such as France (Duty of Vigilance Law), the UK (Moderns Slavery Act), and the Netherlands (Dutch Child Labor Due Diligence Act). These new frameworks and their prior public debates — which already paved the way, together with a mature civil society and a demanding sustainable consumer scene — have made European companies advance in this area, with some of them even asking for mandatory human rights regulations.

**Figure 2: Companies with human rights commitment in place, by region**



Source: S&P Global Corporate Sustainability Assessment (CSA) 2017 — 2020  
Scope: 703 companies

In our assessment, **Latin America** has been found as the region with the most significant improvement over the years on all the questions within the human rights criteria. This can be explained by the large exposure of Latin American companies conducting high-risk activities (extractive, construction, textiles, etc.) together with the rising State-based movement around the business and human rights topics in the last few years (as demonstrated by the approval of several Business and Human Rights National Action Plans in Colombia, Chile and Mexico). Several cases of company involvement in the harm to human rights and environmental defenders have also turned the spotlight towards Latin America, increasing the pressure for companies to be compliant with the UN Guiding Principles.

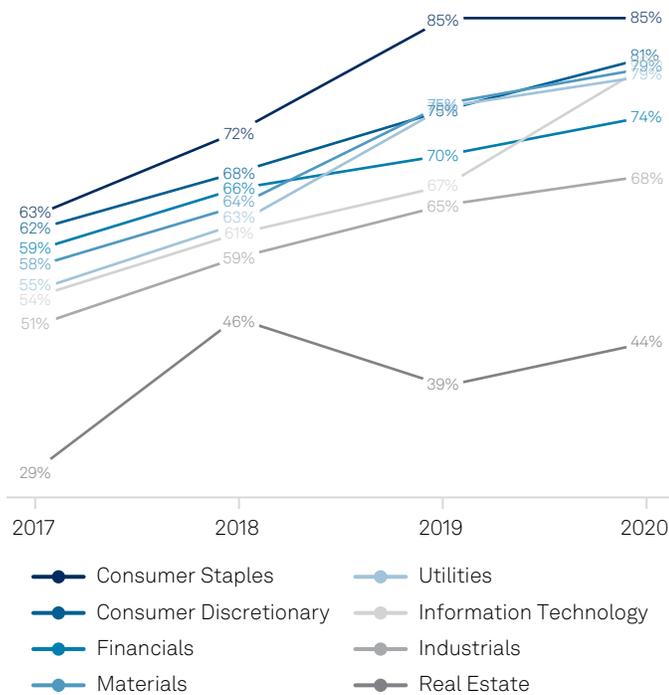
On the contrary, **North American companies** lag in all the human rights questions according to our data. This may be explained due to the shortcomings of legislative frameworks in the region. For instance, Canada has not yet developed a national action plan on business and human rights. Another reason could be that North American companies might be more reluctant to report on their human rights strategy to avoid exposures to potential litigation.

# Human Rights Performance by Industry

According to our data, not all sectors dedicate the same efforts to respect human rights. It is worth noting that consumer staples and consumer discretionary companies, including high-risk industries such as the apparel and food products industry, have been scoring at the top of all human rights questions in 2020 and have had the most significant improvements when it comes to commitment and assessing human rights risks. By 2017, following our assessment, 75% of the consumer staples companies had a policy commitment on human rights, which increased to 98% by 2020, when human rights due diligence mechanisms were adopted by 81% of consumer discretionary companies and by 83% of consumer staples companies. These industries have been under scrutiny for several years and several industry-specific initiatives such as the Bangladesh Accords, and efforts on mandatory supply chain due diligence have accelerated the progress.

Not all sectors (and geographies) dedicate the same efforts to respect human rights.

**Figure 3: Companies with due diligence in place, by selected industry sectors**



Source: S&P Global Corporate Sustainability Assessment (CSA) 2017 – 2020  
Scope: 541 companies

At the very bottom of all questions ranks is the real estate sector. As in other industries, real estate companies are responsible for respecting human rights and have particular importance when it comes to the right to adequate housing<sup>3</sup>. Recent global practices around real estate investment suggest that this industry has put the right to adequate housing at risk and has been connected with a global housing crisis.

Compared to other sectors, it is also worth noting that the industrial sector, including construction industries, lag in all the human rights questions. The industry often has direct adverse impacts on human rights, particularly affecting workers' rights, rights of local communities and indigenous peoples, and causing environmental damages.

As interest in sustainable investments reached unprecedented heights in the last years, financial companies have become a key player for the business and human rights movement. However, severe human rights violations may be related with the sector through its core activity – the provision of financial services (both to private and public actors). At the same time, their position facilitates international development by directing investment to activities which are respectful of human rights, and by leveraging companies they have invested in to prevent, mitigate or remediate impacts. Based on our analysis, companies within the financial sector improved their human rights strategy over the years. As much as 87% of participating companies within the industry had a human rights policy in 2020 (almost 32% more than in 2017). When it comes to due diligence processes, 26% of companies still have not implemented a process to identify, prevent and mitigate human rights impacts. Information is also scarce on mitigation action, where only 28% publicly report on their efforts to mitigate identified risks.

<sup>3</sup> [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24404&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24404&LangID=E)

## Publicly Reporting on Human Rights: A Goal Still to Be Achieved

As it was already mentioned in the introduction, our analysis further suggests that there is a clear difference between the results of companies that were assessed based on their active participation and companies that were assessed solely based on their public reporting regarding their human rights performance.

There is a clear difference between the results of companies that were assessed based on their active participation and companies that were assessed solely based on their public reporting.

For those companies that did not actively participate in the CSA, public information on human rights is hard to find. For instance, although a positive improvement can be deduced, in 2020 only 21% (7% in 2017) of those companies reported that they have a human rights due diligence process in their public reports, compared to 74% of active participants. When it comes to disclosing the risk identification process within their due diligence, there has been a 9-point increase since 2017 (from 2% in 2017 to 11% in 2020), which, although encouraging, still falls behind the UN Guiding Principles expectations.

These numbers are more aligned with what other studies (e.g., the German National Action Plan Monitoring results or the EU study on due diligence requirements through the value chain) have suggested: that public reporting is still insufficient and that companies still feel uncomfortable about disclosing their human rights commitments and performance.

## Conclusion

In recent years companies have achieved major steps to address and prevent human rights abuses in their business relations. This truly signals that multinational enterprises acknowledged their responsibility to respect and protect human rights. Committing to respect human rights has become the standard. However, acting on this commitment remains challenging. Implementing and disclosing mitigation and remediation actions need further improvements, even if the developments for companies' supply chain due diligence are promising.

To overcome these challenges, action will be required from a broad range of actors. States will need to work on their international obligations to protect human rights from harmful business actions and to provide adequate venues for those that would like to seek justice against outrageous corporate behaviors. For that, the approval of the UN legally binding instrument on business and human rights would be crucial.

But, most fundamentally, investors' role will continue to be essential within the next 10 years in order to comply with their fiduciary duty and to act in the best long-term interest of their beneficiaries. It is already evident that social issues can significantly impact the performance of investment portfolios. Some leading investors have already recognized that respecting human rights also leads to better financial risk management, and helps to align with the evolving demands of beneficiaries, clients and regulators. In this sense, pressure from the investment community may continue to shape companies' performance. Investors need to rely on granular data to steer their investment decision. To remain competitive, companies not only are required to have a strong human rights due diligence in place, but they must also diligently report on it. That said, we may hopefully see in the next ten years increased transparency when it comes to reporting on corporate human rights due diligence approaches. Promising developments to this trend may as well be seen as a result of future mandatory reporting requirements, which will set clear standards. Companies can benefit from this strong push for transparency, as it provides them with more clarity on the topic and it further allows companies to benchmark against industry peers, encouraging a race to the top going beyond a commitment to respect human rights. On this path, companies need to take significant steps ahead and the next 10 years will be decisive for achieving a closure of the gap that still exists between business and human rights.

## CONTACT US

### S&P Global Switzerland SA

Zurich Branch, Josefstr. 218, 8005 Zurich

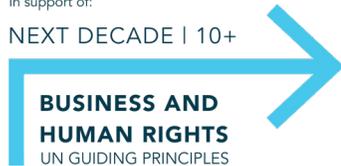
Switzerland

+41 44 529 5170

esgbenchmarking@spglobal.com

In support of:

NEXT DECADE | 10+



This S&P Global report is a submission to the UN Working Group's Call for Inputs on "Business and human rights: towards a decade of global implementation" — UNGPs10+

Copyright © 2021 S&P Global Inc. All rights reserved.

Unless otherwise noted, all information, data and other material, including ratings or scores (all such information, "Content") contained in this publication and other reports, materials, or websites of S&P Global Inc. and/or its affiliates is the exclusive property of S&P Global (Switzerland) SA, a subsidiary of S&P Global Inc., and/or its relevant affiliates (individually and collectively "S&P") and may not be copied or reproduced in any form except with the prior written permission of S&P. The Content shall not be used for any unlawful or unauthorized purposes. This publication is derived from sources believed to be accurate and reliable, but it is each reader's responsibility to evaluate the accuracy, completeness and usefulness of any opinions, statements or other Content contained in this publication. The Content and any other material and information in this publication are provided "as is" and without warranties of any kind, either expressed or implied. S&P Global (Switzerland) SA, a subsidiary of S&P Global Inc., and/or its relevant affiliates disclaim all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose.

S&P (and any third-party providers, as well as their directors, officers, shareholders, employees or agents) does not guarantee the accuracy, adequacy, completeness, timeliness or availability of any Content and are not responsible for any errors or omissions (negligent or otherwise), regardless of the cause, or for the results obtained from the use of such Content. In no event shall S&P (and any third-party providers, as well as their directors, officers, shareholders, employees or agents) be liable for any direct, indirect, special, incidental, and/or consequential damages, costs, expenses, legal fees, or losses (including, without limitation, lost income or lost profit and opportunity costs) in connection with any use of the Content (including, without limitation, any opinions or other information expressly or implicitly contained in this publication).

Any opinions and views in this publication reflect the current judgment of the authors and may change without notice. Further, any opinions and views expressed by CSA participants do not reflect the policies or positions of S&P or any other person, organization or company. The Content contained in this publication is distributed with the understanding that the authors, publishers and distributors are not rendering legal, accounting or other professional advice or opinions on specific facts or matters and accordingly assume no liability whatsoever in connection with its use. The Content contained in this publication constitutes neither a solicitation, nor a recommendation, nor an offer to buy or sell investment instruments or other services, or to engage in any other kind of transaction, and such information is not directed to persons in any jurisdiction where the provision of such Content would run counter to local laws and regulations. S&P keeps certain activities of its business units separate from each other in order to preserve the independence and objectivity of their respective activities. As a result, certain business units of S&P may have information that is not available to other S&P business units. S&P has established policies and procedures to maintain the confidentiality of certain non-public information received in connection with each analytical process.

For information provided as part of the CSA questionnaire refer to our "Use of Information and Confidentiality Policy" [https://portal.csa.spglobal.com/survey/documents/Use\\_of\\_Information\\_Policy.pdf](https://portal.csa.spglobal.com/survey/documents/Use_of_Information_Policy.pdf) and for personal information provided to S&P refer to S&P Global's Privacy Policy: <https://www.spglobal.com/en/privacy/privacy-policy-english>.

**spglobal.com**