

# Implementing the UN Guiding Principles on Business and Human Rights into the Corporate Context

Marisa McVey





**First published 2023**

This report is published for the Research Panel of ICAS.

The views expressed in this report are those of the authors and do not necessarily represent the views of the Council of ICAS or the Research Panel.

No responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication can be accepted by the authors or publisher.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopy, recording or otherwise, without prior permission of the publisher.

©2023

ISBN: 978-1-909883-74-1 EAN: 9781909883741

# Contents

Acknowledgements	<b>4</b>
Executive summary	<b>5</b>
Background – contextualising business and human rights	<b>7</b>
Research objectives	<b>10</b>
Case studies	<b>11</b>
Findings	<b>13</b>
Recommendations	<b>18</b>
Policy implications	<b>19</b>
References	<b>20</b>
Appendix: data collection	<b>23</b>
About the author	<b>25</b>

# Acknowledgements

**My deepest thanks go to my participants in this research. While the project was conducted with the promise of anonymity, my gratitude to them is personal and public.**

I would like to also thank my wonderful supervisors, Prof John Ferguson and Dr François-Régis Puyou. In particular, to John for his invaluable feedback on early drafts of this report. Thanks also to Marie Gardner, Head of Research at the Institute of Chartered Accountants of Scotland (ICAS), and the Research Panel at ICAS, for their support and encouragement throughout this project.

Finally, I greatly appreciate the financial contributions of ICAS and the Scottish Graduate School of Social Science (SGSSS) for doctoral funding, without which this research would not have been possible.

# Executive summary

## Study objectives and background

This study explores the corporate implementation of the United Nations Guiding Principles for Business and Human Rights (UNGPs). Since their unanimous endorsement by the Human Rights Council of the United Nations in 2011, the UNGPs have served as the central reference point for legislative and policy developments in the field of business and human rights. While a soft law initiative, the UNGPs are increasingly being assimilated into national laws, with key concepts such as human rights due diligence (HRDD), now forming the basis of recent national and international legislative initiatives. Despite these developments, little research has been undertaken into how the UNGPs are being implemented and internalised by corporations.

**Drawing on case study research conducted at two multinational companies – an oil and gas company and a bank – this study pursues the following objectives:**

1. To examine how human rights are brought into and employed in the corporate space through the implementation of the UNGPs, particularly Pillar II – the corporate responsibility to respect human rights;
2. Identify who is involved in this process, and how these actors understand and translate the UNGPs, human rights and HRDD in different contexts, and in particular;
3. Examine how experts legitimise their expertise in the BHR ecosystem and the roles they play in the UNGP implementation process.

## Summary of research approach

Case study research was undertaken at two multinational companies – an oil and gas company (OilGas) and a bank (CashMoney). More specifically, semi-structured interviews were undertaken with individuals that held human rights related roles at each company as well as external experts who advised or engaged with the companies on human rights issues. In total, 32 interviews were conducted – including 5 with internal participants from OilGas, 7 with internal participants from CashMoney, and 20 external experts.

# Executive summary

## Findings

### Key findings from this study highlight:

- The utility of the UNGPs in terms of framing human rights issues. The familiar business and management language embedded in the UNGPs appealed to those working in the corporate context, and allowed for a significant degree of autonomy in fulfilling human rights responsibilities.
- The professional and ethical challenges of translating human rights into the corporate context. Despite good intentions, the very process of implementing the UNGPs into the corporate context created the potential to subordinate human rights to management processes, rather than transforming business practices.
- The roles and perceived legitimacy of external experts that are engaged by companies to carry out various HRDD functions. By utilising 'legitimate' expertise, companies were perceived to be not only taking their responsibilities under the UNGPs seriously, but also performing these responsibilities to a high standard, embodying both the spirit and the letter of the UNGPs.

Overall, this study provides a much-needed contribution to the expansion of interdisciplinary inquiry into business and human rights issues, evaluating the use of the UNGPs and the realities and nuances of implementing human rights into the corporate context.

# Background

## Contextualising business and human rights

Human rights are basic fundamental and inalienable freedoms (Donnelly, 2013). They are upheld through instruments such as the Universal Declaration of Human Rights (UN General Assembly, 1948). Since the 1990s, the field of business and human rights has emerged as ‘an increasingly prominent feature on the international agenda’ (Ruggie, 2013, p.xxv). The field emerged as a response to growing awareness and concern for the impacts of corporations on human rights – for example, as a result of poor working conditions, environmental pollution or violations of the rights of indigenous people through forced displacement.

According to Ruggie (UN Human Rights Council 2008, p.189, ‘the root cause of the business and human rights predicament... lies in the governance gaps created by globalization’ – that is, while the economic, political and social power of corporations has increased, the capacity for ‘societies to manage their adverse consequences’ has not kept pace. Such governance gaps are exacerbated by the transnational character and legal structure of corporations, along with the proliferation of bilateral investment treaties and the liberalization of trade.

These all make it more difficult to hold corporations accountable for violations of human rights. This is compounded by the fact that few measures in international law include private actors like corporations, since states are considered the primary duty-bearer for human rights (Kaleck & Saage-Maaß, 2010; Gear & Weston, 2015). Accessing justice for victims of corporate human rights abuse then becomes extremely difficult.

Since their unanimous endorsement by the Human Rights Council of the United Nations in 2011, the UNGPs have served as the central reference point for legislative and policy developments in the field of business and human rights. While ostensibly a soft law initiative, the UNGPs are increasingly being assimilated into national laws, with key concepts, such as HRDD, now forming the basis of recent legislative initiatives.

The three pillars of the UNGPs emphasise the states’ duty to protect human rights, the corporate responsibility to respect human rights and access to remedy for victims of corporate human rights abuse (Office of the United Nations High Commissioner for Human Rights (OHCHR), 2011).

# Background

## Contextualising business and human rights

A key component of Pillar II, the corporate responsibility to respect, is human rights due diligence (HRDD): ‘the practice of a company looking for risks to people which are connected to what the company does’ (Taylor, 2020, p.91). The scope of HRDD is based largely on context, depending on the risk of severe human rights impacts (OHCHR, 2011, p.15), the company’s size and the nature of a company’s operating environment (2011, p.18). HRDD should be an ongoing process, recognising that the human rights risks may change over time as the business enterprise’s operations and operating context evolve (OHCHR 2011, p.18). Under Principle 17 of the UNGPs, HRDD should not only cover impacts that a company causes, but also those impacts to which a company contributes, and those to which the company’s operations, products, or services are directly linked by its business relationships with another entity, whether a public or a private actor (OHCHR 2011, p.17). In these situations, a company should exercise leverage, which exists when it has the ability to change the wrongful practices of an entity that causes a harm, to help prevent or mitigate adverse human rights impacts (OHCHR 2011, p.21). HRDD has been described as both ‘routine and revolutionary’ (Kemp & Vanclay 2013, p.89), incorporating a customary process like due diligence<sup>1</sup> (normally conducted in the context of commercial transactions in order to identify and mitigate risks), and pivoting the concept of ‘risk’ to mean risk of adversely impacting upon human rights, rather than the risk to business.

Perhaps one of the most influential mechanisms for operationalising the corporate HRDD requirements of the UNGPs is the Reporting Framework (Shift/Mazars, 2015). The Reporting Framework provides the ‘first comprehensive guidance for companies to report on their human rights performance in accordance with the UNGPs’ (McPhail & Ferguson, 2016, p.528). It emphasises the prioritisation of a company’s salient human rights issues, meaning those human rights most at risk from their operations (Shift/Mazars, 2015, p.12; See also, Rees & Davis, 2016). The Assurance Guidance component of the Framework, launched in 2017, assists internal auditors and external assurance practitioners in assessing companies’ human rights performance and reporting (Shift/Mazars, 2017). Companies must ‘know and show’ how they meet their human rights responsibilities, through a statement on salient human rights issues, and disclosing ‘how these issues were determined and managed through policies, stakeholder engagement and tracking performance’ (McPhail & Ferguson, 2016, p.529).

<sup>1</sup> In law, due diligence is broadly defined as ‘reasonable steps taken by a person to avoid committing a tort or offence’ In commercial transactions, is more commonly used to describe the appraisal of a business undertaken by a prospective buyer to evaluate its commercial potential (LEXICO, no date).



# Background

## Contextualising business and human rights

In the decade since their introduction, the UNGPs have proved highly influential, endorsed by states, inter-governmental bodies, multinational corporations, and industry associations, along with growing support for country and EU-level mandatory human rights due diligence initiatives.<sup>2</sup> As a result of their influence, there is now a broad expectation that corporations should respect human rights (Nolan, 2016).

The focus for improvement is now on considerations of how corporations can be held responsible, the creation of mechanisms to ensure accountability, and the adequacies of these mechanisms (Wettstein, 2015; Arnold, 2016)<sup>3</sup>. To further tackle the issues surrounding the unenforceability of the UNGPs, the UN Human Rights Council established an open-ended inter-governmental working group (OEIGWG) in 2014, in the hopes of creating a legally binding instrument to regulate corporate conduct under international human rights law.<sup>4</sup> At the time of writing, a Second Revised Treaty draft has been published.<sup>5</sup> The current iteration of the treaty attempts to better align with the UNGPs and HRDD, while at the same time potentially providing greater protection for victims of corporate human rights abuse (Bernaz, 2020; Cassel, 2020). The eventual format and effectiveness of this initiative remains to be seen.

<sup>2</sup> For example, the French Vigilance Law (2017), and similar recent initiatives in Germany. For an overview of the push for national mHRDD initiatives in Europe, see the Business and Human Rights Resource Centre's (2021) roundup. At the EU-level, the European Parliament's Committee on Legal Affairs recently adopted a report requesting the Commission submit a mandatory due diligence legislative proposal.

<sup>3</sup> In this respect, the field of business and human rights (BHR) differs from the topic of corporate social responsibility (or CSR). While CSR is primarily concerned with promoting the positive potential of companies as responsible social actors or 'good corporate citizens' (Carroll, 1991, p.42), through activities such as philanthropic giving, BHR emphasises corporate accountability and the mitigation and prevention of the negative impacts of corporate activity, grounded in a core set of universally recognised human rights principles (Ramasastry, 2015).

<sup>4</sup> UN Human Rights Council (2014) '[Elaboration of an International Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with Respect to Human Rights, Resolution 26/9](#)' (14 July) UN Doc A/HR/RES/26/9, (Accessed: 22 October 2020).

<sup>5</sup> Zero Draft: OEIWG (2018) '[Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises: Zero Draft](#)' (16 July), (Accessed: 22 October 2020); Revised draft: OEIGWG (2019) '[Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises: Revised Draft](#)' (16 July), (Accessed: 22 October 2020). Second Revised Draft: OEIWG (2020) '[Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises: Second Revised Draft](#)' (6 August), (Accessed: 22 October 2020).

# Research objectives

Despite the significant influence of the UNGPs, in the decade since their creation, there has been relatively little empirical analysis of how they have been interpreted or how they work in practice when implemented.

**This kind of investigation is necessary on three levels:**

- First, the UNGPs approach allows corporations a wide margin of discretion on how to operationalise HRDD. This means that while corporations might say they are committed to the UNGPs, there is often a disconnect between policy and practice with respect to human rights (Corporate Human Rights Benchmark, 2020). It is therefore crucial to open up the corporate ‘black box’ and understand what happens during implementation (Scheper, 2015; Obara, 2017; Goethals, 2019).
- Second, as a field, BHR governance tends to focus on states, companies, and rightsholders<sup>6</sup> as its central actors. Yet, the UNGPs and the Reporting and Assurance Framework specifically point to ‘external expertise’ as a crucial component in operationalising HRDD. As such, there remains limited research into the makeup of this group of external experts and their impact on the implementation process (Birchall, 2020; Deva, 2020; Partiti, 2021; McVey et al. 2022).
- And finally, in the absence of binding international law on business and human rights, mandatory human rights due diligence is fast becoming a firm favourite amongst legal scholars and activists, again with little analysis of its application.

By exploring the nuances, complexity and context of corporate implementation of human rights, this report serves as a counterbalance to the dominant quantitative emphasis that is embedded in the practice of human rights benchmarking, social auditing, reporting and assurance, where the language of justice and rights are transformed into apparently objective modes of measurement (Power, 2003; Merry, 2015, 2016; Scheper, 2015).

**The objectives of this research were therefore as follows:**

1. To examine how human rights are brought into and employed in the corporate space through the implementation of the UNGPs, particularly Pillar II – the corporate responsibility to respect human rights.
2. Identify who is involved in this process, and how these actors understand and translate the UNGPs, human rights and HRDD in different contexts; and in particular,
3. Examine how experts legitimise their expertise and the roles they play in the UNGP implementation process.

<sup>6</sup> Rightsholders in UNGPs and Human Rights law are defined as individuals or communities affected by corporate human rights impacts.

# Case studies

To address the questions above, the study uses two qualitative case studies of an extractive company and a bank, and their external experts. Both case studies are real corporate examples, but are referred to as OilGas and CashMoney to preserve confidentiality.

## OilGas

OilGas is headquartered in a European city and has around 900 subsidiaries worldwide. OilGas is no stranger to human rights concerns, and its history includes litigation on a number of rights issues in Africa and Asia. Since the introduction of the UNGPs in 2011, OilGas has been particularly enthusiastic about implementation, conducting various HRDD processes, including undertaking human rights impact assessments (HRIAs) along potential pipeline sites. Since 2016, it has developed a standalone human rights policy, a roadmap which details progress made in this area and future goals, and publishes various updates each year. OilGas' Code of Conduct separately references the company's commitment to human rights. OilGas is also a member of an oil and gas industry association which requires its members to adhere to certain environmental and social reporting standards. There have been significant top-level management changes in OilGas in recent years, which has meant changes to the company's approach to human rights implementation. There have also been significant fluctuations in the composition of its human rights team over the last few years, with members of the team moving to other departments or on to opportunities outside of the company.

## CashMoney

CashMoney is a European bank that has offices in 15 countries and over 30,000 employees. It provides an interesting comparator to OilGas, since financial institutions enjoy a role more 'behind the scenes', rather than 'on the ground' like extractive companies. CashMoney appears more progressive than many of its banking competitors both in terms of human rights reporting and company mandate. It specialises in sustainable and green finance products and places emphasis on corporate social responsibility. Participants from CashMoney had also been involved in the stakeholder meetings led by Ruggie during the consultation period for the 'Protect, Respect, Remedy Framework' (and later the UNGPs). The bank published human rights reports based on the UNGPs in 2016 and 2018, with various updates in between. It employs a dual approach to HRDD, both through its value chain studies on sectors that are deemed to be a potential risk (e.g., cocoa), and through company assessments that integrate HRDD for new and existing clients, and event-driven reviews for companies when a potential human rights impact has occurred.

# Case studies

Another reason for CashMoney's enthusiasm for human rights can be gleaned from its membership of a multi-stakeholder initiative (SectorAgreement1). This agreement, starting in 2016, had a three-year mandate and was made up of a coalition including banks operating in that particular European country, government, civil society representatives, banking associations, and trade unions. The agreement monitored human rights performance, focusing on compliance with the UNGPs and the Reporting and Assurance Framework in the banking sector, and employed a number of external advisors to assist in HRDD and reporting.

## External experts

As discussed above, external experts play a key part in HRDD under the UNGPs. From a practical perspective, it became clear early in the data collection that these actors also required further attention. Both case studies had a condensed human rights/sustainability team within a company headquarters who worked on the central human rights policies and reporting. They, in turn, relied heavily on external advice and repeatedly signalled this during data collection, giving examples of the work external experts had undertaken in relation to their business operations. While the Commentary on Principle 23 of the UNGPs specifically points to some examples of credible, independent external human rights experts, in reality this category is composed of a far wider variety of organisations and actors, including consultants, social auditors and due diligence advisors.<sup>7</sup>

To better understand the experiences within each case study, bolster the researcher's knowledge and offer critical insight into the growing field of HRDD, experienced consultants were also selected and interviewed. While not every participant worked directly on human rights reporting for OilGas or CashMoney, they all worked as external human rights experts to the extractive or banking sectors, providing HRDD consultation or advice in a variety of contexts, or monitoring and critiquing corporate behaviour. It's also worth mentioning that many of the external organisations relied on by CashMoney to advise on human rights issues are involved in this work as a result of CashMoney's membership in SectorAgreement1.

<sup>7</sup> Categorisations of actors or organisations in this space were also fluid (as can be seen in the range of descriptions of organisations in Table 1 in the Appendix). As Deva (2020) points out, some private consultants in this space have even incorporated themselves as 'non-profit organisations', making it difficult to parse their exact roles and responsibilities. During data collection, this fluidity was even more pronounced, where 'consulting' did not seem to be the preferred term for actors. For instance, P17 who worked at CashMoney, in reference to one particular business and human rights advisory organisation, stated that 'It's almost more like an academic institution, than a real consultancy. If I call them a consultant, I get slapped...'. Similarly, P13 (who worked as a corporate liaison in an NGO) characterised her work in this space as a 'partnership' between NGOs and corporations, rather than consulting.

# Findings

Evidence from the qualitative analysis suggests a number of interesting features of how human rights are brought into the corporate context and the legitimacy and role of external experts.

## The Utility of the UNGPs

In both case studies, it was clear that the UNGPs and the supplementary initiatives such as the Reporting Framework were key documents, providing participants with the necessary discursive tools to facilitate human rights resonance in the business context. The UNGPs formed the fundamental reference point to establish legitimacy within the companies, since they had already been endorsed by a myriad of influential actors. The content of the UNGPs, and the use of HRDD in particular, appealed to those working at both OilGas and CashMoney, since it tactically employed the language of business and management in the development of human rights principles (Ruggie, 2013; O'Kelly, 2019). At CashMoney, the Reporting Framework was highlighted as an effective vehicle for connecting human rights to business in a language that companies could understand, acting almost as a corporate translation of the UNGPs themselves.

In addition to the familiar business and management language embedded in the UNGPs, their perceived flexible framing also appealed to participants. Flexibility was described as the 'genius component' by one external expert who worked with OilGas, giving companies and their external experts a significant degree of autonomy over the way in which they fulfil these responsibilities (Fasterling & Demuijnck, 2013). The plasticity of the UNGPs was widely acknowledged and extolled upon by those working at both OilGas and CashMoney. Room for contextual interpretation of the UNGPs was an important part of implementing the corporate responsibility to respect human rights in OilGas and CashMoney, since it allowed for a variety of responses, dependent on a range of factors, like company structure and company purpose. At the time of data collection, OilGas had recently shifted from a purely compliance-based perspective of human rights, to a human rights department which encompassed many different functions, while still working alongside compliance and legal. In contrast, CashMoney housed human rights issues under the umbrella of the sustainability department, since green finance was a large part of the bank's operating strategy. Neither company were binary in their approach to situating human rights in the corporate structure, also making use of inter-departmental ethics and human rights committees.

More explicitly, the interpretive possibilities of the UNGPs seemed to be of particular importance to individual participants when bringing human rights into the corporate space and making them persuasive. The flexibility allowed participants to construct human rights ideals through different frames, using contextualisation as a way of communicating human rights significance to a particular setting or corporate department, and linking human rights to other discursive spheres (Merry, 2015).

# Findings

There were a range of frames used by participants (both internal and external to each company) to construct human rights. These included a moral lens, development lens, and social performance lens.

In short, when trying to make human rights resonate in the corporate context, the UNGPs and their supplementary materials provide participants with a desirable framing of legitimacy, familiar terminology and flexibility, allowing for contextualisation and multiple interpretive possibilities.

## The Negotiation of Human Rights

Nevertheless, the UNGPs did not provide a flawless frame for translating human rights and often participants at both companies turned to other strategies to ensure the message of ‘human rights’ was heard. Those working at OilGas and CashMoney spoke of the struggle they encountered when human rights implementation came into direct contact with the profit-making rationale of the company. This tension was particularly emphasised by participants working at the bank and was markedly apparent when they were speaking about onboarding prospective clients. The tension may have been more explicit with CashMoney, since exercising leverage is typically perceived as one of the main ways in which financial institutions can uphold the corporate responsibility to respect under the UNGPs (OHCHR, 2017).

In order to advance the embedding of human rights ideas within each company, participants in the study described how they drew on their background and knowledge of human rights and international law as well as their understanding of the corporate context. In doing so, participants were able to frame human rights ideas in a way that resonated with the corporate context in order to make them more understandable and relatable. For example, participants in the study highlighted how they might frame human rights as a business risk or emphasise the business case for developing human rights policies and governance mechanisms.<sup>8</sup> In some instances participants preferred to link human rights to sustainability and the language of the Sustainable Development Goals (SDGs).<sup>9</sup> In contrast to the UNGPs, the SDGs were seen as the more uncomplicated product, easier to sell to corporate colleagues, with better branding and associated paraphernalia, such as a recognisable logo and badges.

However, as a number of participants acknowledged, framing human rights in a way that resonates with the corporate context has a downside – which, in many respects, reflects what the anthropologist Sally Engle Merry refers to as the ‘resonance dilemma’.

<sup>8</sup> The ‘business’ or ‘economic’ case for human rights posits that implementing policies or strategies that advance respect for human rights will positively contribute to the financial position of the company (Bağlayan et al., 2018).

<sup>9</sup> The UN SDGs were adopted in 2015, replacing the Millennial Goals. They are made up of 17 interconnected goals and indicators, including no poverty, zero hunger, all of which are intended to be achieved by 2030. SDG 17, which calls on states to ‘enhance the global partnership for sustainable development, complimented by multi-stakeholder partnerships that mobilize and share knowledge’, encourages corporate involvement to achieve the SDGs (UN Global Compact, 2020).

# Findings

That is, while attaining “resonance” is more likely to yield support and secure implementation, ‘choosing resonance (also) requires sacrificing ideals’ (Merry, 2006, p.41). In this regard, while resonance may be achieved, it can be at a cost – for example, by emphasising human rights in financial transaction terms rather than the actual rights and perspectives of rightsholders.

This ‘resonance dilemma’ draws attention to a significant professional challenge related to the translation of human rights ideas into the corporate context. For both internal and external human rights participants, this dilemma has an ethical dimension – making human rights understandable and manageable may potentially undermine human rights realisation.

Even when employing resonance strategies, participants in both case studies encountered challenges in their attempts to make human rights understandable and relevant in the corporate setting. Three key – yet concerning – features were identified in this negotiation of human rights in both case studies:

- First, the neutralisation of human rights into more palatable concepts or neutral language. External expert participants also highlighted how they might use more neutral terminology, for example, using ‘human rights impacts’, rather than risk the company disengaging as a reaction to the use of terms such as ‘human rights violations’.
- Second, where grievances emerge, the UNGP implementation process encourages the presentation and communication of those grievances to the company by external experts rather than providing an opportunity for rightsholders to directly express their grievances.
- And finally, the privileging of formalising or quantifying human rights issues by companies, which often decontextualised human rights impacts. For example, by overlooking or misrepresenting the contested and complex nature of a grievance. That is, what gets ‘counted’ as a grievance might rest on what “is easier to measure [or] what is already recognized as measurable”; grievances that are contested or complex may not get ‘counted’, leading to “disparities... [and] varying levels of attention to issues” (Merry & Wood, 2015, p.207)].

Despite good intentions, the very process of implementing the UNGPs into the corporate context has the potential to subordinate human rights to management processes, rather than transforming business practices.<sup>10</sup>

<sup>10</sup> For further discussion of the utility of the UNGPs and the negotiation of human rights, see: McVey, M., Ferguson, J and Puyou, F-P. (2022) "Traduttore Traditore?" Translating Human Rights into the Corporate Context', *Journal of Business Ethics*, DOI: <https://doi.org/10.1007/s10551-021-05028-3>

# Findings

## Legitimising External Experts in Business and Human Rights

External experts had to respond to a variety of legitimacy claims from companies in order to be seen as experts (Suchman, 1995). Nevertheless, not all expertise was recognised as equally legitimate by those at OilGas and CashMoney. In particular, on-the-ground expertise was largely conceived as superior to forms of expertise supported solely by desk-based research, since on-the-ground experts engendered the perception of more authentic engagement with rightsholders.

Moreover, findings from the study suggest that external experts that were perceived as legitimate could also confer legitimacy onto a company's human rights practices. For example, by utilising 'legitimate' expertise, it was perceived that companies were not only taking their responsibilities under the UNGPs seriously, but also performing these responsibilities to a high standard, embodying both the spirit and the letter of the UNGPs. In particular, engaging with NGOs was a beneficial endeavour, since it served to demonstrate the company's willingness to collaborate and their ability to take on board independent – and perhaps critical – feedback on their performance. External experts were able to legitimise corporate action because of their perceived independence. This was a heavily emphasised component of external experts' function under Pillar II of the UNGPs. The experts in this study saw themselves as standing apart from corporate activities, offering unbiased expertise and, in some cases, passing judgment.

## Unpacking the Diverse Roles of External Experts

Findings from both case studies suggested that external experts embody a variety of overlapping and complementary roles in the implementation of the UNGPs. They can be knowledge providers when companies lack relevant information. They facilitate cooperation in relation to human rights concerns through the processes of matchmaking (establishing initial connections between groups) and mediation (encouraging dialogue between groups). Further, in their role as critics or challengers of corporate conduct, experts are elevated to a place of judgment. For the most part, their criticism had to be constructive so as not to disrupt the client relationship. For this reason, where critical modes of engagement were deemed necessary and appropriate, these tended to take place 'backstage' or, as one participant phrased it 'behind closed doors'. This provided the opportunity for actors to 'step out of character' (Goffman, 1959, p.112), where experts provided constructive criticism away from a public audience. The setting of SectorAgreement1 provided this backstage forum, as the discussions between all parties remained confidential.

Nevertheless, the experts' role of critical friend could be frustrated by companies' reluctance to disclose details of their own human rights practices or those of their clients, as it limited experts' ability to offer assessment and critique. In particular, client confidentiality with respect to HRDD remained a source of tension between the bank and external experts. From CashMoney's point of view, external experts



## Findings

underestimate the challenge of addressing the client confidentiality issue, whereas external experts feel they cannot get a good understanding of how HRDD was conducted by the bank because client confidentiality prevents the sharing of key information.

In their role as informal ‘standard setters’, some experts constructed in-house standards (derived from the UNGPs) and utilised these as a basis to score companies on their corporate human rights performance.

Finally, as the pressure of implementing corporate HRDD is increasing, so too is the demand for expertise in this area. This supports what Deva (2020) calls the emergence of the ‘business of human rights’ and the ‘mushrooming’ of a new private industry of HRDD expertise. With this demand comes increased competition between experts, where newer entrants were sometimes viewed with suspicion for not being sufficiently ‘mission-driven’ or viewing human rights as simply another profitable avenue. Whether or how to regulate business and human rights experts remained a contested question for experts, with some highlighting the need for greater standardisation or accountability measures.

# Recommendations

From the above analysis and conclusions, a number of practical recommendations arise as follows:

## **For businesses**

- Increase awareness and understanding of human rights within all levels of the organisation.
- Ensure a holistic grounding of human rights within the organisation rather than a cosmetic application of the UNGPs, i.e., promoting human rights risk as a risk to people, not simply a risk to business or profit. The implementation of the UNGPs and HRDD into the corporate context may not automatically or necessarily lead to positive outcomes for rightsholders. For example, human rights issues that are framed in terms of 'business risk' or the 'business case' may potentially undermine human rights realisation.
- Strengthen efforts to ensure that context and rightsholder voice are key components when undertaking HRDD and reporting.

## **When considering alignment of the UNGPs in national and international law**

- Recognise and address the intermediary power and influence of external experts within the UNGP implementation process, particularly with respect to their role as legitimising corporate behaviour and acting as proxies for rightsholder experience.

## **For future research**

- This report demonstrates the clear need for multidisciplinary research in business and human rights, particularly assessing the influence of external experts and the co-option and commercialising of human rights. Other research disciplines, such as critical accounting studies, may provide useful insights for further engagement with these issues.

## Policy implications

This report sheds light on the practicalities of the implementation of the UNGPs, the challenges faced by those undertaking HRDD, and the increasing role for experts in business and human rights. The recent push towards mandatory human rights due diligence across European jurisdictions and the ongoing drafting of the BHR treaty further centres the importance of HRDD. To ensure human rights and HRDD do not become simply a commodity, there needs to be – at the very least – a recognition of the existence and impact of human rights experts in this growing industry in deliberations related to new and more legally binding forms of governance. Further consideration will need to be given to whether or how these actors are held responsible for the work they produce and the means through which they might be held to account. This will be challenging, given the diversity of experts and the reliance on them in this space.

# References

- Arnold, D. (2016) 'Corporations and Human Rights Obligations', *Business and Human Rights Journal*, 1(2), pp.1–21.
- Bernaz, N. (2020) 'Conceptualizing Corporate Accountability in International Law: Models for a Business and Human Rights Treaty', *Human Rights Review*, 22, pp.45–64.
- Birchall, D. (2020) 'Corporate Power over Human Rights: An Analytical Framework', *Business and Human Rights Journal*, 6(1), pp.42–66.
- Bowen, G. A. (2009) 'Document Analysis as a Qualitative Research Method', *Qualitative Research Journal*. Emerald Group Publishing Limited, 9(2), pp.27–40.
- Business and Human Rights Resource Centre (2021) '[National & regional movements for mandatory human rights & environmental due diligence in Europe](#)', accessed 31/03/2021.
- Carroll, A. (1991) 'The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders.', *Business Horizons*, 34(4), pp.39–48.
- Cassel, D. (2020) '[Progress in the Newest UN Draft Treaty on Business and Human Rights](#)', Business and Human Rights Resource Centre, accessed 27/08/2020.
- CHRB (2020) '[Key Findings Report 2020](#)', accessed 16/11/20.
- Deva, S. (2020) 'From “Business or Human Rights” to “Business and Human Rights”: What next?', in Deva, S. and Birchall, D. (eds) *Research Handbook on Human Rights and Business* Edward Elgar, London.
- Donnelly, J. (2013) *Universal Human Rights in Theory and Practice*. Cornell University Press, Ithaca.
- Goffman, E. (1959) *The Presentation of Self in Everyday Life*. London: Doubleday.
- Goethals, S. (2019) 'Exploring Migrant Employees' “Rights-Talk” in the British Hospitality Sector', *Business and Human Rights Journal*, 4(2), pp.287–315.
- Grear, A. and Weston, B. H. (2015) 'The Betrayal of Human Rights and the Urgency of Universal Corporate Accountability: Reflections on a Post-Kiobel Lawscape', *Human Rights Law Review*, 15(1), pp.21–44.
- Kaleck, W. and Saage-Maaß, M. (2010) 'Corporate Accountability for Human Rights Violations Amounting to International Crimes: The Status Quo and its Challenges', *Journal of International Criminal Justice*, 8(3), pp.699–724.
- Kemp, D. and Vanclay, F. (2013) 'Human Rights and Impact Assessment: Clarifying the Connections in Practice', *Impact Assessment and Project Appraisal*, 31(2), pp.86–96.

# References

McPhail, K. and Ferguson, J. (2016) 'The Past, the Present and the Future of Accounting for Human Rights', *Accounting, Auditing & Accountability Journal*, 29(4), pp.526–541.

Merry, S. E.

- (2006) 'Transnational Human Rights and Local Activism: Mapping the Middle', *American Anthropologist*, 108(1), pp.38–51.
- (2015) 'Firming Up Soft Law: The Impact of Indicators on Transnational Human Rights Legal Orders', in Halliday, T. C. and Shaffer, G. (eds) *Transnational Legal Orders*, Cambridge University Press, Cambridge.
- (2016) *The Seductions of Quantification*, University of Chicago Press, Chicago.

Merry S. E. and Wood S. (2015) 'Quantification and the Paradox of Measurement: Translating Children's Rights in Tanzania', *Current Anthropology*, 56(2), pp.205–229.

Nolan, J. (2016) 'Introduction', in Baumann-Pauly, D. and Nolan, J. (eds) *Business and Human Rights: From Principles to Practice*. Routledge, London.

O'Dwyer, B. (2004) 'Qualitative Data Analysis: Illuminating a Process for Transforming a "Messy" but "Attractive" "Nuisance"', in Humphrey, C. and Lee, B. (eds) *The Real Life Guide to Accounting Research: A Behind the Scenes Viewing of Qualitative Research Methods*, Elsevier, London.

O'Kelly, C. (2019) 'Human Rights and the Grammar of Corporate Social Responsibility', *Social and Legal Studies*, 28(5), pp.625–649.

OHCHR (2011), '[Guiding Principles on Business and Human Rights: Implementing the UN "Protect, Respect, Remedy" Framework](#)', accessed 20/02/21.

Obara, L. J. (2017) "'What Does This Mean?": How UK Companies Make Sense of Human Rights', *Business and Human Rights Journal* 2(2), pp.249–273.

Partiti, E. (2021) 'Polycentricity and Polyphony in International Law: Interpreting the Corporate Responsibility to Respect Human Rights', *International and Comparative Law Quarterly*, 70(1), pp.133–164.

Power, M. (2003) 'Auditing and the Production of Legitimacy', *Accounting, Organizations and Society*, 28(4), pp.379–394.

Ratner, S. R. (2001) 'Corporations and Human Rights: A Theory of Legal Responsibility', *Yale Law Journal*, 111(3), pp.443–545.

Rees, C. and Davis, R. (2016) 'Salient Human Rights Issues: When Severe Risks to People Intersect with Risks to Business', in Baumann-Pauly, D. and Nolan, J. (eds) *Business and Human Rights: From Principles to Practice*, Routledge, London.

Ruggie, J. G. (2013) *Just Business: Multinational Corporations and Human Rights*, W.W. Norton & Co., London.

# References

Scheper, C. (2015) “From Naming and Shaming to Knowing and Showing”: Human Rights and the Power of Corporate Practice’ *The International Journal of Human Rights*, 19(6), pp.737–756.

Shift/Mazars,

- (2015) ‘[UN Guiding Principles Reporting Framework](#)’, accessed 18/08/2020.
- (2017) ‘[The UN Guiding Principles Reporting Framework: Guidance Part II - Assurance of Human Rights Performance and Reporting](#)’, accessed 18/08/2020.

Taylor, M. B. (2020) ‘Human Rights Due Diligence in Theory and Practice’, in Deva, S. and Birchall, D. (eds) *Research Handbook on Human Rights and Business* Edward Elgar, London.

UN General Assembly (1948) ‘Universal Declaration of Human Rights’, United Nations.

UN Global Compact (2020) ‘[The SDGs Explained for Business](#)’, accessed 12/09/2020.

UN Human Rights Council (2008) ‘[Protect, Respect and Remedy: A Framework for Business and Human Rights, Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises](#)’, UN Doc. A/HRC/8/5, 7 April, accessed 12/08/2020.

Wettstein, F. (2015) ‘Normativity, Ethics, and the UN Guiding Principles on Business and Human Rights: A Critical Assessment’, *Journal of Human Rights*, 14(2), pp.162–182.

# Appendix

## Data collection

In-depth, semi-structured interviews with internal participants from OilGas, CashMoney, and external experts formed the majority of primary data sources for this research. In total, 32 interviews were conducted, of which 8 were in person and 24 were conducted digitally. These comprised 5 interviews with employees at OilGas, 7 with employees at CashMoney, and 20 with external experts.

All interviews took place between October 2018 and October 2019. In addition to interviews, the research drew on extensive observation and document analysis, to develop a more comprehensive and holistic understanding of the phenomena at hand and the context in which the participants operated in (Bowen, 2009).

**Table 1. List of OilGas Internal Participants**

Participant	Role at OilGas
1	Human Rights Senior Advisor
2	Former Legal Counsel for Business and Human Rights
3	Pipeline1 Project Land and Social Manager
4	Head of Social Performance (Former Head of Human Rights Department)
5	Stakeholder Engagement Co-ordinator

**Table 2. List of CashMoney Internal Participants**

Participant	Role at CashMoney
15	Sustainability Reporting Specialist
17	Environmental and Social Risk Advisor
18	Head of Environmental, Social and Ethical Risk and Policy
19	Head of Natural Resources
23	Relationship Manager for Charities (Sustainability)
24	Senior Relationship Manager for Charities (Human Rights)
27	Environmental and Social Risk Advisor

## Appendix

### Data collection

**Table 3. List and description of external expert organisations and their relation to case studies.**

External Expert Organisation	Description		Relation to case studies	Participant
NGO1	Peacebuilding organisation		Carried out human rights assessments for OilGas	P13
NGO2	International peacebuilding NGO		Advocated for communities along Pipeline1 and facilitated dialogue between OilGas and rightsholders, and conducted impact assessments	P14
NGO3	Organisation specialising in responsible business practices		Longstanding advisory role for OilGas focusing on various HRDD projects	P6
NGO12	Peacebuilding organisation		CashMoney (via SectorAgreement1)	P25, P28
NGO14	Financial NGO		Acts as a 'watchdog' NGO on the banking sector (including CashMoney) on human rights and environmental issues	P32
HRI1	Human rights institution with BHR expertise		Carried out human rights assessments and HRIAs for OilGas and advised CashMoney (via SectorAgreement1)	P7, P20
HRDDO1	Independent business and human rights specialists		Contextual extractive expertise focusing on HRDD	P8
HRC1	Ethical consulting firm		Carried out advisory work and human rights assessments for OilGas	P11
HRC2	Organisation specialising in HRIAs and on the ground fieldwork		Contextual extractive/financial expertise	P12
GovtMinistry1	Government Ministry		Facilitated SectorAgreement1 (CashMoney)	P16
HRC3	Large business and human rights consulting organisation		P9 conducted independent HRIA on Pipeline1 for OilGas and HRC3 has an ongoing advisory relationship with the company. Advised CashMoney (via SectorAgreement1)	P9, P22
FinancialAssociation1	Financial association		Advised and acted on financial institutions' behalf (including CashMoney) in SectorAgreement1	P21
HRC4	Small business and human rights consulting organisation		Contextual expertise	P22
NPO1	Management consultancy, focusing on responsible business		Contextual expertise	P10
TradeUnion1	International trade union		CashMoney (via SectorAgreement1)	P26
DDP1	Environmental, social and governance (ESG) ratings and research provider		CashMoney	P31
DDP2	Management consultancy		Advises CashMoney on sustainability issues	P29, P30



## About the author

Dr Marisa McVey is a postdoctoral research fellow at the University of St Andrews' School of Management. Her research focuses on corporate accountability for human rights, HRDD, and the wider application of business and human rights issues. She is also a research fellow at Aston Law School, where she is part of a Leverhulme-funded project on digital privacy. She holds an MRes in Management from St Andrews, an LLM in Business and Human Rights, and LLB from Queen's University, Belfast.



**Contact us**

CA House, 21 Haymarket Yards, Edinburgh, UK, EH12 5BH  
+44 (0) 131 347 0100  
connect@icas.com | icas.com

---

 @ICASaccounting  ICAS – The Professional Body of CAs

ISBN: 978-1-909883-74-1 EAN: 9781909883741