



# **Business and Human Rights**

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**Standard Life**  
Investments

# Standard Life Investments' Business and Human Rights Report

## Foreword by James Featherby

I am delighted that Standard Life Investments have asked me to write a foreword supporting their work reviewing the implementation in the extractives sector of the key aspects of Professor John Ruggie's Guiding Principles on Business and Human Rights (the GPs).

The GPs set out a human rights framework that is new in its comprehensiveness, sophistication and rigour. They form an essential part of doing business in a way that is ethical, sustainable and sensitive to financial and non-financial risk.

I expect the GPs to become the norms against which the Church of England's Ethical Investment Advisory Group (EIAG) examines the management of human rights issues by the companies in which the Church of England national investing bodies hold shares.

The EIAG has long prioritised the extractives sector for engagement because of its significant impact on the communities in which it operates. We have seen many positive steps forward in recent years.

However, Standard Life Investments' research has revealed that the GPs challenge the extractives industry to do more, including those companies who have already worked hard to institute policies and procedures to respect human rights.

And, as the research indicates, it is likely that the extractives sector is ahead of many other sectors in this regard.

My own background is as a partner of a major international law firm. In that role I encouraged companies to engage with and implement the GPs, not least because they will inform the future development of the law and because they will shape the expectations that all stakeholders have of global businesses.

As a representative now of one of the biggest groups of institutional ethical investors in the UK, I am delighted to be able to continue encouraging companies in all sectors to engage with and implement the GPs.

The EIAG will be supportive of companies who commit to this journey. We will challenge those who are not giving the GPs the attention they deserve.

I congratulate Standard Life Investments for doing this work, and thank them for asking the EIAG to support it. I look forward to future assessments indicating substantive progress against the important agenda set by the GPs.



**Chair elect**

Church of England Ethical Investment Advisory Group

# Executive Summary

Investors regularly evaluate, for financial (and, in many cases, ethical) reasons, a variety of risks that could impact on their investments, including the risks that social and environmental issues pose to secure, stable and safe operations. Human rights issues have been some of the most difficult for investors to assess, in part due to a lack of agreement on the nature and extent of the responsibilities of business to prevent or remedy abuses. In this report we look at the new standards for corporate conduct set out in the Guiding Principles for Business and Human Rights (the GPs), which were endorsed by the United Nations Human Rights Council in June 2011 and have gained widespread support. We compare the nature and extent of company policies and procedures in the extractives sectors to the requirements in the GPs in order to assess whether the GPs prescribe significant changes to current practice and which aspects will require the most effort from companies to implement.

The GPs were developed by Professor John Ruggie, who was appointed in 2005 by UN Secretary General Kofi Annan as the Special Representative for business and human rights with a remit to identify and clarify standards of corporate responsibility and accountability on human rights. Professor Ruggie developed the 'Protect, Respect and Remedy' Framework which affirmed the State duty to protect against human rights abuses, the corporate responsibility to respect human rights and the need for greater access by victims to effective remedy. In a subsequent phase of his work Professor Ruggie developed the GPs, which contain practical recommendations on the implementation of the Framework.

The GPs have gained the support of many investors, companies, industry and civil society organisations. This consensus is significant because it constitutes the first widespread multi stakeholder agreement on benchmarks for corporate conduct on human rights. For investors, the importance of having clear and agreed standards on human rights has increased as a result of shifting patterns of global growth that have led to the dominance of emerging economies in world markets. Investors

have moved capital to countries with weaker governance that may be unable or unwilling to conform to international standards of human rights protection, both in their own activities and their regulation of business. Companies operating in such states have been criticised for being complicit in government abuse of human rights. The increased demand for transparency on global corporate activities has heightened the risks for companies dealing with these issues.

The key findings from our research are:

1. Even at the largest extractives companies which have a long history of reporting on social and environmental issues, reporting on human rights issues is often not indicative of actual practice.
2. The human rights policies of the largest extractives companies demonstrate a high level of alignment with the requirements set out in the GPs.
3. The biggest gaps between current company practice and the GP standards are on due diligence. None of the companies in our sample published information showing their practices on due diligence are aligned with all five of the requirements set out in the GPs. Even when we consider additional information provided by companies in correspondence, only half have incorporated four out of five requirements.
4. While more than three quarters of companies have incorporated the grievance mechanisms specified in the GPs, only just over one third do so regularly throughout their operations. Full alignment with the grievance mechanism requirements will require changes to current company practice.

Our findings support the conclusion that the GPs are much more than a consolidation of existing best practice. They constitute a new set of standards for corporate conduct that will require significant change to current practice. Because our study focused on the companies likely to have the highest standards, we expect that companies outside the extractives industries will face even bigger challenges in moving to align their procedures with the GPs.

## Introduction

Over the last decade there has been extensive debate about the responsibilities of business on human rights. The issues discussed include whether companies should operate in countries with repressive governments or military dictatorships that have overthrown democratically elected leaders; what actions by business in dealing with such governments render them complicit in human rights abuses; and what policies and practices companies should adopt so that in their own operations they do not commit or benefit from human rights abuses.

These issues matter to investors. For some there is an ethical imperative to avoid investing in companies whose profits are derived from activities that contribute to or are responsible for human rights abuses. Increasingly, other investors are focusing on the risks that human rights issues pose to long term, sustainable returns. Companies associated with human rights abuses have a higher risk of attracting opposition from consumers, international watchdogs and local communities that can impact on their sales, ability to conduct business and success in obtaining government permits to operate or develop new projects. It is therefore in the interest of companies and investors to have clarity and consensus on the standards to be applied to business conduct in relation to human rights.

The importance of having clear and agreed standards on human rights has increased as a result of shifting patterns of global growth that have led to the dominance of emerging economies in world markets. Investors have moved capital to countries with weaker governance that may be unable or unwilling to conform to international standards of human rights protection, both in their own activities and their regulation of business. The increased demand for transparency on global corporate activities has heightened the risks for companies dealing with these issues.

Many investors have therefore welcomed the work of Professor John Ruggie, who was appointed in 2005 by UN Secretary General Kofi Annan as the Special Representative for business and human rights with a remit to identify and clarify standards of corporate responsibility and accountability on human rights. Professor Ruggie developed the 'Protect, Respect and Remedy' Framework which affirmed the State duty to protect against human rights abuses, the corporate responsibility to respect human rights and the need for greater access by victims to effective remedy. In a subsequent phase of his work Professor Ruggie developed the Guiding Principles for

Business and Human Rights (the GPs), which were endorsed by the United Nations Human Rights Council in June 2011 and have gained widespread support. The GPs contain practical recommendations on the implementation of the Framework. They have gained the support of many investors, companies, industry and civil society organisations. This consensus of support is significant because it constitutes the first widespread multi stakeholder agreement on benchmarks for corporate conduct on human rights.

## Standard Life Investments Study

The aim of our research was to assess the extent to which companies were already aligned with the standards set out in the GPs and to identify the aspects of the GPs which we anticipate will require the greatest focus for future corporate activity. We wanted a baseline picture of company practice as it existed just prior to the endorsement of the GPs by the UN Human Rights Council and their dissemination as best practice standards. We also wanted to see whether the GPs represent a consolidation of existing best practice or will require significant changes to company practice.

We selected a sample of the 16 largest extractives companies among the top 250 constituents in the MSCI Europe Index. Extractives companies were chosen because over the last decade there have been several high profile cases where their activities have been criticised on human rights grounds. Examples include accusations that Royal Dutch Shell has been complicit in abuses committed by the government and military in Nigeria and that Total's presence in Burma has supported the military dictatorship. Exposure to such issues will have given extractives companies the greatest incentive to develop their approach to human rights and they are likely to be in the vanguard. A review of their current practices will illustrate how close the most experienced companies are to being aligned with the standards set out in the GPs and whether the GPs are likely to require companies to make changes to existing practice.

We identified the 12 most significant requirements that the GPs set out for companies. These cover three areas of business practice:

- ▶ five requirements cover the nature and content of company policies in relation to human rights
- ▶ five requirements cover due diligence which should be conducted to identify, prevent, mitigate and account for how businesses address their human rights impacts and

- ▶ two requirements cover remediation, or the actions and mechanisms that should be in place when business causes or contributes to adverse human rights impacts.

We first reviewed information provided in company reports and web-sites in order to assess the extent to which companies disclose information evidencing that they meet the twelve requirements. We then wrote to the companies in our sample to tell them the results of our review and to ask whether they could provide any information about their activities in addition to what was already in the public domain.

We did not seek to verify independently that the processes the companies reported were in place.

## Review of Public Reporting<sup>1</sup>

In our initial review we assessed whether each company had made clear in its public reporting that it has policies and procedures in place that meet the twelve requirements of the GPs. We describe the results of our review in each of the three areas of business practice listed above.

### a. Policy Requirements

The GPs outline five requirements which should characterise company policies on human rights. The policies should

- ▶ be approved at the most senior level
- ▶ be available and communicated internally and externally

- ▶ be supported by employee training

- ▶ stipulate the human rights expectations of personnel, business partners and stakeholders and

- ▶ express a commitment to internationally recognised human rights in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

In assessing whether a company met the requirement to commit to internationally recognised human rights we looked at whether the company had publicly committed to the principles expressed in the ILO core conventions or the Universal Declaration on Human Rights (UNDHR). We also looked at whether a company is a signatory to the UN Global Compact, whose ten principles are derived from the UNDHR, the ILO Declaration on Fundamental Principles and Rights at Work and other international agreements.

We found that of the 16 companies we reviewed, 13 evidence in their public reporting that they meet all of the five requirements. Two companies, Antofagasta and Randgold Resources, publish no information evidencing that they meet any of the five requirements. One company, Tullow Oil, meets four of the five requirements but fails to express a commitment to the principles of any of the international agreements on human rights.

**Table 1**  
Requirements for Statement of Policy – Company compliance as evidenced by public reporting

Company	Approved at most senior level	Is publicly available, communicated internally and externally	Is supported by training for personnel	Stipulates HR expectations of personnel and stakeholders	Expresses commitment to internationally recognized human rights
Anglo American	✓	✓	✓	✓	✓
Antofagasta	No evidence	No evidence	No evidence	No evidence	No evidence
BG Group	✓	✓	✓	✓	✓
BHP Billiton	✓	✓	✓	✓	✓
BP	✓	✓	✓	✓	✓
Cairn Energy	✓	✓	✓	✓	✓
ENI	✓	✓	✓	✓	✓
OMV	✓	✓	✓	✓	✓
Randgold Resources	No evidence	No evidence	No evidence	No evidence	No evidence
Repsol YPF	✓	✓	✓	✓	✓
Rio Tinto	✓	✓	✓	✓	✓
Royal Dutch Shell	✓	✓	✓	✓	✓
Statoil	✓	✓	✓	✓	✓
Total	✓	✓	✓	✓	✓
Tullow Oil	✓	✓	✓	✓	No evidence
Xstrata	✓	✓	✓	✓	✓

<sup>1</sup>Our review of company public reporting took place in April 2011

### b. Due Diligence Requirements

The GPs identify five key aspects of due diligence. Due diligence should be

- ▶ initiated prior to the start of a new activity or relationship
- ▶ include consultation with potentially affected groups
- ▶ continue on an ongoing basis because human rights risks may change over time
- ▶ cover the adverse human rights impacts caused by the company's own or its partners activities and
- ▶ draw on either internal or independent external expertise.

In contrast to the generally high level of alignment with the requirements on human rights policy, none of the 16 companies demonstrated in their public reporting that they satisfy the five requirements on due diligence and only one company, Xstrata, satisfies four

of the five. Two aspects of the due diligence requirements stand out as areas where more work is needed. None of the companies we reviewed reported that they have due diligence processes that cover adverse human rights impacts caused by their own or their partners' activities. Only one, Xstrata, stated that its due diligence process is on-going.

Less than half of the companies say they draw on the expertise of human rights experts. The remaining two requirements in this area are 'conducting due diligence prior to initiating new activities' and 'engaging in consultation with potentially affected groups'. While around half of the companies state that they incorporate these activities, one quarter say they have done so in one or more projects rather than in all operations. We characterised company activity as piloted when the company stated that the practice or procedure had been used in one or more instances but did not clearly state that it is applied routinely in all operations.

Company	Initiated prior to new activity or relationship	Consultation with potentially affected groups	Is on-going, recognizing that HR risks may change over time	Covers adverse HR impacts caused by own or partners activities	Draws on internal and/or independent external HR expertise
Anglo American	✓	✓	No evidence	No evidence	✓
Antofagasta	No evidence	No evidence	No evidence	No evidence	No evidence
BG Group	✓	✓	No evidence	No evidence	No evidence
BHP Billiton	✓	✓	No evidence	No evidence	✓
BP	No evidence	No evidence	No evidence	No evidence	No evidence
Cairn Energy	Piloted	Piloted	No evidence	No evidence	No evidence
ENI	Piloted	Piloted	No evidence	No evidence	✓
OMV	Piloted	Piloted	No evidence	No evidence	✓
Randgold Resources	No evidence	No evidence	No evidence	No evidence	No evidence
Repsol YPF	Piloted	Piloted	No evidence	No evidence	✓
Rio Tinto	No evidence	No evidence	No evidence	No evidence	No evidence
Royal Dutch Shell	No evidence	No evidence	No evidence	No evidence	No evidence
Statoil	✓	No evidence	No evidence	No evidence	No evidence
Total	No evidence	No evidence	No evidence	No evidence	✓
Tullow Oil	No evidence	No evidence	No evidence	No evidence	No evidence
Xstrata	✓	✓	✓	No evidence	✓

### c. Grievance Mechanism requirements

The two main features of the grievance mechanisms outlined in the GPs are

- ▶ companies should have procedures to respond to and remediate any adverse human rights impacts and
- ▶ companies should have operational level grievance mechanisms for those potentially impacted by their activities.

Nine of the companies report that they have implemented both of these requirements although at three companies this has been limited to one or more projects and is not a general practice. There is no evidence that the remaining seven incorporate either of the two key features of grievance mechanisms specified by the GPs.

**Table 3**  
Grievance Mechanisms –Company compliance as evidenced by public reporting

Company	Procedures to respond to and remediate any adverse HR impacts	Operational level grievance mechanism
Anglo American	✓	✓
Antofagasta	No evidence	No evidence
BG Group	✓	✓
BHP Billiton	✓	✓
BP	No evidence	No evidence
Cairn Energy	✓	✓
ENI	No evidence	No evidence
OMV	Piloted	Piloted
Randgold Resources	No evidence	No evidence
Repsol YPF	Piloted	Piloted
Rio Tinto	No evidence	No evidence
Royal Dutch Shell	Piloted	Piloted
Statoil	✓	✓
Total	No evidence	No evidence
Tullow Oil	No evidence	No evidence
Xstrata	✓	✓

### Supplemental Information Provided by Companies

To supplement our analysis we wrote to the companies in our study asking them to confirm that we had located all of the information they had published in relation to human rights. We also offered them the opportunity to provide additional information on aspects of the GPs that they were working on but had not yet publicly reported. To obtain a positive assessment companies had to provide more than a simple “yes” to our questions on whether they regularly followed a particular procedure. Positive assessments were made only when companies cited a general policy or specific examples.

#### a. Policy requirements

We received no supplemental information which altered our analysis of the extent of company alignment with the GPs policy requirements. There were two companies for which we had found no evidence of compliance with any of the five requirements. One of the two,

Randgold Resources, replied to our letter but did not provide supplemental information evidencing compliance with any of the five policy requirements. The other company, Antofagasta, did not respond to our letter. Tullow Oil, for which we had found no evidence of a public commitment to internationally recognised human rights, confirmed that our analysis of its reporting was correct and offered no additional information.

#### b. Due Diligence Requirements

Eleven of the 16 companies we wrote to advised us that they were implementing aspects of the due diligence processes in the GPs that they had not yet reported on publicly. This information significantly increased the level of overall alignment with the GP provisions on due diligence. Based on publicly reported information the highest level of alignment we had found was at Xstrata, which was the only company to evidence compliance with four of the five requirements. Based on the supplemental information provided, an

additional seven companies meet four of the five requirements – Anglo American, BG, BP, Cairn, OMV, Repsol and Royal Dutch Shell.

Three companies, Anglo American, BP and Statoil, provided supplemental information advising that their due diligence process is on-going. Even with this increase the total number of companies that incorporate this requirement is only four. Four companies advised that their due diligence process covers their own or partners’ adverse human rights impacts. Although an increase on our finding that no company reports publicly that it has such an approach, alignment with this requirement remains low.

An additional five companies told us that they regularly conduct due diligence prior to a new activity or relationship. This increased the number of companies with such procedures in place to ten, just under two thirds of our sample.

The final requirement of the GPs in this area is consultation with potentially affected groups. We found from the publicly reported information that four companies regularly engage in consultation and four have used consultation in one or more projects. Based on additional information this changed to eight companies that regularly engage in consultation and four that had done so in pilot projects.

<b>Table 4 Due Diligence Requirements –Changes based on supplemental information highlighted</b>					
<b>Company</b>	<b>Initiated prior to new activity or relationship</b>	<b>Consultation with potentially affected groups</b>	<b>Is on-going, recognizing that HR risks may change over time</b>	<b>Covers adverse HR impacts caused by own or partners activities</b>	<b>Draws on internal and/or independent external HR expertise</b>
<b>Anglo American</b>	✓	✓	✓ Company states this is a general procedure although no public report was found	No evidence	✓
<b>Antofagasta</b>	No evidence	No evidence	No evidence	No evidence	No evidence
<b>BG Group</b>	✓	✓	No evidence	✓ Company states this is a general procedure although no public report was found	✓ Company states this is a general procedure although no public report was found
<b>BHP Billiton</b>	✓	✓	No evidence	No evidence	✓
<b>BP</b>	✓ Company states this is a general procedure although no public report was found	✓ Company states this is a general procedure although no public report was found	✓ Company states this is a general procedure although no public report was found	No evidence	Piloted
<b>Cairn Energy</b>	✓ Company states this is a general procedure and not just applied to one or more projects	✓ Company states this is a general procedure and not just applied to one or more projects	No evidence	✓ Company states this is a general procedure although no public report was found	✓ Company states this is a general procedure although no public report was found
<b>ENI</b>	✓ Company states this is a general procedure and not just applied to one or more projects	Piloted	No evidence	No evidence	✓
<b>OMV</b>	Piloted	Piloted	No evidence	✓ Company states this is a general procedure although no public report was found	✓
<b>Randgold Resources</b>	No evidence	No evidence	No evidence	No evidence	No evidence
<b>Repsol YPF</b>	Piloted	Piloted	No evidence	✓ Company states this is a general procedure although no public report was found	
<b>Rio Tinto</b>	No evidence	No evidence	No evidence	No evidence	✓ Company states this is a general procedure although no public report was found

**Table 4 (Continued)**

Company	Initiated prior to new activity or relationship	Consultation with potentially affected groups	Is on-going, recognizing that HR risks may change over time	Covers adverse HR impacts caused by own or partners activities	Draws on internal and/or independent external HR expertise
Royal Dutch Shell	✓ Company states this is a general procedure although no public report was found	Piloted	No evidence	Piloted	✓ Company states this is a general procedure although no public report was found
Statoil	✓	✓ Company states this is a general procedure although no public report was found	✓ Company states this is a general procedure although no public report was found	No evidence	No evidence
Total	✓ Company states this is a general procedure although no public report was found	✓ Company states this is a general procedure although no public report was found	No evidence	No evidence	✓
Tullow Oil	No evidence	No evidence	No evidence	No evidence	No evidence
Xstrata	✓	✓	✓	No evidence	✓

### c. Grievance Mechanism Requirements

Four companies - BP, Randgold Resources, Rio Tinto and Total - provided supplemental information on grievance mechanisms that was not available in their public reporting. This raised the number of companies with procedures to respond to and remediate any

adverse human rights impacts from nine to 12, although only half of this group require such procedures regularly in all operations. The number of companies with operational level grievance mechanisms rose from nine to 13, with only four of the 13 incorporating them as a routine practice.

**Table 5**  
**Grievance Mechanisms – Changes based on supplemental information highlighted**

Company	Procedures to respond to and remediate any adverse HR impacts	Operational level grievance mechanism
Anglo American	✓	✓
Antofagasta	No evidence	No evidence
BG Group	✓	✓
BHP Billiton	✓	✓
BP	✓ Company states that it has piloted this procedure although no public reporting was found	✓ Company states that it has piloted this procedure although no public reporting was found
Cairn Energy	✓	✓
ENI	No evidence	No evidence
OMV	Piloted	Piloted
Randgold Resources	No evidence	✓ Company states that it has piloted this procedure although no public reporting was found
Repsol YPF	Piloted	Piloted
Rio Tinto	✓ Company states that it has piloted this procedure although no public reporting was found	✓ Company states that it has piloted this procedure although no public reporting was found
Royal Dutch Shell	Piloted	Piloted
Statoil	✓	✓
Total	✓ Company states that it has piloted this procedure although no public reporting was found	✓ Company states that it has piloted this procedure although no public reporting was found
Tullow Oil	No evidence	No evidence
Xstrata	✓	✓

# Summary of findings

## Human rights policy

1. Most of the companies we reviewed report publicly in sufficient detail to evidence that they are already aligned with the five key features identified in the GPs for company policies on human rights.

## Due diligence

2. The five due diligence requirements of the GPs present a greater challenge. None of the companies in our sample published information showing they are aligned with all five and only one reported alignment with four out of five.
3. None of the companies reported publicly that they have due diligence processes covering adverse human rights impacts caused by their own or their partners' activities and only one reported that its due diligence process is on-going.
4. Less than half of the 16 companies reported publicly that they draw on the expertise of human rights experts.
5. Only one quarter of companies reported publicly that they conduct due diligence prior to new activities and consult with potentially affected groups as a regular operational procedure.

6. Just over two thirds of the companies told us that they had adopted aspects of the due diligence requirements even though this information had not been included in their public reporting. Despite this increase in the number of companies that incorporate features of the due diligence requirements, no company incorporates all five and only eight companies incorporate four out of five.

## Grievance Mechanisms

7. Six companies reported publicly that they have adopted both of the GPs two key requirements on grievance mechanisms in all operations. An additional three companies have used both procedures in one or more projects. Seven companies did not evidence adoption of either of these procedures in their reporting.
8. Supplemental information from three companies increased the number of companies that had used remediation procedures in one or more projects to six. The number of companies which had piloted operational grievance mechanisms increased from three to seven. Four companies have no procedures to respond to and remediate adverse human rights impacts and three companies are yet to develop operational grievance mechanisms.

# Conclusions

We sought to understand the extent to which the key requirements of the Guiding Principles for Business and Human Rights (GPs) have already been incorporated into company policy and practice by looking at a sample of extractives companies who as a sector have had the most experience in complex human rights issues.

While the human rights policies of the largest extractives companies demonstrate a high level of alignment with the requirements set out in the GPs, there are clear gaps at most companies on due diligence and grievance mechanisms. Our findings support the conclusion that the GPs are much more than a consolidation of existing best practice. They constitute a new set of standards for corporate conduct that will require significant change to current practice. Because our study focused on the companies likely to have the highest standards, we expect that companies outside the extractives industries will face even bigger challenges in moving to align their procedures with the GPs.

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