

GUIDE FOR DUE DILIGENCE IN HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW IN THE SUPPLY CHAIN



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Technical Secretariat:



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This document is a self-regulating instrument of voluntary application, that serves as a guide to develop business activities in a way that is respectful to Human Rights and International Humanitarian Law. The application of these principles does not imply that *Guías Colombia* certifies the performance of business in Human Rights issues.

The organizations that adhere to *Guías Colombia* do it voluntarily and on their own behalf. The content of this guideline is public and of free access to anyone that wishes to consult and apply it. However, only businesses endorsing the initiative are bound to implement it. As to business associations, their adhesion to *Guías Colombia* does not bind or compromise any of the businesses that are part of it.

Technical Secretariat:
Fundación Ideas para la Paz

Design and Layout:
Ladoamable
www.ladoamable.com

ISBN
 978-958-59761-8-4

Bogotá, Colombia 2017



INTRODUCTION

In a globalized economy, the outsourcing model has improved both business efficiency and economies of scale. Likewise, global supply chains have created important development and employment opportunities in many places. However, the outsourcing model may often give rise to the business supply chain fragmentation. This has made it more complex and challenging to manage the risks and adverse effects on human rights (HRs) and International Humanitarian Law (IHL) by companies, resulting from activities by their suppliers and contractors¹.

The Guiding Principles on Business and Human Rights² establish the responsibility of business to adopt the necessary measures to end or prevent situations that contribute or may contribute to generate negative direct or indirect consequences on human rights. Therefore, even if a business does not directly generate negative impacts on HRs, it should influence its suppliers and contractors to manage any negative impacts on HRs derived from the operations, products or services supplied to the business.

The Guiding Principles on Business and Human Rights also recognize that, although a business may not exercise 100% control over its business partners, its assessment of their performance on HRs cannot ignore the links with suppliers and contractors. Hence, bearing in mind the idea of “*extended producer responsibility*”³, business’ due diligence should take into consideration risks on HRs derived from its supply chain activities and operations, insofar those activities and operations may eventually affect the continuity, reputation and viability of business operations.

Guías Colombia recognizes that companies, when conducting HRs due diligence, should adopt all the necessary measures and efforts to ensure the respect for HRs and the management of any negative impacts caused by suppliers and contrac-

tors. Business enterprises, through a bidirectional⁴ analysis of risks and impacts, should identify situations or activities likely to give rise to HRs negative consequences, thus avoiding any active or passive complicity (actions or omissions), or contributing or participating in any activity that may lead to the infringement of rights.

The purpose of this Guide is to provide orientation to companies for conducting HRs due diligence in their supply chains, based on a responsible and transparent management of their relationships with suppliers and contractors. It also seeks to provide companies with enough elements to manage risks and impacts derived from their business relationships with suppliers and contractors through a preventive approach. This, without ignoring the companies’ power to adopt corrective measures in case the behavior of a supplier or contractor infringes on.

Lastly, this Guide seeks to establish management plans for suppliers and contractors and suggests actions so businesses implement monitoring mechanisms that integrate HRs risks and impacts associated to the supply chain into their own management systems.

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¹ Shift (August 2012). Respecting Human Rights through Global Supply Chains. Shift Workshop, Report No. 2.

² OHCHR (2011). Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. Available at: http://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf&action=default&DefaultItemOpen=1

³ Further information available at: <http://www.oecd.org/env/tools-evaluation/extended-producerresponsibility.htm>

⁴ See the Glossary section.

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SCOPE AND APPROACH

Negative impacts and infringements on HRs may arise in any tier within the supply chain: from direct suppliers and contractors, through the last level of subcontractors. Companies should understand the risks and impacts of their operations derived from their commercial relationships with suppliers and contractors, to fulfil their obligations on HRs matters.

The scope of this Guide covers the relationships with any type of supplier or contractor, from a HR's perspective. However, this Guide recognizes that also IHL issues should be part of the interactions with third parties on security matters. For this reason, as a complement to this Guide, companies are encouraged to implement the Guías Colombia Guide on Security, as a way to conduct their relationship with private surveillance and security service contractors.

Through this Guide, Guías Colombia also recognizes that conducting HRs due diligence along the entire supply chain may be very difficult in practice; particularly, when companies have many suppliers and contractors or when the supply chain is fragmented geographically. For this reason, the scope of this Guide is limited to the following:

- (i) Suppliers and contractors that have direct commercial relationships with the company (tier 1).
- (ii) Suppliers and contractors identified as overriding, given the risks of infringing or impacting HRs.

By prioritizing based on the concept of complicity and influence⁵, the company should identify suppliers and contractors that are critical for business continuity, and which may give rise to HRs risks.

Guías Colombia recognizes, on the one hand, that implementation by companies of this HRs due diligence Guide for the supply chain is progressive and gradual, and it is associated to companies' continuous improvement cycle. On the other hand, it recognizes that, by the time that companies start implementing this Guide under the PDCA cycle, they already have ongoing contractual relationships with suppliers and contractors. Therefore, the Guide invites companies to implement strategies to voluntarily involve those current suppliers and contractors. This way, companies may reduce HRs risks associated to such business partners.

⁵ In conducting HRs due diligence, **influence** is understood as the capability or power that a business enterprise has to affect the course of events or the decisions made by suppliers or contractors, with which it has contractual relationships. **Complicity** is the indirect and substantial participation in activities of suppliers and contractors giving rise to infringement of rights, such as supporting, inducing, covering up, having knowledge and benefiting from abuses. John Ruggie (2008). Clarifying the Concepts of "Sphere of influence" and "Complicity". UN Human Rights Council. May 2008. Available at: <https://business-humanrights.org/sites/default/files/reports-and-materials/Ruggie-companion-report-15-May-2008.pdf>

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GENERAL PRINCIPLES

Companies who are members of Guías Colombia commit to:

1. Promote the respect for HRs and IHL among their suppliers and contractors.
2. Inform the supply chain of the company's HRs commitment and, particularly, to the implementation of this Guide and to Guías Colombia.
3. Determine if suppliers and contractors manage risks and impacts on HRs and IHL based on applicable standards.
4. Promote the implementation of standards on HRs and IHL due diligence in the supply chain, based on the Principles of Action provided in this Guide.
5. Promote the management of risks and negative impacts on HRs and IHL caused by suppliers and contractors.⁶
6. Promote in their supply chains the principle of non-discrimination⁷, and the adoption of affirmative actions leading to the insertion of discriminated population in their operations.

⁶ For instance, see: Deloitte and Argentinian Business Council for Sustainable Development (March 2016). Human Rights Risk Assessment. Available at: <https://www2.deloitte.com/content/dam/Deloitte/ar/Documents/risk/An%C3%A1lisis%20de%20Riesgos%20en%20DDHH%20CEADS%20Deloitte.pdf>

⁷ The principle of non-discrimination is defined as the prohibition of any distinction, exception or preference, based on sex, sexual orientation, gender identity, race, religious beliefs or political opinion, social or economic position, physical or mental condition or civil status, with the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal basis with others, of all human rights and fundamental freedoms. UN Women Training Centre.

ACTION PRINCIPLES

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ACTION PRINCIPLES

Companies who are members of Guías Colombia commit to:

1. PLAN

- 1.1. Define roles and responsibilities within the organization, to manage the risks of HRs and IHL in the supply chain.
- 1.2. Inform suppliers and contractors about the company's policies on HRs, its requirements regarding the respect and promotion of HRs, as well as remedying negative impacts, including the procedures and guidance that the company may have in this regard.
- 1.3. Inform suppliers and contractors of punitive measures⁸ for behaviors and actions infringing HRs, such as the immediate termination of the business relationship.
- 1.4. Inform suppliers and contractors of their responsibility to establish strategies to manage HRs risks.
- 1.5. Incorporate clauses in contracts with suppliers and contractors obliging to respect HRs.
- 1.6. Identify and analyze HRs risks and impacts associated to the company's operations and the link between those risks and impacts, with suppliers and contractors.⁹

- 1.7. Identify critical suppliers and contractors on HRs issues, prioritize the company's HRs due diligence in them.
- 1.8. Analyze risk levels associated with new suppliers and contractors and/or risk levels associated with current suppliers and contractors, on which there is credible evidence¹⁰ of participation in HRs infringements or adverse impacts on" HRs.
- 1.9. Identify measures to address risks resulting from commercial relationships with prioritized suppliers and contractors.
- 1.10. Analyze the performance of prioritized suppliers and contractors in terms of HRs, based on services provided in the past.
- 1.11. Determine whether prioritized suppliers and contractors have implemented mechanisms to manage their HRs risks, and have the required qualifications to do so.
- 1.12. Promote relationships based on trust and constant communication between the company and the supply chain, to facilitate managing HRs risks.

⁸ In this Guide, the term "punitive measures" should be understood broadly, as autonomous measures adopted by organizations in response to the infringement of agreements or regulations, or particular behaviors considered inappropriate according to corporate codes or policies. "Punitive measures" are not administrative, criminal, civil or disciplinary measures, comprised within State responsibilities.

⁹ As appropriate, the task should focus on the impact on children, adolescents and young persons, and the respect and active protection of their rights.

¹⁰ The credibility of evidence is subjective, and the company should determine it after evaluating: type of evidence, legitimacy of the source of information, sufficiency of information, and potential consequences derived from such evidence.

2. DO

- 2.1. Implement mechanisms to exchange relevant information with suppliers and contractors, aimed at monitoring their performance in managing HRs risks.
- 2.2. Contribute to generating or strengthening knowledge through the transfer of tools to suppliers and contractors, enabling them to identify, manage and mitigate HRs risks and impacts, and also to behave according to standards and regulations.
- 2.3. Encourage suppliers and contractors to implement HRs standards to improve their performance and comply with their HRs obligations towards the company, according to their economic sector and capabilities.
- 2.4. Encourage suppliers and contractors to participate in initiatives contributing to improve their performance in HRs; for instance Guías Colombia, the Mining and Energy Committee, the United Nations Global Compact, among others.
- 2.5. Encourage suppliers and contractors to adopt affirmative actions for the inclusion of discriminated population, taking into account the applicable regulations.
- 2.6. Implement a differentiated approach to interact with small- and medium-size enterprises (SMEs) as well as in the enforcement of the requirements for strengthening their qualifications for HRs management. This should allow the company to gradually increase requirements and expectations of conduct of the SMEs.
- 2.7. Implement a grievance and complaints mechanism to enable employees of suppliers and contractors, or

stakeholders impacted by the operations of suppliers and contractors, to file complaints before the contracting company when their operations negatively affect HRs.

- 2.8. Implement measures to address risks arising from commercial relationships with prioritized suppliers and contractors, when the supply chain contributes, supports or conceals:
 - Any form of torture, cruel, inhuman, or degrading treatment.
 - Any form of forced labor or worst forms of child labor, and commercial sexual exploitation of children and adolescents.¹¹
 - Harassment and gender violence.
 - Any form of infringement to the rights of freedom of association and collective bargaining.
 - Any infringement and abuse of HRs, such as corruption, bribery and harm to the environment, among others.¹²
- 2.9. Implement punitive measures when there is evidence of direct or indirect complicity of suppliers and contractors with the actions of illegal armed groups. Complicity includes, but is not limited to, making payments or providing logistic support, information or equipment.

¹¹ Some examples of such measures are: the adhesion to codes of conduct, or the inclusion of contractual provisions explicitly prohibiting the contribution, support or concealment of practices related to forced labor, worst forms of child labor, and commercial sexual exploitation of children and adolescents.

¹² According to the rights set out in the **Ten principles of the UN Global Compact**.

- 2.10. Set out corrective and/or punitive measures to manage cases of discrimination and/or infringement of rights by suppliers and contractors.
- 2.11. Prepare and implement contingency plans in case of infringement of HRs and IHL in the supply chain.

3 VERIFY

- 3.1. Establish and/or adapt its the company's HRs management system, to include to include:
- Indicators for monitoring HRs due diligence and management in the supply chain.
 - Tools for measuring the qualifications of suppliers and contractors to comply with HRs and IHL performance criteria, and other procedures for assessment as required.
 - Mechanisms to assess suppliers and contractors' performance regarding the obligation to respect HRs. These mechanisms may range from self-assessments by the supplier or contractor, to in-situ visits and audits by third parties.
- 3.2. Communicate regarding in a clear manner to suppliers and contractors, the monitoring mechanisms to be implemented by the company in order to determine their HRs performance.
- 3.3. Inform suppliers and contractors of the use that will be given to the information collected through HRs performance indicators.
- 3.4. Implement assessment mechanisms so the prioritized suppliers and contractors avoid engaging in:

- Any form of torture, cruel, inhuman, or degrading treatment.
 - Any form of forced labor or worst forms of child labor, and commercial sexual exploitation of children and adolescents.
 - Harassment and gender violence.
 - Discrimination based on race, age, religious, political, cultural, gender, or disability reasons, among others.
 - Any form of infringement to the rights of freedom of association and collective bargaining.
 - Other infringements of and abuses against HRs, such as corruption and harm to the environment.
 - Direct or indirect support to illegal armed groups.
- 3.5. Provide tools to suppliers and contractors to self-assess their HRs performance, promote awareness about HRs in their own operations, and align their operations with the identified HRs risks.

4. ADJUST

- 4.1. Adapt corporate HRs due diligence processes for the supply chain management, upon identification of opportunities for improvement, thus strengthening HRs management with both suppliers and contractors.
- 4.2. Inform suppliers and contractors the consequences of failing to comply with corporate requirements on HRs or the consequences resulting from continued low performance on the matter.
- 4.3. Agree with prioritized suppliers and contractors that have failed to comply with the company's requirements and expectations on HRs, an improvement plan with clearly specified objectives and timeframes to improve the supplier's or contractor's performance on HRs.
- 4.4. Implement monitoring and assessment mechanisms for the improvement plans agreed upon with suppliers and contractors.
- 4.5. Consider the termination of the commercial relationship with suppliers and contractors that incur in conducts infringing HRs or that fail to comply with the implementation of the agreed improvement plans on HRs.
- 4.6. When suppliers and contractors fail to implement improvement plans, and those suppliers and contractor are crucial for corporate operations, consider as a last resort, contingency measures allowing continuing the commercial relationship in the framework of respect for HRs.

5 GLOSSARY

AFFIRMATIVE ACTIONS

Policies or measures leading to the reduction and elimination of social, cultural or economic inequalities of people or groups traditionally discriminated. Affirmative actions are differential instruments that are crafted to ensure the provision of goods and services in a society characterized by scarcity.¹³

TWO-WAY HRS RISK ASSESSMENT

Risk assessments should be carried out on a two-way basis, that is, they should cover potential and/or actual HRs risks brought about by business operations on its environment and stakeholders and, likewise, they should cover actual and/or potential HRs risks derived from environment conditions that may affect corporate operations. Therefore, a two-way risk assessment encompasses not only risks associated to the company, but also the risks associated to the environment that affect both the company and its stakeholders.

For further information, please refer to the following documents:

- BSR (March 2013). Conducting an Effective Human Rights Impact Assessment.
> https://www.bsr.org/reports/BSR_Human_Rights_Impact_Assessments.pdf
- Deloitte and Argentinian Business Council for Sustainable Development (March 2016). Human Rights Risk Assessment.
> <https://www2.deloitte.com/content/dam/Deloitte/ar/Documents/risk/An%C3%A1lisis%20de%20Riesgos%20en%20DDHH%20CEADS%20Deloitte.pdf>

- Guiding Principles on Business and Human Rights (2011). Guiding Principle No. 23.
> http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_en.pdf
- Shift (March 2015). Human Rights Due Diligence in High Risk Circumstances: Practical Strategies for Businesses. See: Potential sources of heightened risk.
> <https://www.shiftproject.org/resources/publications/human-rights-due-diligence-high-risk-circumstances/>

SUPPLY CHAIN

The supply chain covers all steps needed to offer end consumers goods or services that attend to their needs. The supply chain refers to the network or sequence of processes for exchange or flow of materials or information inside or outside companies, in order to provide, design, manufacture, plan and transform materials, inputs and raw materials, documents and information and people, until the final distribution of such intermediate or end-products and/or services to clients.

CONTRACTOR

An individual or legal entity that supplies goods or services to companies under a contractual relationship.

¹³ Constitutional Court of Colombia. Ruling C-1036/03. Available at: <http://www.corteconstitucional.gov.co/relatoria/2003/c-1036-03.htm> - Ruling T-023/17. Available at: <http://www.corteconstitucional.gov.co/relatoria/2017/T-023-17.htm>

DUE DILIGENCE IN THE SUPPLY CHAIN

Steps conducted by companies to identify and address actual or potential HRs risks through all the the supply chain, to prevent or mitigate any negative consequences.

RESPONSIBLE MANAGEMENT OF THE SUPPLY CHAIN

It is a systemic perspective to address the relation between key processes in the supply chain, from primary suppliers up to the company (backward process). It implies not only the efficient management of flows of information, materials, and people down the supply chain but, also, handling risks and impacts on the environment and society, as well as encouraging good governance throughout the supply chain. A responsible management of the supply chain goes beyond ensuring constant supply of materials and information, and quality of products and services at competitive costs. The supply chain management also seeks to protect the environment and foster stakeholders' social and economic value.

SUPPLY PRACTICES

It is understood as the process forecasting supply of materials or services, namely, what is needed, how much is needed, specifications required, when and where. Supply practices relate to the stock of goods and seek to ensure the balance between the supply and demand for inputs and materials. It focuses on the adequate management of inputs and products acquisition, handling, use and control.

SUPPLIER

An individual or legal entity asked to participate in the provision of goods or services. Suppliers should be enrolled in the company's supplier registry.

SMES

In Colombia, companies are classified as micro, small, medium and large enterprises. Law 590/2000 and its amendment (Law 905/2004), known as Mipymes Law, provides classification parameters. The term SME refers to small- and medium-size enterprises (SME) with assets worth between 500 and 30,000 minimum monthly legal wages.¹⁴

HRS RISK IN THE SUPPLY CHAIN

HRs risk is the probability that corporate activities may bring about one or more negative consequences on HRs. In the supply chain, risks are defined with respect to potential adverse effects resulting from activities throughout the supply chain, including activities developed by suppliers and contractors.

SUBCONTRACTOR

An individual or legal entity with which a contractor has a relationship for the purchase of goods and services.

OUTSOURCING

Corporate practice consisting in transferring certain activities to third parties. This allows companies to focus on the essential efforts required to achieve tangible results. The main characteristic lies on the agility and opportunity in dealing with processes transferred to business enterprises specialized on the subject matter, the reduction of processing times, and the reduction of costs, thus boosting corporate effectiveness and efficiency.

¹⁴ Bancoldex's definition, available at: <https://www.bancoldex.com/Sobre-pymes/Que-es-Pyme.aspx>



GUÍAS COLOMBIA
DUE DILIGENCE IN HR AND IHL IN THE SUPPLY CHAIN

**GUIDING
TOOLS**



GUIDING TOOLS

In addition to the references provided in this Guide, this section offers additional practical guidance for companies to implement HRs due diligence processes in the supply chain.

CONTINUOUS HRS IMPROVEMENT CYCLE IN THE SUPPLY CHAIN

See: *“Practical Guidance for Market Participants in the Gold and Precious Metals Industry”*, from the DMCC.¹⁵ This Guide is an adaptation of the OECD Due Diligence Guidance for Responsible Supply Chains, to the gold industry. It is a five-step framework for conducting due diligence processes in the supply chain of the gold industry.

PRIORITIZATION OF SUPPLIERS AND CONTRACTORS IN DUE DILIGENCE PROCESSES

See: *“Respecting Human Rights Through Global Supply Chains”*, Shift.¹⁶ Sections: “Prioritizing Relationships for Due Diligence” and “Whose Risk is Paramount: that of Businesses or Stakeholders?” This guide indicates that business “should start by assessing the risks from the perspective of potentially affected stakeholders, based on the severity and likelihood of potential impacts”. These risks may be somewhere else beyond direct suppliers and contractors. Companies should prioritize more severe risks and, within those risks, start by those having higher probability of occurrence.

IMPLEMENTATION OF DUE DILIGENCE IN THE COLOMBIAN GOLD INDUSTRY

See: *“Due Diligence in Colombia’s Gold Supply Chain: Overview”*, OECD.¹⁷ This is a baseline assessment of the gold supply chain in Colombia containing an analysis of the gold mining sector in Colombia and the potential to strengthen responsible mineral supply chains as defined in the OECD Due Diligence Guidance for Minerals. It includes a review of the challenges faced by gold mining companies to have responsible supply chains and improve their due diligence.

BUSINESS REPORT AND COMMUNICATION ON HRS MANAGEMENT IN THE SUPPLY CHAIN

See: *“Statement on efforts to combat human trafficking and slavery in our business and supply chains”*, Apple.¹⁸ It describes Apple’s management in 2016 and its “ongoing efforts to combat and prevent human trafficking, slavery, servitude, and forced, compulsory, or involuntary labor in its supply chain and own operations”.

See: *“Modern Slavery and Human Trafficking Statement”*, Unilever.¹⁹ It explains the steps Unilever has taken to prevent, detect, and respond to slavery and human trafficking within its business and throughout its supply chain.

MANAGEMENT OF SPECIFIC RISKS IN THE SUPPLY CHAIN: HUMAN TRAFFICKING

See: *“Addressing human trafficking risk in supply chains: lessons from conflict minerals”*, Deloitte.²⁰ It summarizes experiences of the mineral sector in its supply chain and sets out best practices to address requirements and concerns on human trafficking. This includes, without limitation, forced labor, child labor and slavery, as well as coercion, kidnapping, fraud and labor related exploitation.

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¹⁵ DMCC (April 2012). *Practical Guidance for Market Participants in the Gold and Precious Metals Industry*. P. 2. Available at: [http://www.kalotipm.com/userfiles/file/DMCC-Guidance-Version-1-English-02062016%20\(5\).pdf](http://www.kalotipm.com/userfiles/file/DMCC-Guidance-Version-1-English-02062016%20(5).pdf)

¹⁶ Shift (October 2012). *Respecting Human Rights through Global Supply Chains*. Available at: https://www.shiftproject.org/media/resources/docs/Shift_UNGPssupply-chain2012.pdf

¹⁷ OECD. *Due diligence in Colombia’s gold supply chain: Overview*. Available at: <https://mneguidelines.oecd.org/Colombia-gold-supply-chain-overview.pdf>

¹⁸ Apple (2016). *Statement on Efforts to Combat Human Trafficking and Slavery in Our Business and Supply Chains*. Available at: <https://images.apple.com/supplier-responsibility/pdf/Apple-Combat-Human-Trafficking-and-Slavery-in-Supply-Chain.pdf>

¹⁹ Unilever (2017). *Modern Slavery and Human Trafficking Statement*. Available at: https://www.unilever.com/Images/unilever-slavery-and-human-trafficking-statement-2017_tcm244-498073_en.pdf

²⁰ Deloitte (2016). *Addressing human trafficking risk in supply chains. Lessons from conflict minerals*. Available at: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/risk/us-risk-conflict-minerals-pov.pdf>

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