



UK Export  
Finance

## Note on Human Rights and Social Risks and Impacts

This note should be read in conjunction with UK Export Finance's (UKEF) Policy and Practice on Environmental, Social and Human Rights (ESHR) which sets out our policy commitments, roles and responsibilities in respect of the management of ESHR risks and impacts when we support projects overseas.

### What are social impacts, social risks, and project-related human rights?

The OECD Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the "Common Approaches") defines social impacts and risks as follows:<sup>1</sup>

- **Social impacts** are the impacts on the local communities directly affected by, and on the people involved in, the activities of an existing operation or the construction and/or operation of a project; these social impacts encompass relevant adverse project-related human rights impacts.

Social impacts may include, but are not limited to, labour and working conditions, community health, safety, and security, land acquisition and involuntary resettlement, indigenous peoples, cultural heritage, and project-related human rights impacts, including forced labour, child labour, and life-threatening occupational health and safety situations.

- **Social risk** is the probability of such impacts occurring and the consequence of such an occurrence.

Human rights are defined by international conventions, treaties, and organisations:<sup>2</sup>

- **Human rights** are basic rights and freedoms that all people are entitled to. They are inherent in all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or other status. These rights are all interrelated, interdependent and indivisible. They include the rights contained in the International Bill of Human Rights – meaning the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. They also include the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. International human rights law lays down obligations on States to act in certain ways

<sup>1</sup> <http://www.oecd.org/tad/xcred/oecd-recommendations.htm>

<sup>2</sup> UN Guiding Principles on Business and Human Rights Reporting Framework with implementation guidance (2015); International Business Leaders Forum (IBLF) and International Finance Corporation (IFC) Guide to Human Rights Impact Assessment and Management (HRIAM), September 2011.

or to refrain from certain acts, in order to promote and protect the human rights and fundamental freedoms of individuals or groups.

In its preamble, the Common Approaches recognises that OECD Member Countries and non-Members adhering to the Common Approaches have existing obligations to protect human rights and fundamental freedoms, and that business enterprises have the responsibility to respect human rights, as outlined in the ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (UNGPs).’ Furthermore, in order to achieve the objectives of the Common Approaches, Member Countries should encourage protection and respect for human rights, “particularly in situations where the potential impacts from projects or existing operations pose risks to human rights”.<sup>3</sup>

In this context, the Common Approaches requires Adherent Export Credit Agencies, including UKEF, to take into account “**project-related human rights** impacts” and to consider “any statements or reports made publicly available by their National Contact Points (NCPs)”.<sup>4</sup>

Our approach to managing social and project-related human rights risk, further detailed below, considers potential project-related human rights impacts of a project or existing operation for which export credit support is being sought, together with any final NCP statements the UK company or companies seeking UKEF support has received in respect of their human rights record.

## What are the international standards and instruments related to human rights?

The international legal framework related to human rights is illustrated in Appendix A of this Note, including best practice implementation mechanisms in respect of human rights. This illustrative framework provides the basis for our understanding of existing international standards, conventions and mechanisms that collectively uphold human rights and through which we seek to manage social and project-related human rights risks and impacts.

The framework depicts: the International Bill of Human Rights, including its various declarations, covenants, and core conventions; the UNGPs; and the role of the Office of the United Nations High Commissioner for Human Rights (OHCHR) – to establish a universal ideal of human dignity and support individuals and states to uphold human rights. It also depicts practical tools to assist with management and due diligence of project-related human rights risks and impacts for business and state actors, such as International Labour Organisation (ILO) standards and core conventions, OECD Common Approaches, Equator Principles, and International Finance Corporation (IFC) Performance Standards.

## Our approach to social and project-related human rights risk

Our approach to addressing social and project-related human rights risks and impacts is based on the requirements of the OECD Common Approaches and the Equator Principles. The Common Approaches specifically reference the UNGPs<sup>3</sup>, which describe the role Export Credit Agencies should play, along with other state and non-state entities, to protect against human rights abuses by business enterprises receiving their support, which may include, where appropriate, human rights

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<sup>3</sup> OECD Common Approaches (2016 revision), page 2

<sup>4</sup> Agencies established by adhering governments to promote and implement OECD Guidelines for Multinational Enterprises (<http://www.oecd.org/investment/mne/ncps.htm>); referenced in para 16 of the OECD Common Approaches (2016 revision)

due diligence. The following sections describe our approach to ensuring these obligations are met in a practical and pragmatic way.

Further detail on the UNGPs is provided in Appendix B.

### ***Addressing social and project-related human rights risks pre-issue***

As described in our ESHR Policy, we conduct screening, classification and an ESHR review or due diligence of projects or existing operations where an application for UKEF's support has been received in accordance with the requirements of the OECD Common Approaches and Equator Principles.

Particular attention and consideration is given to social and project-related human rights risks and impacts throughout these screening and due diligence processes. This includes identifying the contextual social and human rights risks relating to an industry or geographic location, and any specific social and project-related human rights risks associated with a project or existing operation under consideration or the relevant entities involved (e.g. the developers or exporters seeking UKEF support). In conducting ESHR due diligence, we benchmark projects or existing operations categorised A or B against relevant international standards, typically the IFC Performance Standards.

The IFC Performance Standards address the majority of rights recognised under the International Bill of Human Rights, with a focus on those most relevant at a project level. Examples of these include: the right to life, the right to freedom of assembly, rights that specifically impact women and minorities, right to non-discrimination. A list of these project-related human rights<sup>5</sup> are mapped against each of the IFC Performance Standards in Appendix C, Table 1. In applying the IFC Performance Standards, these are the human rights which we consider in carrying out our ESHR due diligence of projects or existing operations.

In instances where a business' project activities are unlikely to have a direct impact on the realisation of a human right (i.e. a human right that is not project-related), such human rights may not be explicitly referenced under the IFC Performance Standards. Examples of these include the right to seek asylum from persecution in other countries and the right to be free from retroactive criminal law. An illustrative list of these human rights can be found in Appendix C, Table 2.

Where gaps are identified against the IFC Performance Standards during due diligence, we will work with the relevant parties to ensure that appropriate actions are taken to bring the project into alignment with these Standards – these actions could include further assessment, mitigation, or management measures.

### ***Addressing social and project-related human rights risks post issue***

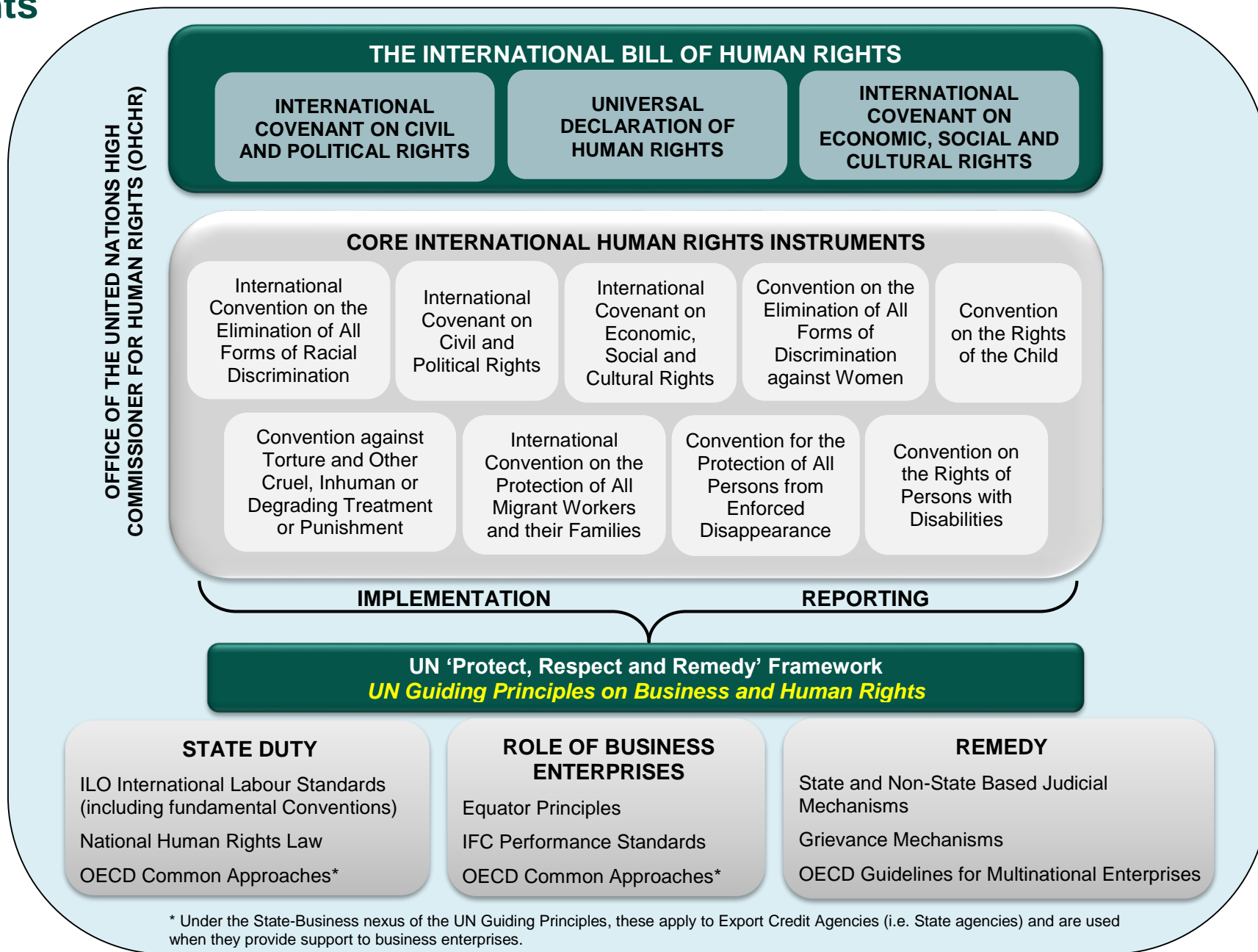
As set out in our ESHR policy, after we provide support to projects and existing operations classified as Category A and B, we undertake appropriate post-issue monitoring in a manner consistent with the ESHR risks and impacts involved. Where specific social or project-related human rights risks or potential impacts are identified, particular attention will be given to these during monitoring. We do this to be satisfied that projects and existing operations are being constructed, operated and, where applicable, decommissioned in line with applicable local and international ESHR standards.

## **UK Export Finance**

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<sup>5</sup> List of Human Rights as detailed in the Guide to Human Rights Impact Assessment and Management" (HRIAM), 2011

# Appendix A: International Legal and Best Practice Framework for Human Rights



## Appendix B: Summary of UN Guiding Principles on Business and Human rights (UNGPs)

The UNGPs have become the authoritative global principles on business and human rights.<sup>6</sup> They provide a framework to enhance standards and practices of business with respect of human rights and are founded on the three pillars of the UN “Protect, Respect and Remedy” framework:<sup>7</sup>

- “Protect” refers to the States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- “Respect” refers to the role of business enterprises to comply with all applicable laws and to respect human rights;
- “Remedy” refers to the need for rights and obligations to be matched to appropriate and effective remedies when breached.

The following section provides a summary and selected extracts of the UNGPs related to the first pillar of the UN framework: the State duty to protect human rights, focused on the State-Business nexus.

### The State Duty to Protect Human Rights and the State-Business Nexus

Under the first pillar the “State duty to protect human rights,” States are required under their human rights law obligations within their territory and/or jurisdiction to protect against abuse by third parties, including business enterprises.<sup>8</sup> Under the State-Business Nexus,<sup>9</sup> States are required to take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence. The UNGPs further clarify the State-Business Nexus as follows:

*“Where States own or control business enterprises, they have greatest means within their powers to ensure that relevant policies, legislation and regulations regarding respect for human rights are implemented. Senior management typically reports to State agencies, and associated government departments have greater scope for scrutiny and oversight, including ensuring that effective human rights due diligence is implemented. (These enterprises are also subject to the corporate responsibility to respect human rights, addressed in chapter II [the second pillar of the UNGP]).*

*A range of agencies linked formally or informally to the State may provide support and services to business activities. These include export credit agencies, official investment insurance or guarantee agencies, development agencies and development finance institutions. Where these agencies do not explicitly consider the actual and potential adverse impacts on human rights of beneficiary enterprises, they put themselves at risk – in reputational, financial, political and potentially legal terms – for supporting any such harm, and they may add to the human rights challenges faced by the recipient State.*

<sup>6</sup> They were unanimously endorsed by the UN Human Rights Council in June 2011.

<sup>7</sup> UN Guiding Principles on Business and Human Rights (2011) – General Principles

<sup>8</sup> UN Guiding Principles on Business and Human Rights (2011) – Pillar I (A) (1) Foundational Principles

<sup>9</sup> UN Guiding Principles on Business and Human Rights (2011) – Pillar I (B) (4) Operational Principles

*Given these risks, States should encourage and, where appropriate, require human rights due diligence by the agencies themselves and by those business enterprises or projects receiving their support. A requirement for human rights due diligence is most likely to be appropriate where the nature of business operations or operating contexts pose significant risk to human rights.”<sup>8</sup>*

## Appendix C: Human Rights as defined by the Guide to HRIAM

**Table 1. Project-Related Human Rights Captured by IFC Performance Standards**

The following table lists human rights as defined by the Guide to Human Rights Impact Assessment and Management (HRIAM), which was developed by the International Business Leaders Forum (IBLF) and IFC in association with the UN Global Compact as a comprehensive framework and methodology for companies committed to assessing and managing the human rights risks and impacts of their business activities. The table also specifies the IFC Performance Standard(s) and the International Bill of Human Rights (IBHR) instrument under which each right is captured.

Human Right, as listed in the Guide to HRIAM <sup>10</sup>	IFC Performance Standards								Reference to the Right within the IBHR <sup>11</sup>
	PS1: Assessment & Management of Environmental & Social risks and Impacts	PS 2: Labour and Working Conditions	PS 3: Resource Efficiency and Pollution Prevention	PS4: Community Health, Safety and Security	PS5: Land Acquisition and Involuntary Resettlement	PS6: Biodiversity Conservation and Sustainable Management of Natural Resources	PS7: Indigenous Peoples	PS8: Cultural Heritage	
Right to life	✓	✓	✓	✓		✓			UDHR 3; ICCPR 6
Right to liberty, and security of person	✓	✓		✓					UDHR 3&9; ICCPR 9
Right not to be subjected to slavery, servitude or forced labour	✓	✓							UDHR 4; ICCPR 8; ILO 29 &105
Right not to be subjected to torture, cruel, inhumane or degrading treatment or punishment	✓	✓		✓					UNHR 5; ICCPR 7
Right to equality before the law, equal protection of the law, non-discrimination	✓	✓		✓	✓	✓	✓		UDHR 7; ICCPR 26; ILO 111

<sup>10</sup> List of Human Rights as detailed in the Guide to HRIAM (2011), page 136

<sup>11</sup> Universal Declaration of Human Rights (UDHR), International Covenant of Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), which taken together form the International Bill of Human Rights (IBHR).

Human Right, as listed in the Guide to HRIAM <sup>10</sup>	IFC Performance Standards								Reference to the Right within the IBHR <sup>11</sup>
	PS1: Assessment & Management of Environmental & Social risks and Impacts	PS 2: Labour and Working Conditions	PS 3: Resource Efficiency and Pollution Prevention	PS4: Community Health, Safety and Security	PS5: Land Acquisition and Involuntary Resettlement	PS6: Biodiversity Conservation and Sustainable Management of Natural Resources	PS7: Indigenous Peoples	PS8: Cultural Heritage	
Right to have access to effective remedies	✓	✓		✓	✓		✓		UDHR 8; ICCPR 2
Right to a fair trial	✓	✓					✓		UDHR 10; ICCPR 14
Right to privacy		GN <sup>12</sup>		GN					UDHR 12; ICCPR 17
Right to freedom of movement		✓			✓		✓	✓	UDHR 13; ICCPR 12
Right to have a nationality		GN							UDHR 15
Right to marry and form a family	✓	✓							UDHR 16; ICCPR 23; ICESCR 10
Right to own property	✓			✓	✓	✓	✓	✓	UDHR 17; ICESCR 15
Right to freedom of thought, conscience and religion	✓	✓					✓	✓	UDHR 18; ICCPR 18
Right to freedom of opinion, information and expression	✓	✓		✓	✓		✓	✓	UDHR 19; ICCPR 19
Right to freedom of assembly	✓			✓					UDHR20; ICCPR 21
Right to freedom of association		✓							UDHR 20; ICCPR 22; ILO 87
Right to social security, including social insurance		✓							UDHR 22; ICESCR 9
Right to work		✓							UDHR 23; ICESCR 6

<sup>12</sup> Referenced within the Guidance Note of the relevant IFC Performance Standard



Human Right, as listed in the Guide to HRIAM <sup>10</sup>	IFC Performance Standards								Reference to the Right within the IBHR <sup>11</sup>
	PS1: Assessment & Management of Environmental & Social risks and Impacts	PS 2: Labour and Working Conditions	PS 3: Resource Efficiency and Pollution Prevention	PS4: Community Health, Safety and Security	PS5: Land Acquisition and Involuntary Resettlement	PS6: Biodiversity Conservation and Sustainable Management of Natural Resources	PS7: Indigenous Peoples	PS8: Cultural Heritage	
Right to enjoy just and favourable conditions of work		✓							UNHR 23&24; ICESCR 7
Right to form and join trade unions and the right to strike		✓							UDHR 23; ICESCR 8; ILO 98
Right to an adequate standard of living (Food, Housing, Water & Sanitation)	✓	✓	✓	✓	✓	✓	✓		UDHR 25; ICESCR 11
Right of protection for the child	✓	✓		✓			✓		UDHR 25; ICCPR 24; ILO 182
Right to health	✓	✓	✓	✓					UDHR 25; ICESCR 12
Right to education	✓	✓		GN					UDHR 26; ICESCR 13 &14
Right to participate in cultural life, the benefits of scientific progress, material and moral rights of authors and inventors							✓	✓	UDHR 27; ICESCR 15
Right of self-determination	✓			✓	✓	✓	✓	✓	ICCPR 1; ICESCR 1
Rights of detained persons to humane treatment				✓					ICCPR 10
Rights of minorities	✓	✓					✓	✓	ICCPR 27

## Table 2. Other Human Rights

The following table lists the human rights defined by the Guide to HRIAM which are not explicitly referenced in the IFC Performance Standards due to their reliance on State action and the fact that they are unlikely to be directly impacted by business activities (although they could be indirectly impacted if the company interferes with or attempts to influence legal due process). They are however listed in the UNGP list of rights (which is referenced in the OECD Common Approaches obligations to human rights) or referenced within the IBHR and are therefore respected by UKEF:

Human Right as listed in the Guide to HRIAM <sup>11</sup>	Covered under the UNGP	Reference to the Right within the IBHR <sup>12</sup>
Right to be free from retroactive criminal law	Yes	UDHR 11; ICCPR 15
Right not to be subjected to imprisonment for inability to fulfil a contract	Yes	ICCPR 11
Right of aliens to due process when facing expulsion	Yes	ICCPR 13
Right to participate in public life	Yes	UDHR 21; ICCPR 25
Right to freedom from war propaganda and freedom from incitement to racial, religious or national hatred	Yes	UDHR 7; ICCPR 20
Right to recognition of the person under law	Yes	UDHR 6; ICCPR 16
Right to seek asylum from persecution in other countries	No	UDHR 14