

GUIDE TO HUMAN RIGHTS IMPACT ASSESSMENT AND MANAGEMENT

Road-Testing Draft, June 2007



Road-Testing Draft, June 2007

The guide is a work in progress, and this draft version has been published to allow companies from different business sectors to test it in practice. The experience gained from the road-testing will be used to further refine the guide. A revised version of the guide will be published by mid-2009. For further information and to receive guidelines for the commenting and road-testing, please contact Caroline Ersmarker at the International Business Leaders Forum: caroline.ersmarker@iblf.org.

Guide to Human Rights Impact Assessment and
Management
Road-Testing Draft, June 2007

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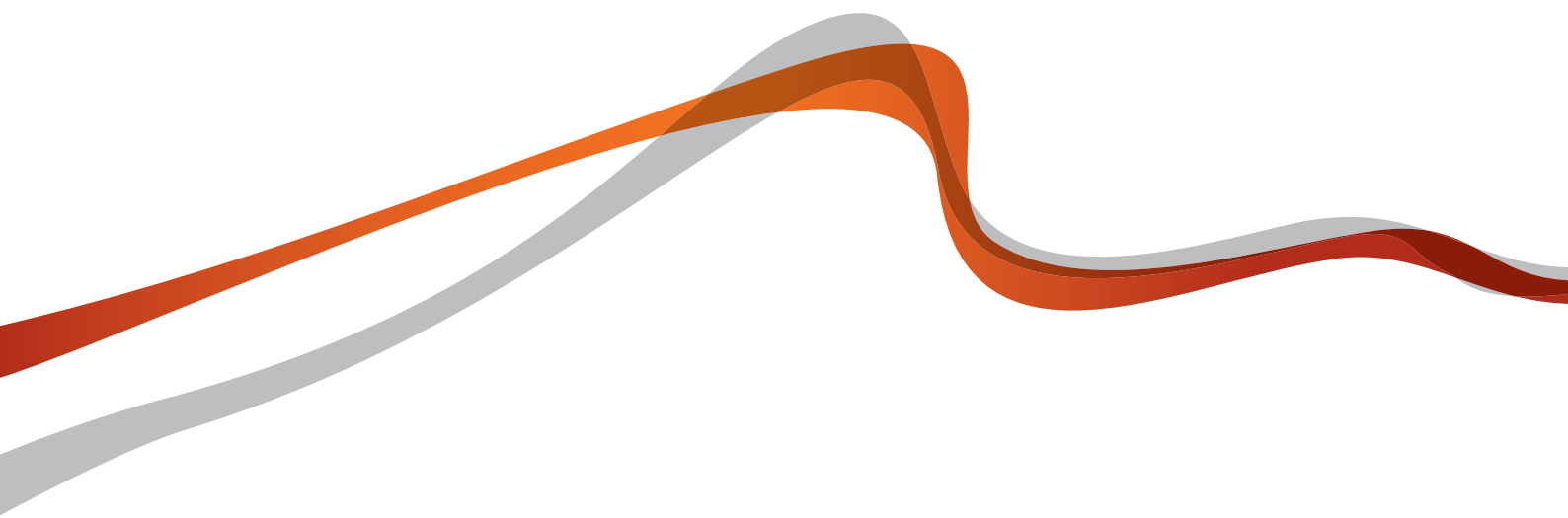
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FOREWORD

by the International Business Leaders Forum

Since the International Business Leaders Forum (IBLF) was established in 1990, the issues of the business response to the rights of workers, communities and customers have been central to its activities. IBLF has worked with companies, civil society organisations, governments and multilateral agencies to understand the role of business as a partner in the protection and enhancement of the lives of all those who are impacted by its operations.

In partnership with other organisations, we have published the following:

- *Human Rights: Is It Any of Your Business?* (2000)
- *The Business of Peace: The Private Sector as a Partner in Conflict Prevention and Resolution* (2000)
- *Business & Human Rights: A Geography of Corporate Risk* (2002)
- *Human Rights: It Is Your Business. (The case for corporate engagement)* (2005).

In the pipeline are a poster to support in-company awareness raising and a guide for business on human rights terminology and its practical application.

The *Guide to Human Rights Impact Assessment and Management* is an appropriate next step in providing companies with a practical process to assess their business risks, enhance their due diligence procedures and effectively manage their human rights challenges.

We are delighted to have partnered with the International Finance Corporation and the United Nations Global Compact Office and to have had access to the wise counsel of our Advisory Group.

IBLF will play an active role in the road-testing phase of the project that now follows, to contribute its knowledge and experience to the process and to share in the learning that will flow from it.

Robert Davies

Chief Executive

International Business Leaders Forum

FOREWORD

by the International Finance Corporation

The business case for human rights is an increasingly important part of the human rights and development dialogues, the understanding of business risk for firms, and the mainstreaming of environment, social and governance factors in investment analysis and firm valuation. The debate is focused not only on the human rights risks facing a company – depending on its line of business, the location of its operations, and the nature of its supply chains and local partnerships – but also on the sphere of influence of a firm's operations beyond its workforce and the potential for the firm to affect the human rights status of host communities and countries.

The above has meant that a number of businesses have incorporated human rights into value statements, risk management matrices, responsibilities of board members, investor relations, and environment and social management practices. However, the human rights issues facing a particular business project will go beyond a company's general commitments to good practice and be influenced by a combination of local issues that need to be considered in detail. There is a call for a process to assess the specific risks an industry or company may face and for measures to manage risk mitigation and desired performance. These pressures are real for the clients and partners of the International Finance Corporation (IFC).

At the corporate level, IFC's Sustainability Policy and Performance Standards explicitly reference the growing business and human rights concern and reference internationally agreed human rights norms in key requirements of the Performance Standards. IFC undertook a human rights analysis of the new Performance Standards as they were being developed. The management response to the *Extractive Industries Review*¹ and the *Performance Standard 4: Community Health, Safety and Security*² constitute IFC's adoption of the Voluntary Principles on Security and Human Rights.

At the operational level, IFC specifically focuses its approach to this debate on practical dialogue and tools that can help a company understand the impact of human rights on its operations, and anticipate how its actions may have adverse consequences on both human rights and its operations.

In this context, the *Guide to Human Rights Impact Assessment and Management* is intended to develop a practical meaning of the debate for firms and financial analysts from an emerging market perspective; assist them in identifying the human rights issues associated with their business; provide them with a tool to manage and mitigate these impacts; and help them seize opportunities to engage beyond compliance requirements.

As the guide is launched for a road-testing phase with companies in various sectors, we welcome feedback on this road-testing version from all involved in this important debate for sustainable development.

Rachel Kyte

Director, Environment and Social Development Department
International Finance Corporation

¹ International Finance Corporation. (2007). *Extractive Industries Review Reports*. <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTOGMC/0,,contentMDK:20306686~menuPK:592071~pagePK:148956~piPK:216618~theSitePK:336930,00.html>.

² International Finance Corporation. (2006, April 30). *Performance Standard 4: Community Health, Safety and Security*. [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_PS4/\\$FILE/PS_4_CommHealthSafetySecurity.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_PS4/$FILE/PS_4_CommHealthSafetySecurity.pdf).

INTRODUCTION TO THE GUIDE

The *Guide to Human Rights Impact Assessment and Management* was developed jointly by the International Business Leaders Forum and the International Finance Corporation in close collaboration with the United Nations Global Compact Office. The guide has three main objectives:

- Acknowledge that companies can and do contribute to protecting the rights of individuals – whether employees or workers, members of communities or customers – through the effective planning, implementation and ongoing management of business projects.
- Provide a process through which business managers, who are unlikely to be experts in the field of human rights, can oversee the identification, assessment and implementation of appropriate management responses to potential human rights challenges to new or evolving business projects, in order to strengthen their company's contribution to human rights protection.
- Enable a company to address the risks for the business of potential allegations of human rights violations, the corporate social responsibility opportunities that active engagement on these issues present and the potential impact of its operations on the rights of individuals and communities.

The rights of the individual and their protection are embedded in a range of international and national laws, principles, conventions, guidelines and practices, and these form the foundation for the guide.

The rights of the individual and their protection are embedded in a range of international and national laws, principles, conventions, guidelines and practices, and these form the foundation for the guide.

However, international understanding of the relative roles and responsibilities of government, business and civil society in protecting human rights continues to evolve; therefore, the guide has been designed to ensure that impact assessments at all times reflect the most recent thinking and consensus on the role of business. Going forward with future revisions of this draft, the publishers will seek to ensure clarity on the linkage between internal corporate policy and national and international legal frameworks.

As no clear indicators yet exist against which to accurately measure potential human rights challenges for business, the guide offers an approach by which a company can bring together information, consultation, opinion and expertise to inform its business judgements and management decisions.

The guide has been designed as part of a company's suite of due diligence and impact assessment tools. The company can implement it as a discrete process or adapt or combine it (in whole or in part) with other processes to give deeper insight into human rights issues. In either case, the company should apply the more stringent standard identified between national and international legal frameworks and internal company guidelines.

The 'Implementing the Human Rights Impact Assessment and Management Process' section contains practical tips to assist in the assessment process.

In some circumstances, web-links might be broken or go out of date, but all the information provided in this publication should nevertheless be available using common search engines.

ROAD-TESTING THE GUIDE

The guide aims to provide companies with a process for assessing human rights impacts and making appropriate management decisions. It has been based on wide-ranging consultations with companies, organisations and individuals with experience in the field who have commented on previous drafts.

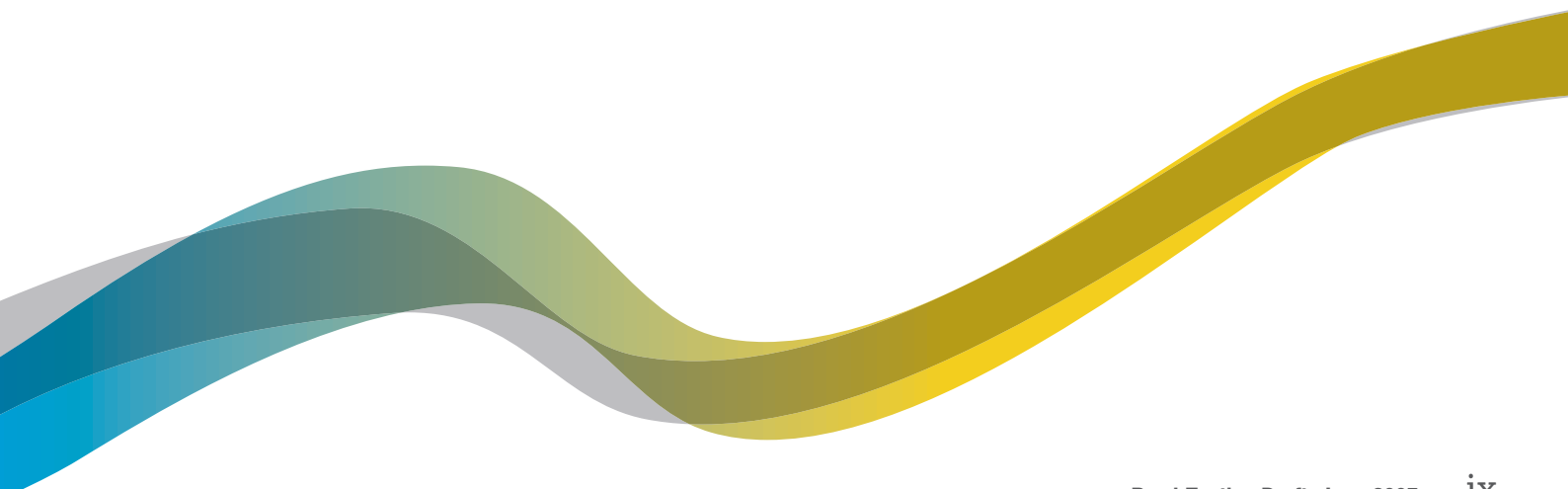
The next step in the development of the guide is to subject it to a period of 'road-testing' in real-life business projects, and it is planned to have at least one company from each main business sector apply the process to a business project over a two-year period beginning in mid-2007. The results of these 'road tests' will be assessed – in terms of both the quality of application and the key lessons learned – and the guide amended and developed as appropriate.

During this process, the guide will be publicly available to any company or organisation that wishes to use or review it. The project team will welcome comments and suggestions for improvement from any interested organisations or individuals.

Guidelines will be produced for the road-testing, commenting, and feedback and evaluation phase of the guide.

The project team plans to make the finally amended version available in both print and electronic form when it is completed in mid-2009.

For further information and to receive guidelines, please contact Caroline Ersmarker at the International Business Leaders Forum: caroline.ersmarker@iblf.org.







PREPARING TO USE THE *GUIDE TO HUMAN RIGHTS IMPACT ASSESSMENT AND MANAGEMENT*

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As stated in the 'Introduction to the Guide', protection of an individual's rights is embedded in a range of international and national principles, law, conventions, guidelines and practices. Despite this protection, human rights violations continue to occur, requiring all sectors of society to be diligent in identifying how, why and where they happen, and what should be done to eliminate or mitigate their impact. Business has an important role to play in this regard, both in how it manages its affairs and in how it can use its influence on others.

Respect for human rights is a fundamental and necessary part of practising good management and being a responsible business. Many companies are integrating human rights considerations into their mainstream business decision making and as a result need to more clearly understand where potential human rights challenges may lie in their evolving or future business projects, rather than reacting to individual challenges as they arise. Issues of corporate responsibility that would rarely have featured on the agenda five years ago are now key topics in boardrooms, with human rights understood and addressed as significant and relevant among these business issues.

Many companies in apparel and footwear, toys and homeware, oil, gas and mining, pharmaceuticals, technology, construction, food and beverage, and motor vehicles have been publicly called to account for alleged employment and other human rights violations. In a number of these cases, the accusations took the companies by surprise, making remedial action all the more challenging. Experience across most business sectors reinforces that in the field of human rights protection, 'prevention is better than cure'. The *Guide to Human Rights Impact Assessment and Management* proposes a more proactive approach to such risks through the application of a business process, thereby helping to reduce the element of surprise.

Understanding Human Rights

Part of the challenge of conducting a human rights impact assessment is to understand the range of rights that define an individual's quality of life and that can so often be threatened. If protecting human rights was only about avoiding the most flagrant violations such as genocide and torture, then the issue would be relatively straightforward. In practice, the issues are much more complex and wide-ranging than that.

Business has a vested interest in respecting and protecting the rights of its stakeholders, and therefore has a responsibility to embed its understanding of and its responses to human rights issues into its core management processes. Well-managed companies will often address a range of business issues that have human rights implications but are called something else – for example, policies and practices in human resources and health and safety. Those companies that are guided by international good practice in governance, community relations and stakeholder engagement will find much of the human rights discussion to be familiar. Where it may be less familiar – in concept or terminology – the basic ethical and moral considerations such as 'dignity', 'non-discrimination', 'transparency' and 'empowerment' that have become part of business language also underpin human rights.

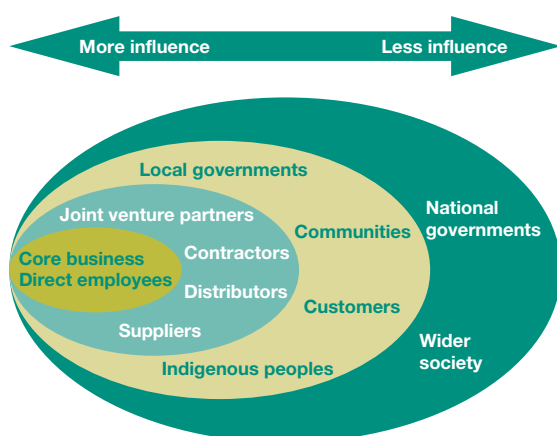


Figure 1: Spheres of Influence

Source: IBLF

Business Spheres of Influence

The extent of control that a company has at each stage of a business project greatly influences its capacity to respond to and manage individual human rights challenges. In many projects, the company will have a combination of direct and indirect control and will be dependent on other parties – for example, business partners and governments – to play their part. In those areas where it does not have direct control, a company will need to assess the level of influence that it can exercise on the behaviour of others.

The spheres of influence, as shown in **Figure 1**, are fourfold:

- **Within the company's core business** – where the company will have most direct control and can put in place the necessary management procedures.
- **Between the company and its business partners** – where the level of direct control will vary depending on the nature of the relationship, but where at least strong influence can and should be exerted to ensure that human rights violations do not arise. Any formal documentation of the business relationship should specifically refer to expected performance on human rights.
- **Between the company and the community in which it operates** – where the level of influence and control will depend on a range of economic, social and environmental factors.

- **Between the company and national government organisations** – where influence is likely to be more applicable than control, and where a range of economic, social and environmental issues will be central to the outcome.

The evolving expectations of stakeholders on what constitutes responsible business practice are requiring companies to look beyond their immediate core operations and direct control. Increasingly, companies have to consider issues along their supply and distribution chains. The greater a company's weight and influence – as an employer, taxpayer or consumer of local resources – the greater will be the expectations of stakeholders.

How Does Human Rights Impact Assessment Differ from Other Impact Assessments?

The concept of impact assessment is now well understood in business planning. Companies are increasingly combining their normal business planning and due diligence procedures – evaluating financial, marketing, supply chain, human resource and legal risks and opportunities – with a range of economic, environmental and social impact assessments, to ensure that management can make fully informed decisions on the viability of business propositions. Such assessments draw on past experience, present realities and future possibilities in creating a complete picture of the circumstances in which the business operation or project will be executed.

Many social, environmental and labour impact assessments do attempt to identify and address human rights challenges as part of a wider set of considerations. For example, a social impact assessment will normally seek to identify individuals or groups that may be disproportionately affected by the business project because of their disadvantaged or vulnerable status, and in many cases, this assessment will be considered adequate. However, in some projects the potential impacts of country and context lead to more complex human rights aspects and demand more in-depth consideration. Additionally, a social impact assessment will typically focus on a

business operation or project's external impacts on communities and customers, whereas a dedicated human rights impact assessment will cover both those external impacts and the internal impacts for the business – for example, labour standards, workplace conditions and health issues. It will also seek to assess the consequences for the company's operations of the human rights challenges identified.

The guide provides the framework for more in-depth studies in a way that will enable it either to stand alone or to be integrated into and inform the social or environmental impact assessments.

Navigating the Responsibility for Human Rights

Ongoing debate about the boundaries of business responsibility for human rights should not cloud the reality that there is a considerable range of responsibility and impact on which there is little or no dispute. Companies can already identify human rights issues that need to be addressed and managed within their operations, and the guide provides a process for doing so, irrespective of the debate. The guide should complement the company's other impact assessment and due diligence processes; it should also reflect the company's core values and commitments, and be informed by appropriate international human rights principles and conventions. The company should always apply the most stringent standard identified during the impact assessment process, whether it be national or international law or internal company policy.

The human rights impact assessment process permits a company to systematically identify, predict and respond to the potential human rights impacts of a business project, having regard to the following:

- The people – those whose rights may be impacted, as well as other interested stakeholders
- The country and locality
- The company's policy and practices, and the business sector in which it operates
- Business relationships within the project
- The project's time frame and lifecycle.

The framework within which a human rights impact assessment is carried out in a business project will address the following questions:

- Who are the people or groups whose rights may be impacted by the project?
- What is the nature of the impacts on their rights?
- How much control can the company exercise over its impacts and the responses to them?
- What alternatives are open to eliminate or otherwise respond to the human rights issues?

The individuals or groups with a valid vested interest in the project (its stakeholders) and in its impacts and its outcomes may include the following:

- Employees (including management) and other workers
- Communities within which the operation is located
- Customers
- Suppliers and distributors
- Investors and financiers
- Business partners
- National and local government organisations
- Multilateral agencies and donors
- Non-governmental organisations.

Some of the stakeholders will share with the company the responsibility for managing the project and therefore its impacts and its outcomes. They in turn may have other stakeholders whose rights are at risk, thereby impacting on the business project. It will be important to take these additional risks into account within the impact assessment.

A complete assessment of opportunities and risks for any business project will demand an evaluation across the fullest possible context – markets, people, supplies, finance, geography, government, society, sector, economy and environment.

Rationale for the Guide

It is expected that companies using the guide will already have addressed or experienced human rights issues and have committed to respecting and protecting human rights within their spheres of influence and control. Some will have in place a statement of human rights policy and practice, or will have made commitments to abide by a code or set of principles that includes human rights. These existing commitments will enable the guide to fit comfortably within other management processes.

The guide has been developed to address a number of circumstances, including the following:

- For companies doing business in any country, recognising that they may face particular challenges in meeting human rights obligations in weak or fragile states
- For new business operations or projects requiring assessment before the project is operational
- For existing operations or projects where the process can be adapted and applied to any stage of the project's lifecycle
- For any type or size of project.

The guide has also been designed for application in a wide range of businesses, since activities in all business sectors entail human rights considerations. However, each business sector faces particular challenges and has its own priorities and emphases.

At the guide's heart is the eight-step impact assessment process. It begins with assembling the information needed, moves on to assessing and managing the human rights risks and challenges, and concludes by monitoring the performance of the business operation or project once it is operational.

More detail on some potentially helpful aspects of a human rights impact assessment and a set of Appendices with reference sources are given in the guide.

Who Will Use the Guide?

The guide has been designed as a tool for company managers and their colleagues who are responsible for evaluating key aspects and impacts of a business project but for whom the issues of human rights are not a core competence. It provides them with a process to systematically address the potential business risks, gives signposts of the stages where human rights expertise needs to be accessed and indicates where that expertise is available.

The Added Value of the Guide

A complete assessment of opportunities and risks for any business project will demand an evaluation across the fullest possible context – markets, people, supplies, finance, geography, government, society, sector, economy and environment. Human rights considerations are an integral element of any such assessment.

Impact assessment as a business methodology is already well tested in other aspects of business – for example, environmental and social considerations. Combined with other planning and due diligence processes, it comprises a comprehensive set of mechanisms to better inform managers on the complex weave of challenges they face and to which they will have to respond.

The purpose of a dedicated human rights impact assessment is to enable a company to identify, understand and evaluate in some detail the potential impact of any of its business projects on the rights of individuals and communities at each stage of the project's development and operation. The guide is a practical tool for business managers and colleagues to bring human rights impact assessment into core business planning and management processes. As well as permitting them to take full account of an issue that is perhaps outside their normal core competence, the guide will support and inform those in management who are charged with carrying out the human rights impact assessment and those who have responsibility

for overseeing the viability and conduct of business projects. The guide can be used in three key ways:

- **As a risk management tool:** to better understand and anticipate the possible human rights impacts of a project, and to systematically manage these impacts.
- **As an engagement tool:** to offer guidelines for engaging stakeholders – e.g., employees and workers, trade unions, individuals, communities, local government – in a structured and methodical discussion about human rights issues around a project.
- **As a decision-making tool:** to gather and evaluate human rights information that will inform the management and monitoring of the business project.

What Is New in the Guide's Methodology?

The guide builds on and complements other human rights tools, guides and impact assessment processes. The additional dimensions that it provides can be summarised as follows:

- **The guide is predictive.** To date, reviews of the human rights impacts of company operations have tended to look back at past performance, assessing events that have already taken place. While the guide recognises the value of past experience, it outlines a process for identifying potential future challenges at each stage of the lifecycle of a business operation or project, thereby encouraging proactive rather than reactive management.
- **The guide is participatory.** The human rights impact assessment process has at its heart engagement with stakeholders, with the objective of arriving at some consensus on identifying human rights challenges and appropriate responses to those challenges. The guide builds the framework for a sound understanding of and response to events as they unfold.
- **The guide links assessment to management processes.** The human rights impact assessment process in the guide can effectively inform and help structure the management and monitoring of a business operation or project from a human rights perspective.

- **The guide permits assessment, not auditing.**

Although an assessment using the process in the guide will benefit from information emerging from any audit or review of a company's performance on human rights issues, the guide is not itself designed to be an audit tool. The priority is to provide a system through which to identify and assess future challenges and risks.

Other Complementary Human Rights Tools

Where appropriate, the guide can be used in conjunction with other human rights tools. For example, companies at an early stage of human rights considerations might use *A Guide for Integrating Human Rights into Business Management* (see next page), published by the Business Leaders Initiative on Human Rights, the United Nations Global Compact Office and the Office of the United Nations High Commissioner for Human Rights, as a useful starting point before undertaking a full human rights impact assessment. The United Nations Global Compact and the Office of the United Nations High Commissioner for Human Rights are also testing a web-based training tool as an introduction to human rights.³

Other tools and guides that complement the *Guide to Human Rights Impact Assessment and Management* are available to business, and include the following:

³ You can access a copy of the *Human Rights and Business Learning Tool* on the United Nations System Staff College website, at <http://www.unssc.org/web/hrb/>.

Human Rights Compliance Assessment

Danish Institute for Human Rights, 2004

(To access the 'Quick Check' and for more information on the full Human Rights Compliance Assessment tool, see http://www.humanrightsbusiness.org/040_hrca.htm)

This self-assessment guide enables a company to assess how it has performed on human rights issues against a set of standards drawn from international experience. The tool contains detailed questionnaires for use in assessing the whole company, individual departments or country operations. The questionnaires include a range of indicators against which to measure the company's policies, processes and performance.

The institute also makes available country-specific studies to assist companies in assessing the wider environment in which they operate or plan to operate. (For summaries of these studies, see http://www.humanrightsbusiness.org/070_country_risk.htm.)

Conflict-Sensitive Business Practice: Guidance for Extractive Industries

International Alert, March 2005

Conflict-Sensitive Business Practice: Engineering Contractors and their Clients

International Alert, September 2006

Conflict-Sensitive Project Finance: Better Lending Practice in Conflict-Prone States

International Alert, September 2006

(http://www.international-alert.org/our_work/themes/project_finance.php)

These guides for the extractive industry and engineering contractors are tools to help identify direct and indirect human rights impacts in conflict zones. The guides look at both the impacts on the company and the impacts that the company can have in those circumstances. They give guidance on such issues as engaging with stakeholders, creating local partnerships, managing resettlement and compensation, dealing with armed groups and arranging for security. The financial sector tool asks financial institutions to establish a list of no-go areas, to work towards improving international standards and to ensure that their clients comply with international and national law and best practice.

A Guide for Integrating Human Rights into Business Management

Business Leaders Initiative on Human Rights, United Nations Global Compact Office and Office of the United Nations High Commissioner for Human Rights, 2005 (<http://www.blihr.org/Pdfs/GIHRBM.pdf>)

This guide has been published primarily to assist companies at an early stage of addressing human rights issues within their business. It outlines an easy-to-follow framework for developing policies and processes across a company and in each of its key disciplines.

Rights & Democracy Initiative on Human Rights Impact Assessment

Rights & Democracy, 2007 (under development)

(For a draft copy of the methodology, as well as other information on the initiative, see http://www.dd-rd.ca/site/what_we_do/index.php?lang=en&subsection=documents&id=1489&page=1&tag=&keyword)

This human rights impact assessment initiative is examining the impact of foreign direct investment on human rights. The methodology comprises a 75-page questionnaire, focusing on interviews with key actors: the government, the corporation, the workers and the affected community. In contrast to the other guides mentioned above, a local non-governmental organisation normally carries out the assessment.

Each of these tools has a particular emphasis and approach. Together they constitute a valuable suite of materials to assist companies in navigating what has become a complex and sometimes confusing field.





IMPLEMENTING THE HUMAN RIGHTS IMPACT ASSESSMENT AND MANAGEMENT PROCESS

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OVERVIEW

The eight-step process in the guide has been designed as a systematic methodology for identifying, evaluating and managing the human rights impacts and consequences of any business operation or project. These steps are designed for a company to do the following:

1. Conduct an initial appraisal on the need for a dedicated human rights impact assessment.
2. Assemble the information required to understand the context within which the project will operate.
3. Determine the current human rights baseline or status quo of the project.
4. Verify the human rights issues through engagement with relevant stakeholders.
5. Assess the actual and potential human rights impacts of the project.
6. Prepare conclusions and recommendations.
7. Eliminate or mitigate negative impacts and promote positive impacts by integrating human rights management into the overall project management plan.
8. Monitor, evaluate and report on the project in operation.

Companies can tailor the process to meet their specific needs or experiment with integrating all or part of the process into other due diligence mechanisms – particularly other impact assessments – to capture synergies and avoid duplication.

INITIAL PRACTICAL CONSIDERATIONS

1. Who Should Conduct the Human Rights Impact Assessment and Management Process?

Responsibility for the impact assessment process needs to be clearly allocated from the outset. As the process moves along, it will be necessary to bring together practical understanding of the company's operations, its legal, regulatory and internal governance requirements, and its role in the local community and wider society. Access to information, experience and expertise in the field of human rights will also be required. Because of the scope of these requirements, the company will need to decide whether it should assign one person or a team to the work, and also whether it has the needed expertise within the company or will source it externally.

Using an Individual Assessor or an Assessment Team

The nature of the work suggests that the company consider a team approach, rather than leaving the whole task to one individual. Using a team would have the added advantage of broadening awareness and understanding of the importance of human rights issues within the business operations.

The assessment team should have access to appropriate senior local and international executives, to ensure that management recognises the assessment process and its outcomes, and gives them their proper place in their decision making. The team should also be able as necessary to tap into the skills of or be represented by colleagues from the operations, human resources, finance, legal and compliance, corporate affairs and corporate responsibility divisions.

In addition to its own corporate skills and experience, the team should have access to wider expertise in the following areas:

- Human rights policy, practice, law and regulation
- Social and environmental considerations
- Business sector practice
- Understanding of local business culture
- Communication and engagement with stakeholders.

This expertise may be available from within the company, but where appropriate, the team should be supplemented by external advisers. The team is, however, likely to be led from within the company.

Using Company Personnel or External Expertise

An early decision is needed on who is to conduct the human rights impact assessment and management process for the company. The choice will lie somewhere between conducting the full process internally and fully contracting it out to a third party. The decision should strike a balance among the following factors:

- Adding work pressure onto already hard-pressed colleagues.
- Keeping the practical realities of the business project at the heart of the process.
- Having human rights expertise and experience readily available.
- Ensuring that the assessment is objective and has some external validation.
- Enhancing the process of embedding human rights considerations into management thinking and practice.
- Building the skills and experience of the management team.

Two Examples

The Use of Independent Assessors

The decision to contract independent third parties to carry out an assessment may depend on the project profile and the company's need to establish or recover trust in its handling of human rights issues. For example, Meridian Gold engaged Business for Social Responsibility, a non-profit business membership organisation, to review its community engagement programme at the Esquel mine in Argentina. A history of poor relations with the surrounding communities needed to be addressed. The company chose to use independent contractors, who published the full, unedited version of their reports as an important step towards re-establishing credibility and providing maximum transparency.

In the case of the massive Baku-Tbilisi-Ceyhan oil pipeline project running through Azerbaijan, Georgia and Turkey, BP and its project partners anticipated that the project could be controversial for a number of reasons – everything from environmental issues, to human rights concerns, to geopolitical risks. The company put in place several systems of external reviews – including an independent external advisory panel – to bring an independent and neutral perspective to the project.

2. When Should the Human Rights Impact Assessment and Management Process Be Applied?

The first step of the human rights impact assessment and management process is to determine whether a full assessment is necessary or whether other due diligence processes will be sufficient. If it is decided that a full assessment is to be made, the earlier in the business planning cycle that it can be carried out, the better. The assessment should continue to feed into the other due diligence processes, generate data to help determine the viability or otherwise of the business project and function as a framework with which to manage the human rights aspects of the project.

The guide can also be adapted for use at a developmental stage of an existing business project or in situations where unexpected human rights challenges are beginning to manifest, providing a rigorous process of evaluation and response.

3. How Can Internal Commitment Be Secured?

The effectiveness of any impact assessment and the extent to which it informs and influences management decisions and practice will in part depend on getting 'buy-in' from colleagues. From the outset, the assessment should be positioned as an integral part of the company's due diligence processes, designed to identify and manage business risks. The company should specify responsibility for the assessment in job descriptions and consider giving incentives to those who will manage the business operation or project, rewarding them for their diligence in contributing to the impact assessment process and in responding effectively to human rights issues that arise when the project is operational. Conversely, a company may need to impose sanctions for failing to adequately participate in the process or to respond to human rights issues in the operation.

THE HUMAN RIGHTS IMPACT ASSESSMENT AND MANAGEMENT PROCESS

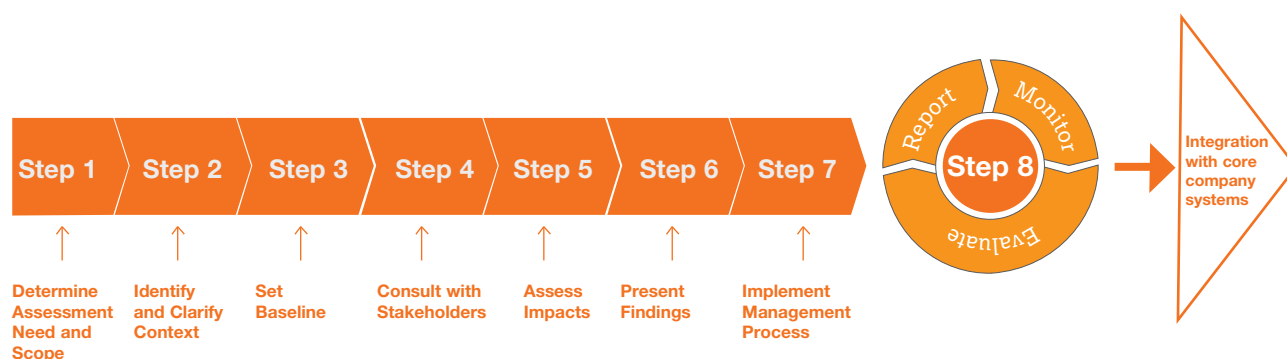


Figure 2: The Eight Steps of Human Rights Impact Assessment and Management

The human rights impact assessment and management process has been designed in eight steps, as summarised in **Figure 2**. The process can be applied to the entire lifecycle or to any stage of a business project, from the initial feasibility study, through implementation, to full operation, and ultimately to completion or closure.

The eight steps of the process are as follows:

1. Determine whether a full human rights impact assessment is needed.
2. Identify and clarify the business project context.
3. Set the baseline – articulate the current local picture and conditions.
4. Consult with stakeholders to verify the human rights challenges.
5. Assess the human rights impacts and consequences.
6. Present the assessment findings and recommendations to management.
7. Implement a human rights management process.
8. Monitor, evaluate and report on the management process.





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STEP ONE:

Determine Whether a Full Human Rights Impact Assessment Is Needed

The eight steps in the human rights impact assessment and management process are designed to permit a thorough investigation and appraisal. Before embarking on what might prove to be a lengthy process, you may be well advised to conduct a limited ‘desktop’ review of the business project and its context, to determine whether a separate human rights impact assessment is necessary, and if it is, what the likely scope and areas of need for the assessment will be.

The key aims of this initial review would include the following:

- To review the human rights laws and conventions within which the business project will operate.
- To understand the company’s experience in similar projects and locations.
- To study relevant country human rights profiles.
- To review Internet-accessible material on similar projects in other companies and sectors.
- To consult with relevant colleagues across the company.

To avoid duplication, the initial review in Step One should refer to any due diligence and impact assessments that have been completed or are under way.

Where adequate information and experience are already available, you can eliminate or shorten the relevant steps in the human rights impact assessment and management process. Alternatively, you can extract elements of it and use these elements to strengthen other social impact or due diligence processes.

Practical Tip #1

Avoid Duplication –

Use Other Due Diligence Processes to Help Collect Relevant Information

- **Legal due diligence** on labour laws, rules for purchasing or leasing property, environmental requirements, concession or licensing issues, and the like – will often bring out human rights issues in relation to, for example, health, education or water, or to the resettlement of communities or individuals as a result of the project.
- **Human resource reviews or labour audits** – may identify a number of key areas relating to the rights of employees on issues such as freedom of association and trade unions, hiring practices, minimum wages and hours of work, and use of labour contracting agencies.
- **Supply and distribution reviews** – may identify the need for diligence in appointing and managing business partners and contractors, to avoid complicity in violating the rights of employees, customers and communities.
- **Other impact assessments** for the project, such as current social and environmental impact assessments – may provide valuable information for the human rights impact assessment – for example, identifying adverse impacts on local communities.



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STEP TWO

Identify and Clarify the Business Project Context

Objective

In Step Two of the human rights impact assessment and management process, you will bring together a range of information on the context in which the business project operates or will operate.

The objective in this step is to build a solid foundation of relevant information, from easily accessible sources, about the overall context in which the business project is being or will be conducted. This information will inform the more detailed human rights impact assessment that follows later in the process. You should be able to draw from many sources of information, including (1) the company's own sources, history and experience; (2) other due diligence processes within the company; and (3) external sources, such as home and host governments, international and local civil society organisations, and industry associations. You will find a comprehensive listing of sources in **Appendix 5: Resource Directory**.

In this step, you will identify five particular aspects:

1. The overall human rights framework and policies within which the company operates around the world
2. The country in which the particular business project will operate
3. The business sector of the business project and the particular human rights risks and challenges of that sector
4. The range of business relationships that are operating or will operate in the business project
5. The key milestones in the business project's lifecycle that may impact or change the human rights risk profile.

Aspect #1: The Human Rights Framework Within Which the Company Operates

Typically, you will need to examine three areas:

- A. Human rights law, including labour law
- B. The company's human right policies and commitments
- C. The human right expectations of third parties.

A. Human Rights Law (Including Labour Law)

A significant body of international and national conventions, laws, regulations and guidelines on human rights have created the overall landscape in which companies, like any other sectors of society, operate. (**Appendix 1** sets out a listing of key international covenants, declarations and other instruments.) The company may already have published its own set of policies and procedures that take account of this landscape, but in any event you need to ensure that you are aware of how comprehensive they are and how applicable they are to the business project in question.

Practical Tip #2:

Understand the Basics of Human Rights

The human rights impact assessment team needs to become familiar with the Universal Declaration of Human Rights and recognise how to apply its key elements in the current context. The assessment will then have a firm foundation and will bring credibility to the team when it engages with key stakeholders or their representatives in the project. The team members do not need to become human rights experts, but understanding the underlying dynamics and application of each right will ensure that their deliberations are well founded.

For example, ‘freedom of association’ may arise as a challenge within the project, with questions such as:

- Does it mean that a company must open its doors to any trade union?
- Does the company have to allow workers time off work to carry out trade union activities?
- Does ensuring freedom of association break any local laws?

In particular, you need to establish which international conventions the host country of the project has signed and ratified, how it has incorporated the principles into its local laws and regulations, and whether any gaps are likely in the protection of human rights provided by the local laws and their application. Any other review that the company is conducting of deficiencies or contradictions in the host country’s legal frameworks –

for example, for employment, tax and banking – should also be taken into account. (For this purpose, you may find that the country profiles available from the Danish Institute for Human Rights⁴ and those available from human rights campaigning organisations are of some help.)

Where gaps in host country commitments are identified, you will need to determine the extent to which national law – or lack of it – and practice might undermine or put at risk your company’s international commitment to respect and protect human rights.

B. Company Human Rights Policies and Commitments

In many cases, the company will already have in place human rights policies, procedures and processes that govern how any business project in which it participates must respect and protect the rights of employees, communities and customers. It may also have made public commitments to implement external codes of conduct that contain human rights undertakings, such as the United Nations Global Compact’s Ten Principles⁵ or the OECD’s Guidelines for Multinational Enterprises.⁶ (See **Appendix 5: Resource Directory** for information on other initiatives with human rights principles.)

You will need to be aware of these policies and commitments from the outset and can use the human rights impact assessment and management process to review how effectively the company is meeting its human rights policies and commitments in practice.

⁴ See the executive summaries of the *Country Risk Assessment Reports*, created by the institute’s Human Rights & Business Project, at http://www.humanrightsbusiness.org/070_country_risk.htm.

⁵ See <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>.

⁶ See http://www.oecd.org/document/28/0,2340,en_2649_34889_23975_32_1_1_1_1,00.html.

Practical Tip #3:

Use the Company's Accumulated Knowledge

Many companies using the guide will have accumulated experience and a history of encountering and responding to human rights challenges within their operations around the world. This experience may have led them to develop policies and processes for more effectively managing any future human rights challenges. The human rights impact assessment team should access this accumulated knowledge – in particular, by doing the following:

- Bringing together all the company's published material on human rights.
- Consulting colleagues who have been involved in other similar business projects, to create a record of actual experience across the business.
- Taking account of any circumstances in the company's previous operations that led to a claim of committing or being complicit in human rights violations, and looking at how the matter was resolved.
- Drawing on any industry guidelines or published experience of other companies in the sector, to identify potential areas of human rights challenges.

C. Human Rights Expectations of Third Parties

A number of international initiatives in recent years have brought the elements of responsible business practice onto centre stage, and how companies respond to these practices is being used to measure the quality of their management. Third-party organisations with legitimate interests in business projects, including investors, lenders, insurers and the like, are requiring evidence that a company is adequately understanding, assessing and managing the full range of financial, environmental and social risks (including human rights). You should be aware of such expectations in the overall assessment of the business project.

Aspect #2: The Country of Operation

Human rights challenges are not just an issue for large multinational corporations operating in developing countries. They are an issue to some extent in every country, and any company, large or small, can have an impact wherever it operates. However, some countries present particular challenges for business operations. Although companies can ultimately choose the countries in which they are prepared to operate, in some circumstances the choice is limited, driven by the imperative to be at or near a source of (often-scarce) supplies or to serve legitimate markets. Whatever the reasons for a particular choice of country, companies need to consider and understand the human rights challenges they face in all countries where they choose to operate.

Although a human rights impact assessment primarily looks at a business operation's actual or potential impacts on the rights of those whom it affects – employees, communities and customers – these cannot in practice be fully understood and assessed without taking account of the national conditions within which the business operates or will operate. The state of governance and the political, social, economic and environmental risks in the particular country will affect the company's ability to operate effectively.

The key priority in considering the country context is to identify and understand (1) any gaps in the law relating to human rights protection; (2) any trends of weakness in the enforcement of the law; and (3) the possible implications of these gaps and weaknesses for the company's business project.

A government's record for upholding human rights will give important signals about any challenges that may stand in the way of a company operating in a manner consistent with its business principles in that country. It will also warn of the potential for a company to be unwittingly implicated or held complicit in alleged human rights violations by government or other parties. (See the section on 'Operating in Controversial States or Weak Governance Zones' in **Appendix 2: Country Issues**.)

The conditions to be assessed in a business project's host country fall into two main areas:

- A. Civil and political rights – the current state of law and its application; likely future developments and human rights experience
- B. Economic, social and cultural rights – current economic conditions; future prospects; community access to enterprise and basic services.

A. Civil and Political Rights

In assessing the host country's performance in civil and political rights, you should record the following information:

- The country's current position on the adherence, application and implementation of international conventions on human rights, and details of local laws and regulations that impact or may impact on human rights
- The prevailing political climate and political stability, the level of tolerance for opposition and dissent, and any recent community conflict
- The relationships between the national and local governments
- The prevailing climate between business and government (including the public sector), with particular focus on the prevalence of corruption
- The current state of labour standards and workplace conditions locally
- Where relevant, the relationship between national and local security forces and the protection of business installations.

Table 1 gives some examples of a country's civil and political rights issues, their possible consequences for a company and the company's possible responses.

Table 1: Examples of Civil and Political Rights Issues

Human Rights Indicator	Potential Consequences for the Company	Potential Company Response
Domination of government by an unrepresentative political elite	Inherent potential in the company's relationship with government for implication in human rights violations and corruption	<ul style="list-style-type: none"> • Include explicit ethical conditions and integrity pacts in government approvals and contracts • Build transparency into all transactions
Well-documented cases of torture or abuse in public detention	Abuse of employees or other business associates questioned about or accused of criminal behaviour in connection with the company's operations	<ul style="list-style-type: none"> • Develop internal processes that protect the company's people and assets • Make clear and verifiable agreements with the authorities for those events where official intervention cannot be avoided • Give employees access to legal counsel
Limited freedom of information and expression	<ul style="list-style-type: none"> • Impaired functioning of a company's operations, giving rise to claims of human rights violations and corruption • Impeded access to accurate and full information from business partners and associates, to the detriment of the business and of relationships 	<ul style="list-style-type: none"> • Ensure that the company's practices and procedures are transparent • Promote freedom of expression within the company's sphere of influence (employees, discussions with communities) • Ensure that the company does not directly or indirectly restrict the free flow of information to and from government
Repression of demonstrations and dissent	<ul style="list-style-type: none"> • Later objections to the project resulting from failure to provide a mechanism for addressing local concerns • Use of less constructive methods, leading to abuses by the authorities 	Create effective channels of communication with communities and their leaders

Government's respect for civil and political rights has direct and beneficial effects for business, just as government's failure to respect these rights creates a poor environment for business management.

B. Economic, Social and Cultural Rights

In the area of economic, social and cultural rights, you will need to take account of the following factors:

- The present state of the local economy and its current phase of growth or recession
- Local management of economic development, and in particular its impact on local communities and their opportunities for enterprise
- The level of corruption in managing development issues
- Local communities' level of access to basic services
- Local attitudes to the economic and environmental challenges of exploiting natural resources
- The presence of excluded or disadvantaged groups on grounds of race, religion or other categories.

Table 2 gives some examples of issues in economic, social and cultural areas.

Table 2: Examples of Economic, Social and Cultural Rights Issues

Human Rights Indicator	Potential Consequences for the Company	Potential Company Response
<i>Labour Issues</i>		
Permissive attitude towards poor labour standards in local factories	Damage to reputation, boycotts by customers and loss of 'licence to operate'	<ul style="list-style-type: none"> • Ensure that labour standards within the supply chain meet acceptable standards and codes of conduct
History of discrimination on the basis of gender or ethnic identity	<ul style="list-style-type: none"> • Limits to the pool of available job applicants • Undermining of harmonious relationships in the workplace 	<ul style="list-style-type: none"> • Ensure employment practices reflect the diversity of the country and community • Respect minority languages and customs
<i>Underdevelopment</i>		
Low marks for country's education system in international reports	<ul style="list-style-type: none"> • Additional costs for the company in finding educated workers or in educating illiterate workers • Added training costs 	Develop long-term strategies for educational improvement through strategic social investment
Health statistics' confirmation of the country's poor health and health care facilities	<ul style="list-style-type: none"> • Absenteeism and disrupted production • Lowering of morale from stigma of communicable disease 	<ul style="list-style-type: none"> • Make health and safety and hygiene an integral part of employment practices and training • Provide basic health care services and advice to employees' families • Give particular attention to issues of women's health

Evidence that the country has managed economic development for the benefit of the population at large, that it has used new resources to improve national services and that communities have benefited from the use and extraction of natural resources will give confidence that the business environment is likely to be positive. Conversely, the misuse of development resources to benefit the few will indicate the possibility of an unstable environment and social instability. These latter circumstances will significantly increase the potential for a company to be held complicit in human rights violations.

Appendix 5: Resource Directory includes sources of country-level human rights information and analysis.

Indigenous Peoples

(IFC's Performance Standard 7)

The International Finance Corporation's Performance Standard 7 (PS 7) requires IFC-financed businesses to address project-related impacts on indigenous peoples. PS 7 aims to ensure that the development process fosters full respect for the dignity, human rights, aspirations, cultures and natural resource-based livelihoods of indigenous peoples, and to respect and preserve their culture, knowledge and practices.

The accompanying Guidance Note 7 contains helpful guidance and reference materials for businesses.

Source: International Finance Corporation. (2006). *Performance Standards on Social & Environmental Sustainability*, pages 28-31. [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_PS7/\\$FILE/PS_7IndigenousPeoples.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_PS7/$FILE/PS_7IndigenousPeoples.pdf)

Cultural Heritage

(IFC's Performance Standard 8)

The International Finance Corporation's Performance Standard 8 (PS 8) contains the requirements for IFC-financed businesses to protect cultural heritage from the adverse impacts of project activities and to support its preservation. PS 8 also requires businesses to promote the equitable sharing of benefits from the use of cultural heritage in business activities.

The accompanying Guidance Note 8 contains helpful guidance and reference materials for businesses.

Source: International Finance Corporation. (2006). *Performance Standards on Social & Environmental Sustainability*, pages 32-34. [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_PS8/\\$FILE/PS_8_CulturalHeritage.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_PS8/$FILE/PS_8_CulturalHeritage.pdf)

Useful information on the human rights performance of individual countries is available from a number of sources, including human rights campaigning organisations (see **Appendix 5** for a list of relevant organisations).

Aspect #3: The Business Sector

Every business sector has the potential to impact human rights – for example, the rights of employees. However, each sector will have issues that are either unique to it or are more prevalent than in other sectors. Tapping into the accumulated experience of the business sector for the particular business project is therefore essential. (**Appendix 3** gives a brief overview of prevalent human rights issues in key industry sectors.)

Example Issues Common to Many but Not All Sectors

Employees and workers' health and safety
 Employment conditions
 Freedom of association
 Child labour and forced labour
 Migrant workers
 Supply chain and distribution chain standards
 Process and product safety
 Traditional rights of communities
 Access to adequate water supplies
 The impact of corruption

You should tap into available information not only from the past experience of the company itself, but also from industry sources – guidelines, published experience, case studies and discussions with other companies that can share relevant experience.

You should also seek information from business sectors other than your own that are likely to have experienced similar challenges.

Sector-Specific Illustrations

The operations of oil, gas and mining companies may directly impact historical access to local communities' land and water supplies, as well as disrupt their traditional livelihoods and their capacity to grow and harvest their food supplies. They can also indirectly impact human rights if public security forces that are protecting the companies' facilities use undue force or unjustly imprison protestors.

Information technology and communication companies can, through the use of their technology, either facilitate freedom of expression or hinder it and in some cases even invade individuals' privacy. They can also impact human rights through their supply chains – both in terms of supplies of precious metals such as coltan that may be sourced from conflict zones and in terms of the working conditions for assembling and disposing of their products.

Agribusiness companies can significantly impact the right to health of their employees if they do not provide employees with appropriate instructions and equipment for applying pesticides or handling chemicals. These companies will offer broader benefits to society if they help increase the supply and variety of healthy and affordable food.

Pharmaceutical companies support the right to health if their products are accessible and patients are enabled to use them correctly. They can infringe this right if they test their products improperly in poorer communities.

Practical Tip #4:

Look for Sector-Specific Guidance

Companies can find guidance and assistance from unexpected quarters on some human rights issues. In addition to the numerous labour codes of conduct, an increasing number of international best-practice guides and codes of conduct for particular business sectors are available – for example:

- The Rainforest Alliance's *Sustainable Agriculture Standard* (http://www.rainforest-alliance.org/programs/agriculture/certified-crops/documents/standards_2005.pdf) sets out extensive labour requirements that farms must meet in order to be certified. This standard is based on relevant ILO and UN human rights and labour rights conventions.
- The Forest Stewardship Council's *Principles & Criteria* (http://www.fscus.org/standards_criteria/) for forest management give certification requirements and guidance for dealing with indigenous peoples' rights in the context of forestry operations.
- Tourism operators and hotels can turn to the World Tourism Organization's *Global Code of Ethics for Tourism* (http://www.world-tourism.org/code_ethics/eng/brochure.htm).
- Internet service providers and software and search-engine production industries can turn to ECPAT's guidance on how to write a model code of conduct dealing with child pornography on the Internet (http://www.ecpat.net/eng/Ecpat_inter/projects/preventing_pornography/prevent.asp) and to the *Joint Investor Statement on Freedom of Expression and the Internet* produced by Reporters Without Borders for investment funds and financial analysts on online freedom of expression (<http://www.rsf.org/fonds-investissement-en.php3>), especially when operating in repressive countries.
- Media companies can look to UNICEF's *Principles for Ethical Reporting on Children* (http://www.unicef.org/media/media_tools_guidelines.html).
- Agribusiness companies can consult the Temporary Labour Working Group's *Code of Practice* (<http://www.lpcode.co.uk/content.asp?link=code>) for guidance on appropriate ways to deal with temporary labour.
- The *Voluntary Principles on Security and Human Rights* (<http://www.voluntaryprinciples.org/reports/2005/index.php>) in the extractive sector contain guidelines on the protection of employees and facilities in difficult environments.

Aspect #4: Business Relationships

Business is a complex weave of short-term and long-term relationships between companies, governments, other organisations and individuals. Any business project is the totality of such relationships, and each of the participating partners contributes to or is affected by its impacts. Tolerance in society for one of the parties to a business project distancing itself from the poor practice of another is fast reducing. Where a business project is a collective venture, the partners will have collective responsibility and face collective consequences when things go wrong. The conduct of each partner will have consequences for the others, so the choice of partners and the framework of standards within which the partners will conduct the business project are vital elements in the ultimate success of the venture. In the case of human rights impacts, the company conducting the assessment should distinguish between those aspects of the business project that are under its direct control and those for which its partners are responsible and that will need to be referred to in the business agreements.

As a result, you should obtain a clear picture of the relationships within the particular business project being assessed. Fundamental questions will include:

- What is the nature of the business relationships within and throughout the business operation or project?
- Does the company retain the majority ownership or overall control of the project?
- If the company has a minority interest, where does the control lie and how are minority interests protected?
- What provisions within the project documentation address the exercise and control of business standards by all participating organisations?
- What mechanisms enable the project partners to respond effectively to human rights and other challenges?
- What due diligence has been carried out on each of the project partners?
- Is your brand name likely to be at risk if the project meets with human rights challenges?

Making due diligence enquiries on potential partners for any business venture is standard procedure in most areas of business. In this regard, you should add human rights considerations to other current financial, technical and compliance assessments. For example, you should enquire into each business partner's human rights record and reputation. Often, this information is already in the public domain and is easily accessible, but it may also emerge later during the stakeholder consultation process (see Step Four).

Three examples of partner types highlight how the nature of relationships can affect impacts and risks:

- A. Joint venture partners
- B. Government as a business partner or shareholder
- C. Contractors.

A. Joint Venture Partners

The company binds itself contractually to its joint venture partners and becomes an integral part of the venture and its impacts. The relationship is intended to be long term, bringing business benefits to all parties that would be difficult to achieve individually. As a consequence, these close contractual relationships can affect the company financially, legally and reputationally.

B. Government as a Business Partner or Shareholder

Worldwide, public-private partnerships are increasingly a feature of infrastructure development, natural resource extraction and harvesting, and essential service provision. Given that governments have the primary responsibility to respect, protect and promote human rights, it could be held that governments should make ideal business partners from a human rights perspective. In reality, however, some governments use their unique power either to ignore legitimate human rights concerns or in the worst examples to allow systematic human rights violations and repress the exercise of human rights. Association with governments that act in this way can expose companies to charges of complicity in human rights violations (see comments on complicity in **Appendix 4: Summary of Human Rights**

Issues for Workers, Communities and Customers).

Even if these issues are not under the direct control of the company, it may experience serious consequences for its reputation, and perhaps legal repercussions.

Practical Tip #5:

Review Potential Government Partners

Study the human rights record, policies, and processes of the potential government partner and any relevant state-owned enterprise. Seek to identify and understand how other projects involving companies and that branch of government have been structured and managed, and whether they have encountered human rights challenges. Consider whether an acceptable relationship with that government is a realistic expectation.

C. Contractors

In addition to the ownership and control of any business operation or project, you should look at other existing contractual relationships. Often, several layers of relationships with other companies and organisations carry out business on behalf of the project principals – for example, supply products or services, undertake construction work, or distribute and represent the company to markets. Despite continuing debate about how far along a complex supply or distribution chain a company can reasonably exercise effective control, it is generally accepted that a high degree of responsibility lies with the principal company.

Construction Contractors

Construction contractors play a central role in the creation and expansion of business operations. They bring with them a range of particular human rights challenges that will either enhance or detract from the perceptions of the project. On the one hand, issues such as poor health and safety standards for workers, disruption of the local community and its infrastructure and services, and the use of substandard materials in construction will have a lasting impact on the project and its operations. On the other hand, making a virtue of applying ‘local content’ conditions by hiring local labour and local subcontractors can cement relationships with key stakeholders.

In conducting a human rights impact assessment, you will need to consider the particular practices and challenges of other business sectors engaged in the business operation or project, since any of their human rights issues will reflect on the project’s outcome.

Practical Tip #6:

Extend Contract Wordings

Increasingly, contract tender documents include statements about the core labour standards expected by international instruments, but often other human rights considerations are not yet included. Companies are advised to extend the wordings of their bidding documents for contractors involved in construction, operation and decommissioning to reflect the companies’ full human rights requirements. Where necessary, sharing information, guidance, training and technology, as well as including incentives, will contribute to managing the project risks.

Primary Contractors and Subcontractors

Other types of contractors carrying out tasks for the company, particularly those on the company's worksites, will also be acting and will be seen to be acting on the company's behalf.

As in the case of construction contractors, the employment relationships and the activities of these operators and their subcontractors may present human rights impacts.

You will need to look at these contractors as an integral part of the project assessment.

As in the case of construction contractors, the employment relationships and the activities of these operators and their subcontractors may present human rights impacts.

Practical Tip #7**Influence and Train Contractors**

In cases where a company is unable to exercise direct control over the activities of contractors and their subcontractors, it will need to be satisfied that they have policies and practices in place to protect the project. Where necessary, training and performance monitoring will help underpin the management of the project.

Suppliers

The extent to which a company can control or influence the behaviour of its suppliers will of course depend on the nature of their business relationship – how much of a supplier's output the company takes and how many other purchasers buy from the same supplier. Some industries may have several layers of subcontracted suppliers with whom the company has no direct relationship. Nevertheless, the buyers are increasingly expected to demand compliance with international standards as part of their purchase contracts, and primary suppliers are being held to account for their subcontractors' policies and practices.

The human rights focus to date has been almost primarily on labour standards and working conditions in supply chains, but other broader human rights issues – for example, the conditions under which natural resources are acquired and processed – are now being considered.

Practical Tip #8:

Create Codes of Conduct or Other Contractual Provisions for Suppliers

Codes of conduct or similar provisions that set out required working conditions, with monitoring systems to verify compliance, are an increasing feature of international business. Working with other companies in the sector and with other stakeholders such as trade unions and appropriate non-governmental organisations to develop, apply and monitor agreed working standards creates a sound platform for improved performance and compliance.

Aspect #5: The Project Lifecycle

Although the initial focus of any impact assessment will be on the current or early human rights impacts of the business project, you need to look beyond these immediate aspects and consider how new challenges may arise as the project moves through its various stages of implementation and operation. Each stage – from planning, through construction, to commissioning and implementation, to operation, later refurbishment and upgrading, to completion or closure – has the potential to affect workers, communities and customers in different ways. To gain as complete a picture as possible, you will need to consider these possibilities with colleagues, to try to identify the full spectrum of the business project's short-term, medium-term and long-term impacts. Better understanding and appreciation of the project's viability, opportunities and risks should prove of value in informing management's decisions at each stage.



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STEP THREE

Set the Baseline – Articulate the Current Local Picture and Conditions

Objectives

Step Three moves from the general picture of the overall context in Step Two to the specifics of the project itself. It seeks to (1) establish a snapshot of the current situation before the business project is implemented, in order to more precisely identify the potential impacts of the project, and (2) focus on the local realities and challenges that will define the business project, its operational development and its management from a human rights perspective.

The essential elements to be addressed in Step Three are as follows:

- The legal and regulatory framework and any other obligations for human rights that will apply in the particular location of the project
- The local cultural context and understanding of local community values
- The prevailing local economic and infrastructural picture, and how the project has impacted or may impact it
- Understanding of the local government's processes and its interactions with the national government
- Any local history of human rights violations or community tensions
- Local attitudes to the role of business generally and to the company in particular.

Practical Tip #9

Understand Local Concerns and Check Local History

You will need to remain aware that national governments may not always accurately represent the concerns of local stakeholders; nor are local concerns always mirrored nationally. Often, local issues and relationships will have as important an impact on a local business project as any national political and social issue. As you bring together the more general country information, pay particular attention to human rights concerns in the locality where the project will actually operate.

Be alert to unsettled claims of human rights abuses or human rights concerns around the project, and if necessary, investigate the incident or incidents. In these circumstances, a company may wish to consider using an external expert to review the situation and to propose potential avenues of resolution.

As well as serving as a baseline for understanding the potential overall impact of the business project, this part of the impact assessment process will inform the development of measurable indicators to monitor and predict any human rights impacts to which the company will need to respond during the project's lifecycle.

It will also be helpful for you to gain some understanding of the current state of relationships between the various sectors of society in the host country or the particular locality of the business project.

Figure 3 suggests the typical roles that each sector of society plays and against which to judge the local situation.



Figure 3: The Roles of the Social Partners

Identifying Human Rights Components in a Baseline Survey

Addressing the prevailing human rights situation in the location of the project will ensure that the human rights impact assessment is a practical, not just a theoretical, support for the team that is managing or will manage the business project. A review only at the national level may overlook key local priorities – for example, in the area of discrimination, how the rights of local minority groups may be under threat. You will need to establish whether the business project is likely to be a welcome development in improving local economic and social conditions, or whether it will risk adding to or bringing new allegations of human rights violations to its host community. You should therefore seek to obtain precise and verifiable local information through other organisations operating in the location and through reliable local community leaders. In this regard, local information may be expressed differently from national or international norms, so you may need to interpret it carefully to determine the human rights implications.

The baseline survey should seek to identify the following:

- **Country and local performance on human rights:** to understand the state of human rights compliance at the time of the assessment, to identify any particular human rights violations or tensions that exist locally and nationally, and to consider the potential implications for the business operation or project.
- **Community and subgroups within the community, with a particular emphasis on vulnerable groups:** to understand which people are already vulnerable, so that the impacts of the business operation or project do not fall disproportionately on them.
- **Community infrastructure and resources:** to understand the local use of facilities, resources, and food and water supplies, so that the construction of facilities will not negatively impact the local population.

- **Discriminatory employment patterns:** to understand the existing patterns of discrimination in the local workplace that the company may need to address in structuring its recruiting and worker training programmes.
- **Land use and ownership:** to identify traditional land use and its impact on legal ownership patterns, so as to establish measures that respect historical rights or to provide appropriate compensation for land the company acquires or uses.
- **Access to basic public services:** to profile the current level of access to public services such as health care and education, and to consider how this access might influence the type and degree of support that the company makes available to its employees, their families and the wider community.
- **Security services:** to survey the record of local public and private security organisations in addressing security situations and acting against protestors and detainees, as a prerequisite to managing the company's relationships with and use of such organisations.

Where alleged human rights violations are prevalent, you should make further enquiries to clarify the following:

- The precise nature of the alleged human rights violations in the project location
- The status of the alleged violations – have they been resolved or are they ongoing?
- The number of alleged violations
- The number of people affected
- The identity of those accused of committing the violations
- The conditions underlying the alleged violations – e.g., inadequate law, lack of enforcement, poor training and lack of oversight of government officials.

You also need to be aware of the concept of 'inherited liability' when taking over an existing business operation. If the company's predecessor has been accused of involvement in alleged human rights violations, the company may – at a minimum – inherit a legacy of local ill will, plus it could also inherit legal accountability for the issues involved, depending on the contractual relations between the predecessor and the company. Even if the company is not held legally liable, it may find that it needs to address and resolve these issues and stabilise the environment before it can take the business project forward.

In addition, you will need to define what exactly is meant by the locality in which the business project will operate. Some communities immediately adjacent to the location of the business operation may validly claim a vested interest in the project, but other communities within a wider area may equally claim that they have a valid interest in events. Consultation with local colleagues and appropriate international and local non-governmental organisations will help you to define the geographic reach of the business project.

Table 3 gives some examples of regional or local governance issues, their possible consequences for a company and the company's possible responses.

Table 3: Examples of Regional or Local Governance Issues

Human Rights Indicator	Potential Consequences for the Company	Potential Company Response
Highly centralised political and economic structure in the country, with revenues from local projects going straight to the centre	Where the project generates significant revenues, such as in extractive industry projects, failure to distribute some of those revenues back to the local level where the project impacts are felt, resulting in resentment that turns into protest and even sabotage	<ul style="list-style-type: none"> • Create employment and enterprise opportunities for local people to benefit directly from the project • Improve the capacity of local enterprise by transferring skills and technology
Substantial ethnic minority in the region, with this group being poorly represented in the local power structure and/or excluded from full participation in the economy	Failure to engage with all local groups, reinforcing a sense of exclusion and undermining social stability and security	<ul style="list-style-type: none"> • Ensure ethnic balance in employment practices, to create opportunity for all sectors of the population • Provide training to improve capacity of potential employees
No local government recognition of the rights of indigenous peoples living in the project area, and national government not a signatory to ILO Convention 169	Risk of accusations of complicity in violations when caught between indigenous peoples' expectations and government indifference	<ul style="list-style-type: none"> • Ensure that respect for the rights of indigenous people is an integral element of the project • Protect sacred lands and traditional livelihoods in addition to support for enterprise and employment opportunities, to create a sense of involvement and mutual benefit
*For C169 Indigenous and Tribal Peoples Convention, 1989, see http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169 .		

Land Acquisition and Involuntary Resettlement

(IFC's Performance Standard 5)

The International Finance Corporation's Performance Standard 5 (PS 5) requires IFC-financed businesses to manage land acquisition and involuntary resettlement properly. IFC-financed businesses are required to avoid, minimise, mitigate and compensate for adverse social and economic impacts from land acquisition or restrictions on affected persons' use of land. PS 5 also aims to improve or at least restore the livelihoods and standards of living of displaced persons, and to provide adequate housing with security of tenure at resettlement sites.

The accompanying Guidance Note 5 contains helpful guidance and reference materials for businesses.

Source: International Finance Corporation. (2006). *Performance Standards on Social & Environmental Sustainability*, pages 18-23. [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_PS5/\\$FILE/PS_5_LandAcqInvolResettlement.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_PS5/$FILE/PS_5_LandAcqInvolResettlement.pdf)

- Are there minority groups in the area?
- If so, what is their overall economic condition compared with that of the general population in the location? In particular, are they living near or below the poverty line?
- How does their rate of employment compare with that of other members of the community?
- Do minority groups have equal access to education and to job training schemes in the area, and do they participate in practice?
- Are all minority group households in one location, and how do their living conditions compare with those of the general population?

The objective is to draw an accurate picture of existing patterns of discrimination against minority groups within the host community. This picture will help to establish priorities within which the project will be managed, with the objective of creating a model of inclusion and diversity that will reduce the tendency for human rights violations. In particular, it should inform future employment policies, the approach taken to land acquisition and the use of local resources.

Child Labour or Forced Labour

Both child labour and forced labour are prohibited under the ILO Declaration on Fundamental Principles and Rights at Work,⁷ and yet these practices persist and are even growing in some areas of the world. Hard facts and figures can be difficult to come by, but it is often possible to identify regional and business sector 'hot spots'. The assessment team should use the country and sector information gathered in Step One to determine if the use of child labour or forced labour is a known problem in the country, especially in their sector. The team could then use this information to cross-check with knowledgeable sources in the local area during the baseline survey, to determine if those risks are in fact a reality in the project area.

Using Local Baseline Information to Focus on the Potential for Human Rights Challenges

Minority Groups

If the country analysis identifies a prevalence of discrimination against minorities, the baseline information should be used to verify whether it is an issue within the project locality. Several questions can be addressed:

⁷ See http://www.ilo.org/dyn/declaris/DECLARATIONWEB.static_jump?var_language=EN&var_pagename=DECLARATIONTEXT.



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STEP FOUR

Consult with Stakeholders to Verify the Human Rights Challenges

Objectives

Step Four seeks to further clarify and verify the general and locally specific impacts and challenges identified in Steps Two and Three, to pinpoint more specifically their potential implications for developing, implementing and managing the project.

Steps Two and Three may have included some level of consultation with relevant stakeholders in putting together the core information, but Step Four takes consultation to a more systematic and detailed level. It ensures that all parties with a legitimate interest in the business project, or impacted directly or indirectly by it, will have the opportunity to contribute to the understanding of its potential human rights impacts, to raise concerns and to participate in identifying solutions to the impacts.

In summary, the objectives of stakeholder consultation are threefold:

- To enable individuals or groups with a legitimate vested interest in the project to bring forward actual or possible human rights challenges and concerns within the business project operations.
- To validate or amend the company's current assessment of the key human rights challenges within the business project.
- To identify possible alternative approaches to the operation of the business project that will eliminate or otherwise respond to the identified human rights challenges in a way that will gain local support.

The Value of Stakeholder Engagement

Stakeholder engagement brings into sharp relief the potential impacts of a business project on employees, communities and customers. For those whose rights might be affected, the opportunity to consult or engage with the company and with other stakeholders is in itself an exercise of human rights, providing (1) the right to freedom of expression – expressing opinions about a business project – and (2) the right to assemble and associate with others of a like mind in commenting on the business project's planning and development.

From the company's point of view, the consultation process comprises a structured methodology through which to clarify the particular human rights issues of concern locally and to identify acceptable and effective measures for addressing them. The consultation process adds local reality to the opinions of human rights experts who will have contributed to Steps Two and Three and will have helped to shape the overall framework for the process.

This stage of the human rights impact assessment and management process also contributes to building longer-term relationships with core stakeholders. While the process is intended to anticipate human rights impacts and enable the company to manage the business project effectively, once the business operations are under way the company can find itself confronting unexpected events that need a response. The building of trust with those who will be impacted by the business project during the assessment and planning stages creates channels of communication to assist in resolving these unexpected future challenges.

Who Are Legitimate Stakeholders?

Identifying those with a legitimate interest in the business project and its impacts is not always easy. It is a basic principle that you should discuss human rights impacts directly with the 'core stakeholders' – those people whose rights may be affected by the company's operations – or with their legitimate representatives. However, you should be prepared to take as flexible a view as possible on the range of consultation that you allow, recognising that this is a consultation process, not a decision-making process. You may hear from individuals or groups that believe they have a legitimate interest that is not immediately obvious to you. If you do, you will need to carefully consider the consequences of eliminating them from the process.

Basic Concept of Core Stakeholders

The World Commission on Dams' Rights and Risks Approach

The core stakeholders will typically include the following:

- Employees – present and future (including management) and workers
- Communities impacted by the business operation
- Potential customers
- Business partners and investors
- National and local government organisations.

The wider community of interests to consider including in the consultation process is some or all of the following:

- Other colleagues across the company
- Trade unions or other worker representative bodies
- Local community organisations and their leaders
- Women – who are often discriminated against because of their gender
- Children and young people who have specific needs and rights and can speak on their own behalf
- Non-governmental organisations
- International development and other multilateral agencies
- Suppliers, distributors and other contractors
- Other companies or business organisations that can share their experience and knowledge
- Public and private security organisations operating in the location of the project
- The media, as a channel of local communication.

Source: To access 'Rights and Risks: An Improved Tool for Decision-Making', see World Commission on Dams. (2000). *Dams and Development: A New Framework for Decision-Making*, page 206. <http://199.236.103.12/sdi/issues/water/WCD%2report.htm>

Figure 4 identifies the usual spectrum of stakeholders.

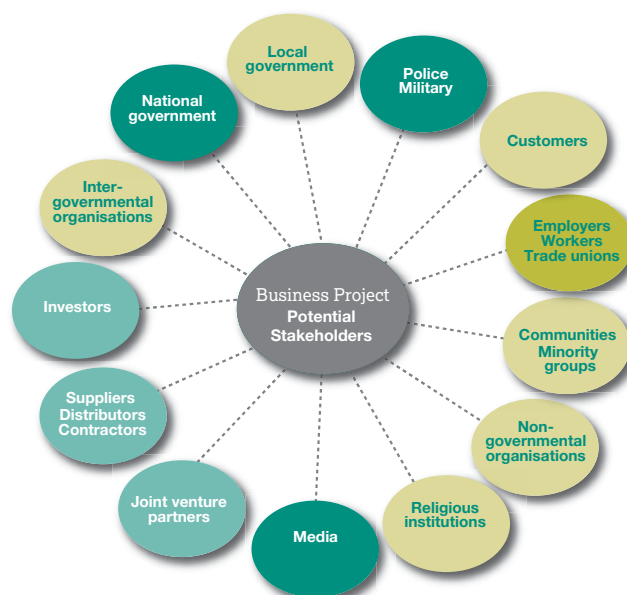


Figure 4: Identifying Legitimate Stakeholders

Are You Talking with the Right People?

Any stakeholder engagement process has the risk of responding to a narrow range of interests that claim to represent a wider constituency than is the reality. Some care is needed to verify the legitimacy of those claiming to represent particular groups or individuals. The impact assessment team can do the verification as follows:

- Identify the full range of legitimate stakeholders.
- Seek out representatives of stakeholders, rather than dealing just with those who come forward and purport to represent them.
- Take the time to gather information about the local, regional and national political situation, to understand the relative authority of those with whom the consultation will take place.
- Clarify with representatives who they represent, require them to substantiate their constituency, show how they gathered their information (e.g., first-hand observation, meetings with workers, local media accounts), indicate when they gathered the information (recently or long ago) and declare any other organisations with which they are affiliated.
- Seek guidance from international non-governmental organisations on suitable local organisations with which to engage.

Source: Adapted from guidance from the Fair Labor Association. For more information, visit <http://www.fairlabor.org/>.

Consulting on Issues

Water Use

The construction of any facility that requires water for its processes has to consider the local community's right of access to water. According to *General Comment 15: The Right to Water* from the UN Committee on Economic, Social and Cultural Rights,* the following aspects are needed:

- Opportunity for genuine consultation with those likely to be affected
- Timely and full disclosure of information on the proposed project and its impact
- Reasonable notice of proposed actions
- Legal recourse and remedies for those affected
- Legal assistance for obtaining legal remedies.

Although these General Comments are written primarily as guidance for governments, they may have relevance for companies.

The human rights impact assessment should identify the nature and extent of impact on local water consumption needs and the alternative ways in which to protect both the needs of the company and those of the local community. Negotiation with the local authority or community leaders on how much water the facility could have and at what hours, and on potential alternative sources for the community or the facility may form part of the process.

*See <http://cesr.org/generalcomment15>.

Consulting with Particular Stakeholder Groups

The following five types of consultation have their particular requirements:

- A. Consulting with employees and workers
- B. Consulting with communities
- C. Consulting with non-governmental organisations
- D. Consulting with other knowledgeable parties
- E. Consulting with vulnerable members of the community.

A. Consulting with Employees and Workers

If no employees or workers are yet in place, as in a greenfield site, hold consultations with local trade unions, non-governmental organisations that support local workers, labour inspectorates and others engaged in industrial relations at the local and national level as 'proxies' until they are in place.

If employees and workers are in place, hold consultations with them and their representatives, but where appropriate, also consult with other organisations to ensure a rounded picture of the issues.

Where there are prohibitions or restrictions on the activities of worker representatives, consider other avenues for structured discussions, such as workers' committees, to discuss workplace relations and working conditions.

B. Consulting with Communities

Bear in mind that it will often take time to build sufficient trust between the company and the community to enable discussions on human rights and other project issues to be constructive and mutually helpful.

It is important to identify legitimate community leaders with whom to engage, particularly in non-urban settings.

C. Consulting with Non-Governmental Organisations

Engage early with any local human rights organisations that can help build an understanding of the national and local human rights landscape and that may also be able to translate local concerns into human rights terms, and similarly, human rights terms into local language.

Consider engaging a broader range of organisations, such as women's groups, ethnic minority groups, development organisations and children's groups, to ensure that particular local concerns are identified.

D. Consulting with Other Knowledgeable Parties

Seek out other knowledgeable individuals, national human rights commissioners or ombudspersons, local government officials, labour inspectorates, lawyers and journalists, as they will likely have relevant information on human rights in the country, region or locality. These parties may in particular be able to give valuable input on the pattern of human rights concerns in the area, along with their causes – for example, inadequate law, poor law enforcement, countervailing cultural practices and lack of resources.

E. Consulting with Vulnerable Members of the Community

In some circumstances, the business project may be located in or near a community that is home to particularly vulnerable or excluded groups.

Disadvantaged or vulnerable groups are likely to require a more sensitive approach, since they may be harder to identify, the discussions may take longer, they will require particular cultural sensitivity and their interests may be resisted if other local leaders claim to speak for all members of the community. To ensure these groups have a say, it is suggested that you do the following:

- Pay particular attention to ensuring that these vulnerable or excluded groups are represented in the discussion and are given appropriate opportunity to express their concerns.

- Identify individuals and groups that may be differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status. This status may stem from an individual's or group's race, colour, gender, language, religion, political or other opinion, property or birth. The company should also consider factors such as culture, health status, physical or mental disability, poverty or economic disadvantage, and dependence on unique natural resources.
- Create 'safe spaces' for discussion, and draw on local expertise that you can rely on to help you think through how to word questions, who is best suited to interview the local community or workforce, and which non-verbal clues will be most useful in interpreting the interview process.

Some Particular Considerations

In conducting stakeholder discussions, you will find that the understanding and expression of human rights issues will differ between stakeholder groups and between locations. You may therefore need to adapt the approaches you take with different groups to ensure mutual understanding.

It is helpful to keep the following points in mind before you start the consultation:

- Stakeholders in the local community may not be fully aware of current international expectations on respecting and protecting human rights. They may also not easily distinguish between the rights of different stakeholders, and they may not recognise that their rights may already be at risk.
- Some stakeholders will seek to include for discussion issues that are outside the normal definition or understanding of human rights – for example, they may raise environmental or corruption issues along with complaints about human rights.
- Some locations have particular political sensitivity to the use of the term 'human rights', and it may be advisable to concentrate any discussion on the issues that lie behind the term.
- It is usually more straightforward to ask for information about economic, social and cultural

rights (such as about food sources) than to ask for information about civil and political rights (such as whether there is censorship).

In addition, you will need to be aware of the possible consequences of embarking on the consultation process:

- Raising the topic of human rights in connection with a business project will inevitably bring some stakeholders to reflect for the first time on their reaction to the location of a new business project in their area.
- Raising the topic of human rights may also challenge local relationships within a workplace, within a community, and within a local, regional or national government, and the process may therefore be resisted because it challenges the status quo.
- By consulting local representatives, the company may have an impact on traditional local hierarchy (e.g., by giving an implicit authority that may not have applied before).
- Inviting the expression of human rights concerns in some locations, particularly in relation to the actions of authorities, could put individuals at risk. You must avoid putting workers, community members, non-governmental organisations' staff or others in jeopardy as a result of your inquiries or discussions.

Conducting Successful Consultations

From the outset, transparency of information and openness of discussion are paramount in developing constructive and trusting relationships with stakeholders. In order to facilitate a process and to give stakeholders an opportunity to discuss any concerns with a third party, you may consider using the services of an intermediary to convene and facilitate discussion.

Conducting a consultation process successfully requires planning ahead for the following aspects:

- A. Developing a workable process
- B. Selecting the right approach
- C. Asking effective questions
- D. Managing the stakeholder consultation information.

A. Developing a Workable Process

Effective consultation focuses on the human rights concerns and adverse impacts, and the proposed measures and actions to address these.

You should begin consultation early in the project development process and then carry it out on an ongoing basis as concerns and impacts arise. Where possible, you should provide information to the relevant stakeholders before the project construction commences.

In all cases, you should undertake the consultation in an inclusive and culturally appropriate manner. You should also tailor the consultation to the language preferences of the affected communities, and to their decision-making process.

The following guidelines will help you shape the discussion with each stakeholder group:

At the start of the consultation

- Clearly outline the purpose and the limits of the consultation.
- Accurately describe the business project, including the purpose, nature and scale of the project, the duration of the proposed project activities, and any risk to and potential impacts on the stakeholder group.
- Disclose relevant and adequate information, including draft documents and plans.

During the consultation

- Clarify the potential scale of impact of any human rights challenges. For example, how many people are likely to be impacted?
- Explore the issue of potential human rights impacts at each key stage of the project lifecycle.
- Invite the stakeholder group to:
 - Share their positive and negative reactions to the business project.
 - Identify any circumstances where they consider that their rights or the rights of others might be at risk.

- Suggest steps that might eliminate or effectively respond to the human rights impacts.
- Suggest other groups that might be consulted to good purpose.

At the end of the consultation

- Express your appreciation to the stakeholders for participating in the consultation.
- Undertake to have further discussions as necessary, and give appropriate feedback on subsequent management decisions that affect the stakeholders' interests.

Informed participation involves organised and often iterative consultation, leading to the company incorporating into its decision-making process the views of the affected communities on matters that affect them directly, such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues.

In many cases, the issues at stake may be complex, and meetings may be needed to build confidence, overcome established perceptions and do justice to valid concerns. In fewer cases, it may be possible to achieve the objectives of the consultation in one session.

Completion of the initial stakeholder engagement process should provide a picture that can inform the next stage of the human rights impact assessment. Either the results will confirm your expectations – identified during Steps Two and Three – or they will raise issues requiring further thought or investigation. In either event, you should arrange for follow-up meetings with the stakeholders to do the following:

- Feed back the company's understanding of their concerns and the way that the business project now reflects or does not reflect these concerns.
- Give information and assurances on remedies proposed.
- Seek additional information or clarification.

B. Selecting the Right Approach

A range of methodologies is available to you for carrying out the engagement process. Some options are:

- One-on-one interviews – which ensure confidentiality
- Open discussion with groups of community representatives and other stakeholders
- Public hearings
- Workshops
- Expert panels
- Taskforces and advisory committees
- Open house or tours of the business operation or project and its site
- Focus groups
- Questionnaires
- Surveys and polling
- Document reviews.

Where illiteracy is a barrier for legitimate stakeholders, you may find value in using a variety of picture-drawing and story-telling exercises to ensure that individuals fully understand the details of the business project and can express their points of view.

When you select your approach or approaches, pay attention to the balance between respect of the right to privacy, the avoidance of harm and the efficiency of the assessment.

C. Asking Effective Questions

The early stages of stakeholder consultations are usually best conducted through posing questions, rather than making statements. Some key considerations are:

- In most circumstances, it is best not to engage in debate at the early stages of engagement, but rather to adopt a listening mode to more fully appreciate concerns and comments. The time for considered responses will come in subsequent discussions.
- Asking open questions may be the best technique, allowing you to gather and discuss a wide range of information, avoid missing issues of concern that were not anticipated and demonstrate a genuine interest in the opinions of others.
- When it is not possible or realistic to ask direct questions about human rights – because of cultural

sensitivities or political or security concerns – you will need to consider how to phrase questions to elicit the desired information.

It is natural for people to react differently to a question depending on who is asking it – a company representative, the local priest or a soldier. The use of a trusted intermediary may be particularly appropriate in sensitive situations.

D. Managing the Stakeholder Consultation Information

You should carefully record and log the information that you collect during the stakeholder consultation, however it is structured. In doing so, you should also ensure that you record the context in which the information has been given, to highlight the commonalities and differences within it – for example, how frequently certain issues were raised, who raised the concerns, whether the same issues were raised by a variety of sources and where people were getting their information from – and to establish emerging priorities. You should also cross-check that the information you obtained from the consultation process is consistent with that received from other independent sources.

In addition, you should treat all information with care, to respect the right to privacy and protect those who contributed to the process.

For more information on consulting with stakeholders, see the International Finance Corporation's 2007 publication, *Stakeholder Engagement: A Good Practice Manual for Doing Business in Emerging Markets*.⁸

⁸ For the February 2007 draft version of the manual, see [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_DraftStakeholderEngagement/\\$FILE/DRAFT_StakeholderEngagement.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_DraftStakeholderEngagement/$FILE/DRAFT_StakeholderEngagement.pdf).



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STEP FIVE

Assess the Human Rights Impacts and Consequences

Objective

Steps Two, Three and Four will have brought together a range of information and opinions to inform you in completing your task. Inevitably, some of this information will turn out to be either purely speculative or not directly relevant to the particular business project.

The objective of Step Five is to further narrow the focus, and thereby better understand and assess the actual and potential human rights impacts of the business project, both positive and negative, and in turn the consequences for how to manage or enhance the project.

You need to bear in mind that some of the issues and challenges that you are assessing are complex and lacking certainty – they will appear as ‘shades of grey’ rather than ‘black or white’. This stage of the assessment process will require you to bring business acumen and judgement to bear on the information and opinions that you have gathered.

Determining Impacts

Your task now is to sort through the collected information and opinions to reach conclusions on the human rights issues that affect or will affect the business project. It will be helpful to begin by listing separately the possible issues for employees and workers, those for communities and those for customers. At this stage, access to human rights expertise – either internal or external – will be a distinct advantage.

Once you have your list of possible human rights issues to consider for the business project, the next step is to determine whether in practice the operation of the business project has impacted or is likely to impact on human rights, and if so, in what way and to what extent. For each issue, you should assess the following elements:

- What is the precise nature of each human rights challenge?
- Which individuals or stakeholder groups will be or are already affected, either directly or indirectly?
- What is the nature and extent of the impact on the affected people?
- What operational alternatives are available to the company to eliminate or otherwise respond to the human rights challenges?
- What economic, social or environmental benefits will accrue to stakeholders from the project, and how might these benefits be used to eliminate or respond to the human rights challenges?
- Does the company have direct or only indirect control over the management of the project in relation to each of the human rights challenges?
- How might the company exercise its influence to mitigate those human rights challenges over which it has no direct control?

In some cases, drawing a link between project operations and the human rights impacts will be fairly straightforward, and the conclusions will be clear. For example, if potential project circumstances could give rise to extreme human rights violations such as genocide or slavery, human rights rules provide a clear answer: involvement in these activities is unacceptable under any circumstances. Similarly, if a company hires personnel through employment agencies, it needs to ensure that none of them are bonded workers; otherwise, it will be employing forced labour and violating ILO core labour standards.

Special Considerations

Human Rights Dilemmas

In some situations, protecting a human right may give rise to a breach of local cultural norms or customs, or the exercise of one person's right may be at the expense of another person's, as the following two examples show:

1. Cultural or religious practices that permit discrimination against women are acceptable in some locations. International conventions regard discrimination as unacceptable in all circumstances, so the company may have to find innovative ways of avoiding discrimination without offending local norms.
2. Individuals have a right to freedom of movement, and the private sector has an obligation not to interfere with this right. Where a company is given a concession in an area with local indigenous communities that have lived without interference for generations, it is possible that the social balance will be changed as a consequence of building the infrastructure required for the project. New ease of access may now be given to other communities that, from the indigenous community's perspective, will 'invade' their territory, challenge their way of life and consume their resources. Does the company restrict the free movement of new settlers into the area (presuming it has the operating control and authority to do so)? Or should it allow free movement of people into the area with the resulting impacts on the local indigenous population? Current practice in the extractive sector suggests that the company should seek a project alternative that limits in-migration.

Identifying Alternatives

Apart from the clear prohibitions set out in international human rights conventions, respect for and protection of human rights can be complex, and as discussed earlier, each business project has to be assessed within its particular context. At this stage in the process, you should use the stakeholder consultation process to build an understanding of the history, culture, economic circumstances and environment of the people concerned. This understanding should help in identifying any alternative options for the management of the business project. In doing so, you will also need to take account of two particularly challenging factors. First, the exercise of the rights of one individual or group may have to be balanced against the legitimate rights of other individuals or groups and the wider needs of society. Second, although many consider rights as absolutes, in some circumstances one right may have to take priority over another right.

Any business project planning team will consider alternatives across a range of aspects of the venture – for example:

- Should a factory be built here or there?
- Where is access to market most efficient?
- Should the water effluent be discharged here or there?
- Should the raw materials be sourced from supplier x or y?
- How should the project be financed?

So it is with human rights impact assessment. The potential impact of the business project may have as much to do with the manner in which the project is operated and managed as with the project's nature. Consequently, you should identify and assess alternative approaches to managing the potential impacts. Consulting affected stakeholders about those alternatives will also help to clarify their relative effectiveness and acceptability. You may well find that the preferred human rights approach is also the best financial, environmental or social approach.

In addressing alternatives, you may find it helpful to make some clear assumptions that will underpin the resulting decision. For example:

- Assume that the company's existing human rights policies and external human rights commitments will determine what are non-negotiable issues. For example, some companies have developed specific policies on working with indigenous peoples that should guide the choice of alternatives in a country where indigenous peoples' rights are not well articulated or protected by national law.
- Assume that the company will choose the most effective option to address human rights issues over which it has direct control.
- Assume that the company will address any human rights issues over which it has only indirect control or influence in the most appropriate way possible, having regard to (1) available resources and expertise, (2) the response of other business partners, and (3) supportive international, national and local conditions.

Practical Tip #10

Predict Human Rights Impacts

Because human rights impact assessment is a new technique, no specialised tools have yet been developed to *predict* human rights impacts and their expected responses. Reports on private sector projects typically rely on analysing human rights problems and responses *after* they have arisen.

Some of the following methods, which are adapted from social impact assessments, may be useful:

- **Consult experienced practitioners.** Experienced practitioners can be drawn from appropriate non-governmental organisations and community organisations, or may be researchers, lawyers, professional consultants or knowledgeable citizens.
- **Develop scenarios.** Scenarios are exercises designed to explore the likely, alternative or preferred future of a community or society, and to compare different outcomes (best case versus worst case). Given the human rights emphasis on empowering people to have a say in their own development, using techniques like these can involve people in a realistic assessment of project options and the potential impacts on their lives.
- **Compare studies.** The experience of similar projects elsewhere is a key source for identifying potential future impacts.
- **Recognise 'futures foregone'.** Look beyond the immediate rights to identify the long-term consequences of loss of rights – for example, reduced access to education or disruption of water supply.
- **Extrapolate trends.** The trends of human rights issues or violations in a country, region or business sector may suggest the likely patterns of future trends.



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STEP SIX

Present the Assessment Findings and Recommendations to Management

Objective

By this stage, you will be able to make recommendations to those managers who are charged with the responsibility of determining the future of the business project and its operation.

The objective of Step Six is to present the conclusions in a way that will ensure appropriate consideration of human rights impacts in analysing the business project, in evaluating alternative options for managing the project and in reaching final decisions.

Presenting the Impact Assessment

More usually, the recommendations you make will address how the business project can remain viable and deliver the expected benefits, having regard to the potential human rights challenges and the measures to take in managing and operating the project.

At times, however, the impact assessment process may uncover serious human rights concerns that will affect the viability of the business project. Of course, these issues are often already in the public domain and may have been considered much earlier in the business project investigation. If not, this stage is when you will need to bring forward those concerns urgently.

In your presentation, you are likely to do the following:

- Describe those negative human rights impacts within the business project that are clear and that the company will have to eliminate or respond to.
- Describe any negative human rights impacts that are less clear but will require careful consideration and monitoring to ensure that the business project managers will be alert to respond if they emerge in practice.
- Define the nature of potential impacts on stakeholders if the human rights challenges occur in practice.
- Define the potential consequences for the company – for example, to reputation, relationships with stakeholders and financial impact – if the human rights challenges occur in practice and responses are inadequate.

- Offer the alternative options open to the company to eliminate or otherwise respond to the human rights challenges.
- Set the critical milestones within the business project when human rights challenges may arise.
- Bring out the positive impacts on human rights that are inherent in the business project and that should be delivered as an integral part of the operation.
- Recommend any further research or consultation that may be prudent before the business project proceeds or its management processes are finalised.

Recommendations for Monitoring, Evaluation and Reporting

Part of your recommendations to management should include a framework for the future monitoring of the business project, from a human rights perspective. The framework should address the nature, level and frequency of reporting, as well as procedures for responding to human rights issues as they arise in practice. The procedures are dealt with in more detail in Step Eight.

Management Decisions on the Project

Those responsible for making the key management decisions about the business project under review may not have participated directly in the human rights impact assessment process. In preparing their final analysis of the project – examining project alternatives, costs and benefits, and challenges and opportunities – the management team will have to weigh up a number of often-conflicting factors. The team will need to do the following:

- Take full account of your recommendations – claims of human rights violations have become major issues in business projects.
- Recognise and weigh up the different options you have presented for eliminating or otherwise responding to human rights issues.
- Decide how to address and manage the human rights impacts in the business project, and capture those decisions as an integral part of the project's management plan.



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STEP SEVEN

Implement a Human Rights Management Process

Objective

The objective of Step Seven is to ensure that the decisions that have been informed by your recommendations become an integral part of the management plan and the procedures that will govern the business project. From a human rights perspective, the management plan must ensure that, at a minimum, the company demonstrates a commitment to respecting human rights, but beyond that it should identify how the company can contribute to protecting and respecting human rights.

Building Human Rights into the Project Management Plan

Detailed management planning for the technical, operational, financial, resourcing and other aspects of the business project will help maximise benefits and returns, and eliminate or reduce business risks. In the same way, the human rights issues that have emerged through the impact assessment should be an integral part of this process. Managers and staff will have to be made aware of, understand the impact of and be prepared to respond to human rights challenges effectively – a challenge that may be new to them. This is not to say that the project will need a stand-alone human rights management plan. Rather, the human rights management issues should be incorporated within all the relevant disciplines of the business project, to ensure early recognition and response. **Figure 5** (see opposite page) suggests the process.

The human rights aspects of the management plan should include the following:

- A full briefing for the business project's operational managers on the findings of the human rights impact assessment, and the resulting recommendations and management decisions
- A clear definition of the policies and standards to which the company is committed and that will underpin the management of the business project
- The key actions to be embedded in operational and management processes to take account of the human rights challenges – for example, in recruiting and developing employees, acquiring land, constructing plant and infrastructure, using natural resources and disposing of waste
- Procedures to properly monitor, identify, report and respond to human rights challenges as they emerge, starting from the earliest stages of the project
- Key milestones in the project's lifecycle that will give rise to the need for a further review of the human rights aspects of the project, to respond to actual experience, identify new challenges and risks, and inform future management procedures
- Clear allocation of responsibility for each aspect of monitoring, reporting and responding to human rights issues as they arise
- Training for managers of key functions within the business project on the human rights issues and their effective management.

There is merit also in establishing a mechanism for the business project's management team to periodically feed back to and consult with the human rights impact assessment team. This mechanism will facilitate the sharing of experience on effective responses to human rights challenges and the recording and archiving of that experience to guide future business projects. In certain circumstances – for example, where the company is operating in a conflict zone – there may be merit in a specialist human rights observer team supporting the management of the business project in what may be a difficult environment.

Practical Tip #11

Integrate Human Rights Actions into Other Company Management Plans

Human rights considerations should be an integral part of any business operation or project and should be blended with other aspects of its management. For example:

- **Human resources** – will need to address issues of labour rights, diversity and discrimination.
- **Planning, construction and commissioning** – will need to encompass issues of land acquisition, displacement of people, access to basic services, infrastructure challenges and community relationships.
- **Operations** – will need to build the capacity of local enterprises to respond to business opportunities that the project presents.
- **Finance** – will need to build in provisions for response to human rights claims and for compensation where appropriate.
- **Public affairs and communications** – will need to maintain regular contact with key stakeholders and community leaders to monitor reactions to the implementation of the project and to alert operational colleagues to problems early on.
- **The senior manager of the project** – will need to allocate responsibility for overseeing community investment initiatives, be they aimed at supporting social development or at preserving the local cultural heritage.

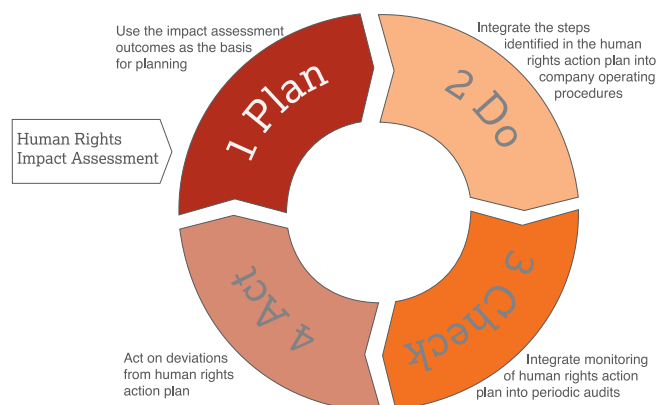


Figure 5: The Process for Managing Human Rights Impacts⁹

Longer-Term Management Issues

Once the business project has moved beyond its initial implementation phase, there is a danger that human rights awareness will reduce, particularly if no issues have emerged to challenge the project's operations. It is therefore important to ensure that the management actions identified in the human rights impact assessment for the business project are built into the wider company management systems. This integration will reinforce three particular aspects:

- Conveying the message that being vigilant about human rights issues is an integral part of effective management, and that responding to human rights issues in a calm, measured and appropriate fashion is possible.
- Not treating the human rights impact assessment as a 'one-off' exercise outside core business activities.
- Making cost-effective use of company resources by incorporating human rights impact assessment monitoring requirements into existing programmes.

⁹ First developed by Walter Schewhart and popularised by William Edwards Deming.

Communicating Implementation to Stakeholders

The primary purposes of the human rights impact assessment and management process – to inform management and to provide frameworks within which to effectively manage this aspect of a business project – are internal. The impact assessment process will already have brought the company into direct communication with a range of stakeholders whose expectations will have been affected by that engagement. This relationship should serve as a valuable platform for ongoing two-way communication throughout the business project's lifecycle.

In order to demonstrate that the company has listened to concerns and suggestions about the human rights challenges posed by the business project, it should disclose to stakeholders how it plans to respond to the human rights concerns identified during the stakeholder consultation (Step Four) and how it has built this response into its core management processes. The report should be in a format accessible to the affected communities. In some cases, the company may be able to disclose the relevant parts of the human rights impact assessment as a basis for its ongoing engagement with stakeholders.

Transparency is today's watchword for business relationships, and stakeholders would expect nothing less from a company whose operations may significantly impact their lives. Whether or not the company decides to make the full impact assessment report public, the report should provide a useful source of credible evidence of the company's commitment to its responsible business practices and be used in the company's wider social and environmental reporting.

Procedures for Human Rights Allegations

Even after a thorough human rights impact assessment, a company may be unable to anticipate every potential human rights challenge in a business project. As part of the business project management, the company should have a process available to deal with allegations of human rights violations as they arise. Indeed, the impact assessment process may uncover issues that the company was not previously aware of and which need a prompt response. Knowing that such a process is in place will give stakeholders confidence that the company takes its responsibilities seriously.

To be effective, such a process should ensure that the company does the following:

- Provides mechanisms for allegations to be registered confidentially.
- Allocates responsibilities for managing and determining all such allegations, and for reporting them through the company's management systems.
- Establishes procedures for investigating allegations and establishing the facts.
- Gives priority to putting right any violations that are confirmed, and ensures no further recurrence.
- Allots appropriate relief for the consequences of any human rights violation. Relief may include cessation of the violation, monetary compensation, an apology or simply an acknowledgement that a violation has occurred.
- Amends management processes to avoid recurrence of the violations.
- Reviews business relationships in the case of indirect violations by third parties.
- Ensures non-retaliation – including 'whistleblower' protection – against those who have brought an allegation.

The process should also have the following characteristics:

- Cost nothing and be freely accessible to any claimant.
- Demonstrate sensitivity to the concerns of vulnerable individuals or groups within the workforce or public that may fear reprisals.
- Be conducted independently from the direct management of the business project, where the circumstances of the complaint make this appropriate.
- Not interfere with or undermine any functioning worker representation systems, such as trade unions, that help channel and resolve complaints from workers.
- Permit free access to administrative or judicial remedies.

An effective allegation mechanism at the business-project level with an opportunity to appeal elsewhere in the company may offer the first and potentially only avenue for claimants to raise legitimate concerns and complaints. In some countries, claimants will have little alternative. The priority is to resolve each issue speedily and fairly, and where appropriate, to the claimant's satisfaction.

In situations where appropriate and effective external mechanisms do exist for responding to allegations of human rights violations, the company should take care not to interfere with the rights of individuals or groups that want to bring an allegation of human rights violation to the local administrative or judicial authority, or through worker dispute mechanisms.

Using Other Business Processes to Respond to Human Rights Concerns

Mechanisms to respond to human rights and labour rights complaints are coming from unexpected quarters. The ignominious collapse of the Enron Corporation in the United States in a blaze of accounting scandals prompted the US Congress to pass the Sarbanes-Oxley Act.* The act requires companies to establish a 'hotline' telephone system for employees to anonymously report suspected accounting or auditing misdeeds.

Companies are now extending these facilities to enable employees to report labour rights violations as well. For example, both Chiquita and Timberland have adapted their hotline and follow-up procedures to accept and address complaints from employees about labour rights violations.

*See http://www.sarbanes-oxley.com/section.php?level=1&pub_id=Sarbanes-Oxley.

Communicating Allegations of Human Rights Violations

Allegations of human rights violations, whether valid or not, can provoke strong emotional reactions, in addition to any legal consequences. When a company has been implicated in an incident, its management should consider carefully how best to communicate its response to the incident, as well as its position and policies on human rights issues generally. Experience suggests that companies may be better served by responding as early and as fully as possible to reasonable concerns – confirming that investigations are under way when the allegations may have some substance, or demonstrating the true position when the allegations are unfounded. Little can be gained by leaving allegations hanging in the air without a response, even when they are unsubstantiated.

A company should address responses directly to the individuals or groups that allege that their rights have been violated, since hastily issued media statements may add to their sense of grievance and make it more difficult to resolve the issue speedily and effectively. If a company has violated a human right, then the appropriate step is to remedy that violation as quickly and fully as possible.

In some circumstances, companies may feel constrained in their communication because of political sensitivities, commercial confidentiality or concerns that an individual or group might be put in danger. Their decisions on communication need to be informed by the reality that, in the absence of clear responses, criticism will continue and perhaps grow unless and until the matter is fully resolved and the facts are made known.



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STEP EIGHT

Monitor, Evaluate and Report on the Management Process

Objective

The objective of Step Eight is to ensure that the company continues to identify emerging human rights issues, delivers on its commitments and takes measures to respond effectively to the business project's changing operating conditions. Other aspects of the business project and its operation will be subject to regular monitoring and evaluation, so applying these practices to human rights issues should fit comfortably within normal processes.

The framework for monitoring, evaluating and reporting should include the following elements:

- A list of the issues that have been highlighted in the impact assessment, indicating the ones that most need regular monitoring
- Allocation of responsibility for monitoring and reporting
- Appropriate formats for regular reporting that fit well with other required management reports
- Procedures for highlighting and responding to any future human rights issues
- Procedures for reporting on human rights issues beyond the project management team
- Guidelines for responding to allegations of human rights violations and for consulting with the affected parties.

Delays in reporting on and responding to allegations of human rights violations can undermine the integrity of a business project and make it more difficult to resolve the issue in question.

Why Monitor?

During the human rights impact assessment and management process, you will have focused your attention on predicting how, where and in what circumstances human rights challenges may arise in relation to the business project. You will also have set out to understand the potential consequences for both the company and the business project. Monitoring events and performance will hold a mirror to the assumptions that were made at the outset, to see how these assumptions compare with the actual experience.

Why Evaluate?

Monitoring is of limited value unless it informs management on the changes that will be needed to respond to the emerging realities of the business project and its environment. A process of evaluating the results is essential if the company is to avoid continuing allegations of human rights violations with all their consequences for the company and its operations.

Monitoring and evaluation should together address the following aspects:

- Whether the predicted human rights issues and impacts have occurred. If not, identify what issues and impacts have in fact occurred.
- Whether the project management procedures are being implemented as required in the management plan and are achieving their objectives. If not, determine why not, and identify and put in place corrective actions.
- Whether unanticipated issues and impacts have occurred. If they have, evaluate their consequences for the project's operation, and feed that information into a review of the project management process.
- Whether management is receiving early notice of any new human rights challenges emerging from the business project, and if not, whether the scope of reporting is adequate.

Why Report?

Human right issues can have impacts for the company and its stakeholders far beyond any particular incident in a business project. Business project managers need to review and regularly report on the human rights aspects of their responsibilities as part of their normal reporting process. This reporting gives other company colleagues the opportunity to consider the possible occurrence of unexpected risks or to assess the effectiveness of the management of human rights within the business project.

Responding to Experience

The lessons learned from individual allegations of human rights violations need to be drawn into the company's corporate memory and used to influence and determine future changes to policy and practice. The management processes should ensure that those responsible for the business project identify, implement and record appropriate responses to human rights challenges and make these responses available in the assessment of future projects.

Finally, if the business project undergoes significant changes or development, it may be prudent to revisit some or all of the human rights impact assessment and management process, and identify any new impacts resulting from the changes in the project operations.

Ongoing Interaction with Stakeholders

The monitoring and evaluating process should also build in the opportunity to maintain structured discussions with appropriate stakeholders. By being transparent, including discussing actual human rights challenges it has faced or is facing, a company will build and sustain trust and confidence, making it easier to resolve and move on from difficult events that may arise from time to time, and perhaps even leading to unexpected positive outcomes for the business over time.





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APPENDIX 1

INTERNATIONAL COVENANTS, DECLARATIONS AND OTHER INSTRUMENTS

Updated as of 23 May 2007

United Nations

Universal Declaration of Human Rights, <http://www.unhchr.ch/udhr/index.htm>

International Covenant on Economic, Social and Cultural Rights, <http://www.ohchr.org/english/law/cescr.htm>

International Covenant on Civil and Political Rights, <http://www.ohchr.org/english/law/ccpr.htm>

Optional Protocol to the International Covenant on Civil and Political Rights, <http://www.ohchr.org/english/law/ccpr-one.htm>

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the elimination of the death penalty, <http://www.ohchr.org/english/law/ccpr-death.htm>

International Convention on the Elimination of All Forms of Racial Discrimination, <http://www.ohchr.org/english/law/cerd.htm>

Convention on the Elimination of All Forms of Discrimination against Women, <http://www.ohchr.org/english/law/cedaw.htm>

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, <http://www.ohchr.org/english/law/cat.htm>

Convention on the Rights of the Child, <http://www.ohchr.org/english/law/crc.htm>

Convention on the Rights of Persons with Disabilities, <http://www.un.org/disabilities/convention/conventionfull.shtml>

United Nations Convention against Corruption, http://www.unodc.org/unodc/crime_convention_corruption.html

United Nations Declaration on the Rights of Indigenous Peoples, <http://www.ohchr.org/english/issues/indigenous/declaration.htm>

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, <http://www.ohchr.org/english/law/firearms.htm>

Code of Conduct for Law Enforcement Officials, <http://www.ohchr.org/english/law/codeofconduct.htm>

United Nations Global Compact, *The Ten Principles*, <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>

UN Millennium Development Goals, <http://www.un.org/millenniumgoals/>

United Nations Economic and Social Council, *Economic, Social and Cultural Rights: Norms on the Responsibilities of Transnational Corporations and their Business Enterprises with Regard to Human Rights*, <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/64155e7e8141b38cc1256d63002c55e8?Opendocument>

For a list of universal human rights instruments categorised by rights, please see <http://www.ohchr.org/english/law/index.htm>

International Labour Organization (ILO)

Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, <http://www.ilo.org/public/english/employment/multi/download/english.pdf>

ILO Declaration on Fundamental Principles and Rights at Work, <http://www.ilo.org/dyn/declaris/DECLARATIONWEB.INDEXPAGE>

ILO Fundamental Conventions

C29 Forced Labour Convention, 1930, <http://www.itsilo.it/actrav/english/common/C029.html>

C87 Freedom of Association and Protection of the Right to Organise Convention, 1948, <http://www.itsilo.it/actrav/english/common/C087.html>

C98 Right to Organise and Collective Bargaining Convention, 1949, <http://www.itsilo.it/actrav/english/common/C098.html>

C100 Equal Remuneration Convention, 1951, <http://www.itsilo.it/actrav/english/common/C100.html>

C105 Abolition of Forced Labour Convention, 1957, <http://www.itsilo.it/actrav/english/common/C105.html>

C111 Discrimination (Employment and Occupation) Convention, 1958, <http://www.itsilo.it/actrav/english/common/C111.html>

C138 Minimum Age Convention, 1973, <http://www.itsilo.it/actrav/english/common/C138.html>

C169 Indigenous and Tribal Peoples Convention, 1989, <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>

C182 Worst Forms of Child Labour Convention, 1999, <http://www.itsilo.it/actrav/english/common/C182.html>

Other

AccountAbility, *AA1000 Framework and Series Standards*, <http://www.accountability21.net/aa1000/default.asp>

Amnesty International, *Human Rights Principles for Companies*, <http://web.amnesty.org/library/index/engACT700011998?open&of=eng-398>

Business Leaders Initiative on Human Rights, <http://www.blihr.org/>

Caux Round Table, *Principles for Business*, <http://www.cauxroundtable.org/principles.html>

Danish Institute for Human Rights, *Human Rights Compliance Assessment*, http://www.humanrightsbusiness.org/040_hrca.htm or http://www.humanrightsbusiness.org/pdf_files/Quick%20Check%20English%20.pdf

Dow Jones Sustainability Indexes, <http://www.sustainability-indexes.com/>

European Parliament, *Code of Conduct for European Enterprises*, <http://198.170.85.29/European-Parliament-Code.htm>

FTSE, *FTSE4Good Index Series*, http://www.ftse.com/Indices/FTSE4Good_Index_Series/index.jsp

Global Reporting Initiative, *G3 Sustainability Reporting Guidelines and Reporting Framework*, <http://www.globalreporting.org/ReportingFramework/AboutReportingFramework/>

Global Sullivan Principles of Social Responsibility, <http://globalsullivanprinciples.org/principles.htm>

International Institute for Sustainable Development, *ISO Corporate Social Responsibility (CSR) Standards*, <http://www.iisd.org/standards/csr.asp>

Organisation for Economic Co-operation and Development, *Guidelines for Multinational Enterprises*, http://www.oecd.org/departement/0,2688,en_2649_34889_1_1_1_1_1,00.html

Social Accountability International, *Social Accountability 8000 (SA800) Standard*, <http://www.sa-intl.org/index.cfm?fuseaction=Page.viewPage&pageId=473>

APPENDIX 2

COUNTRY ISSUES

The legislative and regulatory frameworks of the countries in which a company is located determine in large part the environment in which that company operates. Human rights impacts are more prevalent in those states that are weak in applying national and international law and in those countries where government has a record of violating human rights. Countries with weak governance offer little impediment and potentially actively encourage irresponsible companies, while making it more challenging for responsible companies to operate in accordance with their human rights principles and responsibilities.

Human Rights and Good Governance

The key tenets of good governance – transparency, responsibility, accountability, participation and responsiveness to the needs of people – apply equally to issues of human rights. Government has the primary responsibility to set the framework and leadership for good governance, but companies play a vital role in applying and reinforcing standards. Where a business operation or project demands a close relationship with government or its institutions, vigilance in the separation of responsibility is necessary, as are clear transparency and accountability.

Human Rights and the Rule of Law

International Human Rights conventions require an impartial and fair judicial system that protects the rights of individuals and communities. A company has a strong vested interest in supporting such a system – for the protection of it as an entity, its employees and its directors – and should do nothing that might undermine its integrity.

Human Rights and Revenue Transparency

Revenue from the extraction and harvesting of natural resources is for many governments the primary source of funding for the economic and social wellbeing of their citizens. Companies face increasing pressure to publish monies they pay in taxes, royalties and the like to their host governments, national and local, so that they can more easily be held accountable for their use of these funds.

Operating in Controversial States or Weak Governance Zones

Satisfying the growing demand for natural resources and searching for new markets can be particularly difficult for companies that have a choice about where to locate their operations. Controversial states and countries with records of weak governance are competing for the investment, but they present challenges in avoiding or eliminating human rights violations. A change of regime or the outbreak of conflict in a country can lead to changes in a company's operating environment. On the one hand, it is argued, the mere presence of international businesses in these states can create a veneer of respectability that their governments do not deserve, while on the other hand, responsible companies can be a force for good by supporting local socioeconomic development, providing sustainable and effectively managed employment, and setting an example of good governance. Without their presence, the conditions for individuals and communities would be much worse. Indeed, well-managed companies may be able to exercise a positive influence by promoting higher standards on human rights, and by contributing to broad-based economic development in states with

records of human rights violations. The extent to which they will be able to do so in practice – and to live up to their own declared standards – will depend on their capacity to control, influence and manage all aspects of their project, and thereby avoid implication or complicity in human rights violations and corruption.

There is no definitive answer to whether or not a business should invest in such countries. Each opportunity has to be considered on its own merits. The human rights impact assessment and management process will help to clarify these issues and contribute input for the management decisions. The following pointers may also be helpful in the process:

- Take account of any sanctions or prohibitions that the United Nations or the company's home country has put in place.
- Consider carefully how to effectively manage human rights challenges when entering into contracts or partnerships with governments or other companies known to have violated human rights. In some of these countries, the other companies may be state-owned, adding an additional complexity to the consideration.
- Be particularly wary of participating in projects that could be exposed to flagrant human rights abuses – such as genocide or slavery and other forms of forced labour.

Clearly, the greatest challenge in avoiding being implicated or held complicit in human rights violations will be in those controversial states where abuses are known to prevail. However, countries with weak government often have poor human rights records also, because of their lack of capacity to administer law and justice. Operating effectively in either a controversial state or a weak governance zone will bring particular pressures on the management of the business operation or project, requiring well-informed experience, skills and resources to maintain standards and reduce risks.

APPENDIX 3

BUSINESS SECTOR ISSUES AND HUMAN RIGHTS FUNDAMENTALS FOR BUSINESS

Key Issues by Business Sector

All business sectors are exposed to human rights challenges and risks to a greater or lesser extent. Many of these challenges and risks – for example, employment conditions and practices – are common to all sectors. However, each business sector has issues that are particularly prevalent within it.

The following table sets out example considerations for some key sectors. These examples are not intended to be exhaustive, but rather to highlight where particular vigilance is needed.

Business Sector	Key Human Rights Considerations
Extractive – Oil, Gas and Mining	<ul style="list-style-type: none"> Health and safety of workers – direct and indirect Employment conditions and practices Disruption or relocation of indigenous people Traditional livelihoods and local economic participation Migrant workers Forced labour and overtime Child labour Freedom of association and freedom to join trade unions Relationships with government – national and local Relationships with security forces Operations in conflict zones Use of product as currency for terrorism Corruption
Pharmaceutical and Chemical	<ul style="list-style-type: none"> Health and safety of workers – direct and indirect Employment conditions and practices Freedom of association and freedom to join trade unions Process and product safety Customer safety Contamination – e.g., of local water supply Piracy of local traditional medicines Clinical trials of medicines Access to medicines Relationships with government – national and local Misuse of products – e.g., for torture Marketing of products Corruption

Business Sector	Key Human Rights Considerations
Construction and Infrastructure	Health and safety of workers – direct and indirect Employment conditions and practices Disruption or relocation of local communities Indigenous community rights Migrant workers Forced labour and overtime Child labour Freedom of association and freedom to join trade unions Access to water and other services Relationships with government – national and local Relationships with security services Corruption
Technology – Hardware, Software, Telecommunications	Health and safety of workers – in manufacture, refurbishment and disposal Employment conditions and practices Access to technology and knowledge Migrant workers Child labour Forced labour and overtime Freedom of association and freedom to join trade unions Freedom of expression vs state censorship and repression Invasion of privacy Protection of children from inappropriate material Sourcing from conflict zones Relationships with government – national and local Relationships with security forces Corruption
Food and Beverage	Health and safety of workers – direct and indirect Employment conditions and practices Health and safety of customers Freedom of association and freedom to join trade unions Welfare of suppliers and their employees Local impact of industrialised farming Disruption of traditional agriculture Safety of transportation Responsible marketing Access to water Child labour Forced labour and overtime Relationships with government – national and local Relationships with security forces Corruption
Retail – Garment, Footwear, Homeware, Toys, etc	Health and safety of workers – direct and indirect Employment conditions and practices Child labour Forced labour and overtime Trafficking of humans Freedom of association and freedom to join trade unions Supply chain standards Relationships with government – national and local Relationships with security forces Corruption

Business Sector	Key Human Rights Considerations
Transport – Air, Land and Sea, Including Manufacture	<p>Health and safety of workers – direct and indirect</p> <p>Employment conditions and practices</p> <p>Freedom of association and freedom to join trade unions</p> <p>Health and safety of customers</p> <p>Migrant workers</p> <p>Disruption of local communities – noise, pollution, road accidents, etc</p> <p>Hazardous cargo and materials</p> <p>Forced labour and overtime</p> <p>Child labour (particularly in supply chain)</p> <p>Trafficking of humans</p> <p>Relationships with government – national and local</p> <p>Relationships with security forces</p> <p>Corruption</p>
Tourism	<p>Health and safety of workers – direct and indirect</p> <p>Employment conditions and practices</p> <p>Freedom of association and freedom to join trade unions</p> <p>Disruption or relocation of local communities</p> <p>Access to water and other services</p> <p>Migrant workers</p> <p>Supply chain standards</p> <p>Forced labour and overtime</p> <p>Child labour</p> <p>Sex tourism and protection of children</p> <p>Indigenous community rights</p> <p>Relationships with government – national and local</p> <p>Relationships with security forces</p> <p>Corruption</p>
Banking and Business Services	<p>Health and safety of workers – direct and indirect</p> <p>Employment conditions</p> <p>Freedom of association and freedom to join trade unions</p> <p>Forced labour and overtime</p> <p>Human rights challenges of clients and business partners</p> <p>Sensitivity to human rights in advice and service content</p> <p>Relationships with government – national and local</p> <p>Relationships with security forces</p> <p>Facilitation of funding for terrorism</p> <p>Corruption</p>
Agriculture	<p>Health and safety of workers – direct and indirect</p> <p>Employment conditions and practices</p> <p>Freedom of association and freedom to join trade unions</p> <p>Forced labour and overtime</p> <p>Child labour</p> <p>Migrant workers</p> <p>Access to water</p> <p>Impact of chemicals</p> <p>Local impact of industrialised farming</p> <p>Disruption of traditional agriculture</p>

Human Rights Fundamentals for Business

Supported by a range of international conventions and other instruments, the Universal Declaration of Human Rights¹ has established that all people in the world – individually and collectively – are entitled to have their basic rights respected and protected, placing the primary responsibility for this respect and protection on sovereign governments. Collectively, these instruments clarify how rights should be defined and how they should be protected.

Although the primary responsibility for the protection of human rights lies with governments, business is expected to and does play its part, within its spheres of influence, in supporting and reinforcing government responsibility. A debate is ongoing, particularly between business and civil society organisations, on where the boundaries of responsibility should lie, but in practice each business should determine its responsibilities and responses by adopting an assessment process, and then be prepared to explain and justify its findings and conclusions to its stakeholders. Each business project will face its particular challenges, depending on its operating environment. For example, in countries where government is weak, companies will have to be particularly vigilant in discharging their responsibilities.

That business has a role in the protection of human rights is not in question. A company can and does have a positive impact on peoples' rights – either directly or indirectly – particularly on those of (1) employees and workers, (2) residents in the communities in which it operates, (3) customers, and (4) in some instances, citizens in general.

Appendix 5 advises on where companies can find further information on the specific content of human rights.

Fundamental and Commonly Accepted Principles

It is an important point of principle that companies use the Universal Declaration of Human Rights as the starting point of any human rights impact assessment. As emphasised from the outset of the guide, the assessment is informed by the broad range of current and evolving international and national instruments. If an impact assessment team has as its starting point an internally preconceived list of human rights issues, it may overlook some wider human rights challenges, not previously encountered, that could have major impact and consequences for the business project being assessed.

Some issues of human rights are so fundamental that they leave no room for debate or compromise – for example:

- Genocide
- Slavery
- Murder or causing disappearances of individuals
- Torture or other cruel, inhuman or degrading treatment or punishment
- Prolonged arbitrary detention
- Systematic racial discrimination
- Consistent patterns of gross violations of human rights.

Beyond these fundamentals, four principles for protecting human rights are commonly accepted:

- **Respect:** avoid violating peoples' rights.
- **Protect:** prevent others from violating peoples' rights.
- **Fulfil:** act to provide access to entitlements enshrined in peoples' rights.
- **Promote:** use education systems and public information to inform individuals of their rights.

¹ See <http://www.unhcr.ch/udhr/index.htm>.

Migrant Workers

Although the migration of people for economic, social or security reasons, both between countries and within countries, is nothing new, the level of migration around the world has increased significantly in the 21st century. A shortage of skills, combined with a general unwillingness in many communities to undertake menial tasks, has created a level of demand to which migrants can respond. For many, this situation offers a new opportunity that is legal, well planned and organised. However, for many others, the apparent opportunity is illegal, born of desperation and organised by the unscrupulous.

Attention is increasingly being given to the challenges that migrant workers represent for business, requiring consideration of such issues as the following:

- The legal standing of those applying for work
- The employment terms and conditions for such workers in comparison with those for the rest of the workforce
- Migrant workers' health and safety
- Migrant workers' living conditions
- The terms on which workers engaged through a third party are contracted
- The use of forced or bonded labour
- In the case of a company bringing workers to the worksite, proper arrangements for the workers' return to their home communities.

Operating in Conflict Zones

Operating business in conflict zones brings special challenges – and obligations – that need to be understood and prepared for. In the past, conflict was viewed as simply a risk factor to business: as the violence escalated, so too did the many direct and indirect costs to business. These days, companies must consider not only their costs, but also their obligations to mitigate their impacts on the conflict and ensure that their operations do not contribute to human rights violations.

Operating in a conflict zone is a two-way street: the conflict can impact company operations, and conversely, company operations can impact the conflict. In many circumstances, companies cannot regard themselves merely as neutral outsiders requiring protection. They have to understand that, on the one hand, their poorly planned or managed activities may inadvertently feed the conflict, while on the other hand, their well-managed activities can contribute to peace building. Avoiding direct participation in a conflict is clearly a priority, but companies have to consider their indirect participation as well – through their contracting arrangements, use of their products and use of the proceeds of the business, and even through their attitudes, actions and relationships within a conflict zone. For example, employment policies either can reinforce a sense of exclusion and tension within the local community, or can provide opportunity to all sectors and contribute to rebuilding understanding.

When operating in zones of armed conflict, companies also need to understand their obligations under international humanitarian law as set out in the Geneva Conventions.² These bind states and all other actors including business whose activities are closely related to an armed conflict, to the protection of human rights and dignity. Without this understanding, businesses operating in conflict zones risk being implicated in violations of the laws of war. For example, hiring local security or military forces that do not respect the rules of war to protect company premises and people may result in violations of international humanitarian law. Equally, companies that allow their facilities to be used to support military operations may find themselves outside the protection of international humanitarian law.

² For more information on the Geneva Conventions and their Additional Protocols, see <http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/genevaconventions>.

Organisations such as International Alert, Human Rights Watch and Amnesty International can help companies to clarify and respond to the risks they face (see the ‘Relevant Organisations’ section in **Appendix 5: Resource Directory**).

Complicity

Now that society expects companies to look beyond their core business operations and beyond impacts that are within their direct control, their challenge is to examine the wider impacts of their operations to determine how they should act to improve practice. Where a company’s stature and influence are significant within its local context – for example, as an employer, taxpayer or consumer of local natural resources – the risk of being held complicit in the violations of others is a serious one.

Since the mid-1990s in the United States, a number of cases have been brought against corporations under the Alien Torts Claims Act,³ with these corporations accused of complicity in human rights abuses in such countries as Nigeria, Ecuador, Indonesia, Sudan and Myanmar. Currently, similar cases are being brought in other countries, notably France, Belgium and Spain. Although the US and the other cases have still to be determined, they do bring into sharp focus that companies can find themselves implicated in violations committed by others or tolerated by national governments, often many years ago. Whatever the final outcomes of the cases, the companies involved are incurring significant legal and other costs in responding to them.

Corruption

Corruption is a misuse of power and resources that impacts most acutely on the poorest and most vulnerable groups in society. In particular, corruption diverts resources that should otherwise be used for these people’s social and economic development, and to make matters worse, the poor and the vulnerable are unable to pay the bribes that are demanded for the services to which they are entitled. Since corruption is therefore a breach of the rights of individuals and communities, it should be addressed as an integral part of an impact assessment.

There is now an international movement against corruption, led by the United Nations Convention against Corruption that came into force in 2006.⁴ Although the emphasis in the past has been on the responsibilities of government, in recent times the spotlight has shifted to the supply side of corruption, and business has been identified as a major source of that supply. With its Business Principles for Countering Bribery,⁵ Transparency International has led the way in changing attitudes; the UN Global Compact has added a 10th Principle – against corruption – to its remit;⁶ the World Economic Forum has published its Partnership Against Corruption Initiative (PACI) Principles for Countering Bribery;⁷ the International Chamber of Commerce has created the ICC Rules of Conduct and Recommendations for Combating Extortion and Bribery for its members;⁸ and the OECD has in place its Guidelines for Multinational Enterprises.⁹

Many countries and business sectors have examples of companies joining together in collective action to counter particular corrupt practices.

³ See, for example, <http://www.cja.org/legalResources/legalResources.shtml>, <http://www.globalpolicy.org/intljustice/atca/atcaindx.htm> and http://www.humanrightsfirst.org/international_justice/w_context/w_cont_13.htm.

⁴ See http://www.unodc.org/unodc/crime_convention_corruption.html.

⁵ See http://www.transparency.org/global_priorities/private_sector/business_principles.

⁶ See <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>.

⁷ See <http://www.weforum.org/en/initiatives/paci/index.htm>.

⁸ See <http://www.iccwbo.org/policy/anticorruption/id870/index.html>.

⁹ See http://www.oecd.org/document/28/0,2340,en_2649_34889_2397532_1_1_1_1,00.html.

APPENDIX 4

SUMMARY OF HUMAN RIGHTS ISSUES FOR WORKERS, COMMUNITIES AND CUSTOMERS

The following summary gives an overview of key human rights issues that you may need to assess. You can access more detailed information from the sources listed in **Appendix 5: Resource Directory**.

Rights of Workers

RIGHTS OF WORKERS	
Background Discussion	
<p>Rights of workers are defined in the Universal Declaration of Human Rights, in the two implementing covenants, in International Labour Organization (ILO) conventions and recommendations, in most countries' national laws, and in a host of industry and company codes of conduct. The challenge is therefore not the definition of labour rights, but rather their practical implementation, particularly in countries where the application of labour law is weak. Impacts on workers' rights can be both direct (through a company's employment and contracting relations) and indirect (within business partners' operations and in supply and distribution chains).</p>	
Key Rights	
Four Core Labour Standards	
<i>Freedom of Association and the Right to Collective Bargaining</i>	In most countries, workers have the legal right to form and join independent trade unions or other representative bodies, and to bargain collectively with their employers on employment terms and conditions. Where local enforcement is weak, companies often interfere with or otherwise abuse this right. In some countries, it is still illegal for workers to associate independently, thereby creating particular human rights challenges for companies operating there.
<i>Elimination of Forced or Compulsory Labour</i>	The term 'forced labour' is taken to include slavery, bonded and trafficked labour, the requirement for workers to lodge deposits or identity papers, compulsory overtime and the like. Companies hiring workers from third-party employment agencies need to be particularly vigilant that none of these conditions apply.
<i>Effective Abolition of Child Labour</i>	Abolishing 'child labour' means not employing underage workers who should otherwise be at school and ensuring that any young workers who are legally employed are not exposed to processes that are hazardous or harmful to their development.
<i>Elimination of Discrimination in Respect of Employment and Occupation</i>	Discrimination by gender, age, colour, race, religion, nationality, political opinion, or sexual orientation or disability, or by any other factor not related to the function of the job, should not be tolerated at any stage of the employment process – recruitment, promotion or dismissal.

Other Key Labour Rights	
<i>Fair Remuneration</i>	The International Covenant on Economic, Social and Cultural Rights calls for remuneration that provides workers with 'a decent living for themselves and their families'. At the very least, companies need to ensure that they pay relevant legal minimum wages.
<i>Hours of Work</i>	Working hours and overtime are typically regulated by national law. Internationally, codes like Social Accountability 8000 and the Ethical Trading Initiative Base Code indicate that working hours should not regularly exceed 48 hours per week and that overtime, reimbursed at a premium rate, should not exceed 12 hours per week.
<i>Health and Safety</i>	Workers are entitled to protection from risks to their health and safety in the workplace. International and national labour law and practice provide detailed requirements in this field. Most business sectors have also developed practices and standards that take account of the particular risks that their workers may face.
<i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i>	The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment refers to all forms of intimidation including physical, verbal and emotional abuse, and to sexual or other harassment in the workplace or while engaged in company activities. (http://www.hrweb.org/legal/cat.html)

Key Emerging Issues		
<i>Labour Issues Along Supply and Distribution Chains</i>	There is now international recognition that a company faces risks in not respecting and protecting the rights of workers beyond its direct workforce into supply and distribution chains. The level of control the company can exercise will depend on the nature of its business relationships (see ‘Business Spheres of Influence’ on page 3). This issue is a particular public concern in business sectors such as apparel and footwear, food and beverage, construction and electronics. Many companies now expect their suppliers and distributors either to follow their own codes of conduct regarding working conditions or to adhere to collective standards, such as those of the Ethical Trading Initiative, the Fair Labor Association and Social Accountability International, or sectoral initiatives such as the International Cocoa Initiative.	
<i>Migrant Labour</i>	Migrant workers are an increasing part of the workforce in both developed and developing countries. They often have little or no protection under national labour law, or their employment may in fact be illegal. They are therefore exposed to exploitation and the abuse of their rights.	
<i>Contemporary Forced Labour</i>	Contemporary forced labour – in the form of bonded labour and human trafficking – is on the increase, so companies need to be vigilant in ensuring that their practices are not providing the opportunity or inadvertently creating a demand for this type of abuse.	
<i>Informal Workforces</i>	A trend towards short-term contracting as an alternative to formal employment – in developing and developed countries – challenges companies in providing the appropriate level of security and reward to their workforce while remaining competitive within their industry.	
<i>Disability</i>	Internationally, recognition of and responsiveness to the rights of people with disabilities are increasing. People with disabilities are estimated to account for around 10 percent of the world’s population and have typically been discriminated against or excluded from opportunities for employment and career development. See the UN’s Convention on the Rights of Persons with Disabilities (http://www.un.org/disabilities/convention/).	
<i>Diversity</i>	There is a growing appreciation of the value of diversity in the workplace. This appreciation is helping to overcome historic discrimination in employment of women and minority racial and religious groups.	
Key International Standards		
<i>International Labour Organization (ILO) Standards</i>	<ul style="list-style-type: none">• ILO Declaration on Fundamental Principles and Rights at Work• International Convention on the Elimination of All Forms of Racial Discrimination• Convention on the Elimination of All Forms of Discrimination against Women• 8 fundamental conventions and other relevant ILO conventions	http://www.ilo.org/dyn/declaris/DECLARATIONWEB.INDEXPAGE http://www.ohchr.org/english/law/cerd.htm http://www.ohchr.org/english/law/cedaw.htm http://www.itcilo.it/actrav/english/about/about_fundamentals.html

Rights of Communities

RIGHTS OF COMMUNITIES	
Background Discussion	
<p>A business operation or project will have a range of economic, social and environmental impacts on its host community. It can affect the community as a whole, or individuals or groups of people within it. A company can either negatively or positively impact a number of rights that are fundamental to the quality of life of any community and to its ability to function effectively. The company needs to recognise the positive impacts and address the negative impacts as part of a complete human rights impact assessment. It can deal effectively with some of the latter impacts by adhering to legal or administrative procedures and operational controls, but other impacts may demand wider and less formal community engagement.</p>	
Key Rights	
<i>Property Rights</i>	Under human rights conventions, the term ‘rights to property’ is not purely a legal right to the property itself but encompasses a wider right of access to and enjoyment of property. Normally in developed economies, the purchase or lease of property is a straightforward market transaction under national law. However, in developing and transition economies, property issues and ownership will often be less clear, with only a small percentage of land being formally titled. The rights of individuals or groups that have historically used and lived on land without formal legal title may be under threat, and other complex and overlapping claims to property may complicate the situation. A company’s imposition of a new legal right of use may therefore endanger previously held rights and profoundly impact the lives of those affected.
<i>Right to Housing</i>	Another aspect of the property rights issue is potential interference with people’s homes. The planned location or nature of some business operations or projects may lead to the eviction and resettlement of individuals, groups or whole communities – normally under the authority of national or local government agencies. Where eviction and settlement are deemed to be unavoidable, conventions such as the Committee on Economic, Social and Cultural Rights’ General Comment 7 on The Right to Adequate Housing: Forced Evictions (http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+Comment+7.En?OpenDocument) give guidance on the protections that should apply.
<i>Right to Health</i>	A company’s impact on health may go beyond its workforce. Communities have a right to be protected from any adverse impacts on their health and safety resulting from a company’s operations – whether from pollution, emissions, risk of explosions or toxic accidents, issues of transport safety or the like. Considerable advances have been made in developing technical environmental and other operational controls, but a company needs to understand and respond to the human rights and concerns that lie behind many of these issues. For example, where a company provides health care facilities for employees, it should consider whether, in the circumstances of the project, to extend these in whole or in part to employees’ families and to the wider local community.
<i>Right to Education</i>	Children’s right to education is put in jeopardy if communities are displaced and they lose access to schools.
<i>Right to Food</i>	The traditional livelihoods of individuals or communities, including their self-sufficiency in food, can be put at risk through loss of access to traditional natural sources and resources, contamination, inappropriate handling and storage, or the industrialisation of growing and harvesting.
<i>Right to Water</i>	Access to water, a basic human right, is under increasing threat worldwide. While climate change is one major factor in this threat, the impact of business operations and projects on the water supplies of their host communities – either through blocking access, drawing unsustainable quantities of the local supply or polluting the water – is adding to the concern.

<i>Right to Freedom of Religion</i>	The right to freedom of religion can be impacted by preventing workers from attending to their traditional religious observance because of insensitive work schedules, by impeding religious ceremonies or services, or by damaging, destroying or impeding access to religious or sacred sites.
<i>Minority Rights</i>	In an increasingly mobile world, most communities in which business operates have ethnic, religious or linguistic minorities that wish to preserve their cultures, to profess and practise their own religions, and to use their own languages within their groups. Ensuring that its operation will not unreasonably interfere with their rights to do so is an important social consideration for any company.
<i>Right to Assembly, Freedom of Association and Freedom of Expression</i>	The right of any community to associate, to act collectively and to have freedom of speech is regarded internationally as fundamental. It of course includes the right to speak out, protest or demonstrate against a company and its operations. It is vital that the response of a company or of the authorities with which it engages in protecting its facilities does not itself violate the community's human rights.
Rights of Indigenous Peoples	
While indigenous peoples are entitled to the same human rights as every other individual and group, a growing body of international law and practice recognises the very particular issues and challenges that these peoples face in the rapidly changing environment in which they live. Measures that will help to protect their identities, heritage, lands and way of life are now in the spotlight, and companies find themselves increasingly involved in these considerations.	
<i>Right to Consultation and Participation</i>	ILO Convention 169 on Indigenous and Tribal Peoples (http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169) specifically requires assessment of the social, cultural, spiritual and environmental impacts of a business project on any indigenous peoples before the project is implemented. The convention further requires consultation with representatives of indigenous peoples in a way that gives them a voice in the design, implementation and evaluation of those aspects of the project that may affect, for example, their traditions, cultural values, needs and access to project benefits.
<i>Rights to Land and Natural Resources</i>	Rights to lands and access to natural resources go to the heart of the issues for indigenous peoples. For most of these communities, land is central to their cultural identity, spiritual wellbeing and economic survival, and yet often they live on or beside mineral, oil or gas resources that are vital to national economic interests. ILO Convention 169 requires governments to respect indigenous peoples' special relationship to their lands and to recognise traditional rights of ownership and possession of land (both individual and collective). In practice, this may mean acknowledging that indigenous peoples do have land rights and determining how access may be given to others – including companies – in a way that enables indigenous peoples to continue their way of life.
<i>Relocation</i>	ILO Convention 169 further declares that prior, free and informed consent should be a prerequisite of the relocation of a community of indigenous people. If relocation is the only viable option and consent is not possible, then national law should convey a right of return, or resettlement and rehabilitation on lands of equal quality and with full compensation if they cannot eventually return to their original lands. In these circumstances, companies need to work closely with national and local governments to ensure that these requirements are met.
<i>Cultural Rights</i>	Respect for indigenous peoples' way of life should underpin private sector interactions with indigenous peoples. Their distinctive way of life should not be the basis for discriminatory treatment.

Key Emerging Issues		
Free, Prior, Informed Consent	The protection of the rights of indigenous peoples through free, prior and informed consent in advance of the implementation of business operations and projects is high on the agenda of international human rights. National governments can currently override ILO Convention 169, and there is pressure to reinforce its application.	
Traditional Knowledge	The value and protection of traditional knowledge and understanding – encompassing traditional agricultural and biological practices and knowledge, cultural expressions and cultural handicrafts – have become important discussion topics in numerous United Nations forums. Claims that business development has contributed to the loss of these essential features of indigenous communities in the past mean that any such loss needs to be considered as part of any human rights impact assessment.	
Key International Standards		
UN Standards	<ul style="list-style-type: none">• Universal Declaration of Human Rights• International Covenant on Economic, Social and Cultural Rights• International Covenant on Civil and Political Rights• International Convention on the Elimination of All Forms of Racial Discrimination• United Nations Declaration on the Rights of Indigenous Peoples• Convention on the Rights of Persons with Disabilities	http://www.unhchr.ch/udhr/index.htm http://www.ohchr.org/english/law/cescr.htm http://www.ohchr.org/english/law/ccpr.htm http://www.ohchr.org/english/law/cerd.htm http://www.ohchr.org/english/issues/indigenous/declaration.htm http://www.un.org/disabilities/convention/conventionfull.shtml
International Labour Organization (ILO) Standards	C169 Indigenous and Tribal Peoples Convention	http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169
United Nations Convention on Biological Diversity (UNCBD) Guidelines	Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments Regarding Developments Proposed to Take Place on, or Which Are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities	http://www.biodiv.org/doc/ref/tk-akwe-en.pdf

Rights of Customers

RIGHTS OF CUSTOMERS		
Background Discussion		
Despite a particular contractual relationship between companies and their customers in most jurisdictions, some rights go beyond the limitation of consumer law. An overall duty of care is at the heart of this consideration. In human rights discussions, the focus is on the impact of products on consumers and others who may be in need of protection.		
Key Rights		
Right to Health	A company’s fundamental duty is to respect the right to health of its customers. In practice, this right includes a company ensuring that its products (or substances within them) are not detrimental to the health of consumers and others. Increasing national and international law and regulation define this area of business more precisely, with some business sectors requiring special considerations and controls. For example, pharmaceutical and medical equipment companies need to ensure correct use of their products to achieve their benefits and avoid hazards.	
Right to Food	The right to food can be violated by contamination along the food chain – for example, through inappropriate use of pesticides, poor hygiene, inappropriate handling or environmental pollution at different stages of food production.	
Prohibition on Torture, and Inhumane and Degrading Treatment	Products manufactured for one purpose can sometimes be used in ways that the manufacturer never intended. In particular, equipment and pharmaceutical products can and have been used as instruments of torture, or to incapacitate or otherwise abuse individuals.	
Key Emerging Issues		
Know Your Customer	It is understood that companies cannot always prevent misuse of their products. Nevertheless, a heightened level of due diligence in monitoring the end-use of products is increasingly expected, with appropriate responses where possible. Potential lessons can be drawn from ‘dual use’ decisions addressing military and other sensitive technologies, and applied to the human rights area.	
Key International Standards		
UN Standards	<ul style="list-style-type: none">• Universal Declaration of Human Rights• International Covenant on Economic, Social and Cultural Rights• International Covenant on Civil and Political Rights	http://www.unhchr.ch/udhr/index.htm http://www.ohchr.org/english/law/cescr.htm http://www.ohchr.org/english/law/ccpr.htm

APPENDIX 5

RESOURCE DIRECTORY

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PLEASE SEE  FOR RECOMMENDED READING.

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Global e-Sustainability Initiative, <http://www.gesi.org/>

Extractives

Council for Responsible Jewellery Practices, <http://www.responsiblejewellery.com/>

Extractive Industries Transparency Initiative, <http://www.eitransparency.org/>

Initiative for Responsible Mining Assurance, <http://www.responsiblemining.net/>

Kimberley Process, <http://www.kimberleyprocess.com>

Voluntary Principles on Security and Human Rights, <http://www.voluntaryprinciples.org/>

Financial

Equator Principles, <http://www.equator-principles.com/>

Food and Beverage

Better Sugarcane Initiative, <http://www.bettersugarcane.org/>

Common Code for the Coffee Community, <http://www.sustainable-coffee.net/>

Ethical Tea Partnership, <http://www.ethicalteapartnership.org/>

Ethical Trading Initiative, <http://www.ethicaltrade.org/>

International Cocoa Initiative, <http://www.cocoainitiative.org/default.asp?lang=en>

Marine Stewardship Council, www.msc.org

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Forestry

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Media

Responsible Media Forum, http://www.sourcewatch.org/index.php?title=US_Responsible_Media_Forum

CSR Media Forum, <http://www.mediacsforum.org/>

Retail and Apparel

Automotive Industry Action Group, <http://www.aiag.org/>

Business for Social Compliance Initiative, <http://www.bsci-eu.org/content.php>

Clean Clothes Campaign, <http://www.cleanclothes.org/>

Ethical Trading Initiative, <http://www.ethicaltrade.org/>

Fair Labor Association, <http://www.fairlabor.org/>

International Council on Toy Industries CARE Process, <http://www.icti-care.org/>

Roundtable on Sustainable Palm Oil, <http://www.rspo.org/>

Vietnam Business Links Initiative, <http://www.vcci.com.vn/sub/vbli/default.htm> or <http://www.iblf.org/regions/asia/vietnam.jsp>

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World Federation Sporting Goods Industry, <http://www.wfsgi.org/>

Tourism

International Business Leaders Forum Tourism Partnership, <http://www.tourismpartnership.org/>

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Business and Human Rights Resource Centre, www.business-humanrights.org

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International Commission of Jurists, <http://www.icj.org/>

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International Finance Corporation, www.ifc.org

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Pax Christi, <http://www.paxchristi.net/>

Plan International, <http://www.plan-international.org>

Raoul Wallenberg Institute, www.rwi.lu.se

Respect Europe, <http://www.respecteurope.com>

Rugmark Foundation, <http://www.rugmark.org/>

Save the Children, <http://www.savethechildren.org/>

Social Accountability International, <http://www.sa-intl.org/>

Sustainable Asset Management, <http://www.sam-group.com/>

TRACE, www.traceinternational.org

Trades Union Congress, <http://www.tuc.org.uk/>

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United Nations Development Fund for Women, <http://www.unifem.org/>

United Nations Development Programme, <http://www.undp.org/>

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GUIDE TO HUMAN RIGHTS IMPACT ASSESSMENT AND MANAGEMENT

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The guide is a work in progress, and this draft version has been published to allow companies from different business sectors to test it in practice. The experience gained from the road-testing will be used to further refine the guide. A revised version of the guide will be published by mid-2009. For further information and to receive guidelines for the commenting and road-testing, please contact Caroline Ersmarker at the International Business Leaders Forum: caroline.ersmarker@iblf.org.



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