



chapter 3.3

Assessing impacts

‘From reactive to proactive’

The first step of human rights due diligence is assessing how the company’s activities and business relationships may pose risks to human rights. This involves considering the possible negative impacts of current and planned activities and business relationships on individuals and communities, and sets priorities for action to mitigate any such risks.

Assessing impacts can be a challenging process. Identifying the most severe human rights impacts with which the company could be involved can help build internal understanding of human rights, set a strategic direction for the business on how to manage risks associated with its operations, and provide a focus for the company’s mitigation efforts based on where the risk of harm to people is most acute.

SUMMARY OF GUIDANCE POINTS

- Guidance point** ① Identifying human rights impacts
- Guidance point** ② Prioritising severe human rights impacts
- Guidance point** ③ Involving the existing risk management function
- Guidance point** ④ Deepening assessment of impacts throughout the business
- Guidance point** ⑤ An ongoing process rather than a one-off evaluation

MAIN COMPANY FUNCTIONS LIKELY TO BE INVOLVED IN THE PROCESS

- **CSR/sustainability:** Provide human rights expertise; collaborate with operations; help coordinate human rights impact assessment processes
- **Risk management:** Provide expert input into impact assessment processes; integrate human rights into existing risk management process
- **Community relations:** Interact with external stakeholders when impact assessment involves consultations with neighbours and communities
- **Legal/compliance:** Awareness of a range of risks in light of company's legal obligations that can feed into the impact assessment process
- **Specific functions/operations that may be connected to human rights risks** (for example, security, procurement, human resources, sales): Involvement in evaluating and prioritising impacts for attention
- **Government/public affairs:** Insight into how human rights risks could be heightened by state or regulatory action

Guidance point ① Identifying human rights impacts

The identification of human rights impacts can take shape in multiple ways. It is natural to start with some desk research, focused on identifying the risk of human rights impacts in particular countries and/or sectors relevant to the company's operations. Besides publicly available sources, internal company reports may also provide useful insights, such as reports on the use of whistle-blower policies and grievance mechanisms, self-assessments by suppliers or business units, management reports by relevant functions (for example, human resources, compliance, CSR/sustainability), as well as reports of workers' councils and other worker representative bodies.

Some ways to initially identify broad human rights issues for more in-depth exploration can include:

- **Particular countries:** identifying the operating countries that have the greatest human rights risks;
- **Particular rights:** identifying certain human rights that are recognised as being most at risk in a particular industry or sector or country context;
- **Particular functions:** engaging with particular company functions where certain staff regularly encounter or have responsibility for human rights impacts and risks (for example, security or sales).



LEARNING FROM PRACTICE

TEAM-BASED IMPACT ASSESSMENT WORKSHOPS

One approach to human rights impact assessment uses facilitated brainstorming modelled on traditional team-based risk assessment processes. Groups of managers and staff from relevant parts of the business are brought together, often in a cross-functional setting, and are supported by an expert facilitator to think through ways that the company could now, or in the future, be involved in human rights impacts. The process typically highlights potential issues that would otherwise remain unidentified, and encourages discussion on the relative severity of impacts, although it almost always requires further information and verification.

A growing number of companies have found this to be an important step in building internal understanding of human rights and of their importance to the business. It can help engage colleagues within the business who may be sceptical of the relevance of human rights, but whose support will be essential to effective mitigation measures.

However, because an evaluation of human rights risks is focused on risk to people, assessment processes need to take adequate account of the perspectives of individuals or groups who could be impacted – what the Guiding Principles call “potentially affected stakeholders” – or their legitimate representatives. Trade unions are obviously a primary source of information about impacts on their members’ human rights. Consulting with the leaders of a local community may be an appropriate way to understand impacts on a wider group of members, although companies need to pay attention to when local leaders may not reflect the diversity of views in the community. (What to pay attention to in conducting meaningful stakeholder engagement is discussed in more detail in [Chapter 3.7](#).)

While it may not always be possible at first to consult directly with affected stakeholders, a company’s impact assessment processes may need to evolve over time to enable more direct interaction with them. Where such consultation is not feasible (for example, because of the huge number of potentially affected individuals), or poses risks to affected stakeholders themselves, companies will need to find other ways of gaining

insight into their perspectives. ‘Credible proxies’, who work with affected stakeholders and have direct insights into their perspectives, can help – such as local NGOs or trade unions that do not represent the workers in question, but have good insight into local labour rights issues.

Guidance point

Prioritising severe human rights impacts

A key question in any impact assessment process is prioritisation: where should the company focus its attention? In reality, most companies can be involved with a large number of potential impacts and, due to legitimate resource constraints, will need to decide which ones to focus on first. The UN Guiding Principles recognise this reality in Principle 24. However, companies typically prioritise by focusing on those issues that present the greatest business risk, such as reputational risk or the risk of operational disruption. By contrast, the responsibility to respect is concerned with risk to people, and the Guiding Principles expect a company to put people at the centre of the process. In other words, if it is necessary to prioritise human rights impacts for attention and action, then companies need to do so on a principled basis by focusing on the severity of harm to people.

What does this mean in practice? Typical risk management processes have two inputs: severity of impact on the business (for example, x amount of litigation costs, or x level of damage to reputation) and likelihood (that is, how likely is a particular event that will lead to a certain impact). Risk to people is distinct in two ways:

1. The relevant severity is the severity of the impact on people, rather than on the business;
2. Severity has a greater weighting than likelihood so that severe risks to people should always be prioritised for attention.

Companies should prioritise those impacts that are most severe, which the Guiding Principles define by their scale, scope and their remediability. The table below explains these concepts with some examples. The examples are merely illustrative and are not intended to suggest that a certain type of impact can never be severe.

A key question in any impact assessment process is prioritisation: where should the company focus its attention?

Table: Understanding severity

Dimensions	Definition	Examples	
		Potentially less severe	More severe
Scale:	How grave or serious the impact would be	A 14-year-old helping out behind the counter in the family store	A 10-year-old child working in artisanal mining
Scope:	How widespread the impact would be (i.e., how many people would be affected)	One or two individuals	A whole community
Remediability:	How hard it would be to put right the resulting harm	A worker is fired on a discriminatory basis but can be promptly reinstated with appropriate compensation, apologies and guarantee of non-repetition	A worker contracts an incurable disease due to a lack of appropriate health and safety measures

Prioritisation is always a relative exercise: the most severe human rights risks for one company will look very different from those of another company, but each must take action on the most severe risks to people with which they could be involved. An impact can be severe even if it would only be so on *one* of the above dimensions of scale, scope and remediability – it does not need to be severe against all three.

Prioritising severe impacts for attention does not mean that low severity impacts should remain unaddressed. Some may be relatively easy to address, or require few additional resources, and there is no reason why companies should not proceed to deal with them.

In addition to severity, companies also need to consider likelihood: how likely is the impact to exist or to occur in the company’s operations? This involves considering the company’s own operating contexts and the ability of the company’s various business relationships to effectively manage human rights risks. The following table provides some examples for both of these elements of likelihood.

Table: Understanding likelihood

Several factors can make negative impacts more likely in a particular country context, such as:	The following factors can increase or decrease the likelihood of negative human rights impacts arising through a company’s business relationships:
Existence and enforcement of national laws and regulations	Whether their policies address respect for human rights
Conflicts between national laws and international human rights	Whether they have effective processes for meeting their responsibility to respect
Social customs and practices	Their record for upholding or breaching human rights
Presence of corruption	Their practices with regard to corruption
Presence of conflict	Whether they are in conflict with local stakeholders

Companies often ask how they can be confident in their prioritisation of human rights impacts. Following the above process is the best way to ensure that the decision-making is aligned with the Guiding Principles, but ultimately it is input from stakeholders that can help to make the prioritisation process more robust and a company’s choices more credible. Finding the right stakeholders to test a proposed list with requires careful thought, and companies are likely to turn at this point to credible proxies or to expert stakeholders for their insights. As with the policy development process, providing input on an exercise like this requires a certain perspective on the company’s operations as a whole, and where its greatest human rights risks are likely to lie.

The UN Guiding Principles Reporting Framework, discussed in [Chapter 3.6](#), provides helpful guidance on how to identify and prioritise ‘salient human rights issues’. The table below captures experience from some of the companies that have used the UNGP Reporting Framework. Their reports typically explain the process they used to arrive at their identification of salient issues, aggregated at the global level of these company’s operations. More examples can be found at www.UNGPreporting.org.

Companies should prioritise those impacts that are most severe on people.

Table: Examples of salient issues identified by companies using the UNGP Reporting Framework

Company	Sector	Salient human rights issues identified	Source
ABN AMRO	Finance	<ul style="list-style-type: none"> ▸ Privacy ▸ Discrimination ▸ Labour rights ▸ Land-related human rights 	Annual (Integrated) Report 2015 ³²
Ericsson	ICT	<ul style="list-style-type: none"> ▸ Right to privacy ▸ Freedom of expression ▸ Labour rights 	Sustainability and Corporate Responsibility Report 2015 ³³
H&M	Apparel	<ul style="list-style-type: none"> ▸ Fair living wage ▸ Health and safety ▸ Forced labour ▸ Discrimination and harassment ▸ Child labour ▸ Freedom of association and collective bargaining ▸ Social security ▸ Land rights ▸ Working hours ▸ Access to water 	Sustainability Report 2015 ³⁴
Total	Energy	<ul style="list-style-type: none"> ▸ Forced labour ▸ Child labour ▸ Discrimination ▸ Just and favourable conditions of work and safety ▸ Access to land ▸ Rights to health and an adequate standard of living ▸ Risk of misuse of force 	Human Rights Briefing Paper, July 2016 ³⁵
Unilever	Food and beverage	<ul style="list-style-type: none"> ▸ Discrimination ▸ Fair wages ▸ Forced labour ▸ Freedom of association ▸ Harassment ▸ Health and safety ▸ Land rights ▸ Working hours 	'Enhancing Livelihoods, Advancing Human Rights'. Human Rights Report 2015 ³⁶

32. www.goo.gl/cRLSbO
 33. www.goo.gl/Y6jlz2
 34. www.goo.gl/GLJ72d
 35. www.goo.gl/Kjnm6
 36. www.goo.gl/Zo8JME

Guidance point **Involving the existing risk management function**

For companies with a risk management department, experience shows the value of involving them in the process of assessing human rights impacts. This can contribute to a stronger methodology (given the expertise they bring to the table) as well as help to ensure that the results are integrated into the company's broader or enterprise-wide risk management systems. It can also help build the risk function's own understanding of how human rights risk management differs from traditional business risk management.

Other crucial functions to involve are those that need to implement the mitigating actions, as they can provide input on the nature of risks and the practicality of mitigation proposals. Internal audit and compliance can help ensure alignment with any new procedures.

Guidance point **Deepening assessment of impacts throughout the business**

The process of assessing human rights impacts outlined above can be a fairly high-level exercise at corporate or group level. But the same basic approach can be applied to specific business units, country subsidiaries or other parts of the business. For example:

A focus on particular countries

Initial research can produce a classification of countries according to different levels of human rights risk. For those countries with higher risk (for example, countries where women are denied equal treatment under the law), more intense analysis may be in order before specific mitigation measures are developed. A 'red flag' approach should highlight conflict-affected countries, as well as any countries that have had sanctions placed on them by the UN Security Council or by regional organisations such as the European Union.

Customer and client due diligence processes

Based on its salient human rights issues, a company may want to strengthen its due diligence questions for customers or clients. This typically involves asking certain questions before a client is accepted or a product sold to a customer, and escalating issues internally where doubts are raised about the human rights risks involved in any particular relationship or transaction.

Screening other business partners

Companies are increasingly screening other business partners (for example, suppliers, subcontractors, service providers) on their human rights record and ability to manage human rights risks. This includes asking business partners to fill out questionnaires, requiring them to sign a contract that includes a vendor or supplier code of conduct, and agree to audits, 'supplier support visits' (see the example in [Chapter 3.4](#)), or collaborative assessments to evaluate performance.

Identifying the company's salient human rights issues (see Guidance point 2 above) may help in identifying threshold levels for taking certain types of action. For example, a supplier of a component associated with moderate human rights risks may be asked to do a self-assessment, while a supplier of a high-risk input may be required to undergo a more formal evaluation.

Human rights risks in mergers and acquisitions and joint ventures

For companies acquiring other businesses or working together with them in joint ventures, it is important to identify human rights risks in these activities and relationships. For example, a company may discover that its joint venture partner does not believe that it has a responsibility to respect human rights, which may lead to difficult discussions and even strong disagreements over management of the joint venture.

Or a company may find out after a transaction has closed that the land on which the target facility sits was acquired by the government through a poorly conducted consultation process, and that the buyer's title to the land is, therefore, likely to be challenged by local communities. Up-front human rights due diligence can help identify any significant legacy costs and enable the company to assess the impact on the proposed price or on any requirement that the target should fund certain mitigation actions before the sale.³⁷

37. Shift, 'What Do Human Rights Have to Do with Mergers and Acquisitions?', January 2016, available at www.goo.gl/vKWdm5.

**COUNTRY INSIGHTS: INDONESIA****Company experience with ‘participatory mapping’**

Indonesia is home to large tracts of original forests that are cut down for their valuable wood or burned to make way for commercial plantations that grow agricultural crops in large quantities, such as palm oil and rubber. The land is often inhabited by indigenous peoples or other traditional communities who rely on the forest and its natural resources for their livelihoods and for the preservation of their cultural and ancestral heritage. Plantations require huge amounts of water, which can affect well levels for surrounding villages. Moreover, forest fires that are used to clear the land pose dangers for people living in or around the area, and can have serious impacts on the health of the general population, including of neighbouring countries.

Yet companies often face the challenge of not knowing who exactly owns the land and finding that multiple parties claim the same piece of land. This poses a challenge when assessing impacts: if you don’t know who owns or uses the land that your operations may impact, then you don’t know who your affected stakeholders are that you need to engage with. Stakeholders report that local or regional governments are often not present or not interested in managing the competing claims. This is exacerbated by an incomplete land registry, as well as by the lack of formal title documents. In practice, companies who want to engage stakeholders in relation to a piece of land they aim to use or buy face claims by multiple parties; one company reported that it had 26 different parties lay claim to the same piece of land.

While these types of disputes are complex to solve, several companies and their stakeholders have had positive experiences with a process of ‘participatory mapping’. This often involves all interested parties walking around the disputed piece of land with a GPS system and marking important spots and boundaries. Based on engagement around the results, a map is then developed capturing everybody’s claims, after which a process of consultation and negotiation between the interested parties follows to try to reach a resolution. Expert facilitation, taking enough time, and providing grievance mechanisms for parties dissatisfied with the process were identified as key factors in making participatory mapping more likely to succeed.

Guidance point

An ongoing process rather than a one-off evaluation

The Guiding Principles talk about 'assessing impacts' (rather than 'impact assessments') to emphasise the ongoing nature of this step of human rights due diligence. Not every situation requires a stand-alone 'human rights impact assessment' (HRIA). Companies should use approaches that are most suitable for their business and the type of human rights impacts they may be involved with.

Governments and financial institutions often require stand-alone impact assessments for projects that can have significant environmental and social impacts (including on human rights), such as infrastructure, extractive or large-scale agricultural projects. A growing number of companies are seeking to integrate human rights into existing environmental and social assessment processes.³⁸

Assessing human rights impacts is an ongoing process for companies.

At the same time, there may be good reasons for a stand-alone HRIA in certain situations, such as entry into a challenging new country, launching a new product or service, addressing legacy issues or situations of systemic human rights abuses. There are a number of methodologies and tools available for conducting stand-alone HRIAs of business operations. Good resources include the International Business Leaders Forum and the International Finance Corporation's 'Guide to Human Rights Impact Assessment and Management' and the Danish Institute for Human Rights 'Human Rights Compliance Assessment'. There are a growing number of public examples of company-led HRIAs, including:

- ▶ A human rights assessment of the Marlin mine in Guatemala;³⁹
- ▶ Nestlé's disclosure about the company's human rights due diligence efforts (with the Danish Institute for Human Rights),⁴⁰ impacts in its cocoa supply chain in Côte d'Ivoire (with the Fair Labor Association),⁴¹ and impacts in its Thai shrimp supply chain (with Verité);⁴²
- ▶ Assessments with UNICEF involving the tourism company Kuoni related to impacts on children's rights connected to their operations in Kenya⁴³ and India.⁴⁴

There has also been growing attention on the need to better understand affected stakeholders' perceptions as a contrast to company-led HRIAs, building on the Canadian Organisation Rights & Democracy's 'Getting it Right' tool for community-based impact assessment,⁴⁵ now being implemented by Oxfam and FIDH. The box on the next page summarises some of the findings from Oxfam's work in this space.

38. The International Association for Impact Assessment has published a guidance note on social impact assessment that provides helpful clarification on the integration of human rights into social impact assessments: Frank Vanclay, Anna Maria Esteves, Ilse Aucamp and Daniel Franks, 'Social Impact Assessment: Guidance for assessing and managing the social impacts of projects', 2015, available at www.goo.gl/gTIM23.

39. www.goo.gl/wnbTqs

40. www.goo.gl/a31U5o



LEARNING FROM PRACTICE

RECENT LEARNING FROM OXFAM'S COMMUNITY-LED HUMAN RIGHTS IMPACT ASSESSMENTS WORK

While assessing impacts is only one step in the due diligence process, human rights impact assessments (HRIAs) can be an important tool. An HRIA of a private investment seeks to identify the impacts that corporate activities are having, have had, or might have, on human rights. HRIAs can take various shapes and be led by different stakeholders, but should share the ultimate goal of protecting human rights and improving accountability among stakeholders.

Oxfam, and other NGOs, are proponents of community-led HRIA approaches, so that those who are most directly affected – local communities – can intervene to enhance positive effects, avoid or mitigate negative impacts, and contribute to the fulfilment of human rights. Community-based HRIAs carry the potential to completely change the nature of the dialogue between companies and communities affected by their operations. If communities come with their own evidence-based analysis, companies will need to acknowledge communities' perspectives and engage with them. At the same time, it is clear that even community-based methodologies cannot achieve desired outcomes without company participation.

A community-based human rights impact assessment approach offers an alternative path, allowing affected communities to drive a process of information gathering and participation, framed by their own understanding of human rights. Communities can engage in solving human rights threats by working with NGOs, companies and governments on a more equal footing. By starting with the perspectives of affected people, the HRIA focuses on their concerns and their aspirations for human rights realisation.

Recommendations from Oxfam to companies based on this work include:

- Ensure that any HRIA process is thorough, and that meaningful community participation informs the company's human rights conclusions. This means reaching beyond traditional leadership to ensure that the voices of vulnerable groups, such as women, children, the elderly and minorities, have been afforded an opportunity to be heard.
- Be willing to take on board the findings of external HRIA processes towards the existing project, internalise lessons learnt from HRIAs, and apply this knowledge to future projects while keeping in mind contextual differences.
- Consider reaching out to an NGO that could fund a community-based HRIA while conducting their own company-led one, or consider collaborating in a co-owned process.
- Support a business and human rights fund that can be used by communities for HRIAs.
- Participate thoroughly in any community-based HRIA assessing the impacts of a company project and provide relevant materials and access to the site and staff.

See www.goo.gl/dNwQf8, p.33.

Read more about Oxfam's work on HRIAs at www.goo.gl/RF7tSe

41. www.goo.gl/zJr9p
42. www.goo.gl/yPUUvt
43. www.goo.gl/atvk2J
44. www.goo.gl/aNqD77
45. www.goo.gl/zBptS6



WRAPPING UP - COMMON PITFALLS TO AVOID

FORGETTING ABOUT STAKEHOLDER ENGAGEMENT

Impact assessment is an essential foundation for all of the other steps of the due diligence process. The relationships that a company starts to build with stakeholders by seeking their input as part of identifying impacts can help create a basis for further engagement about potential solutions at later stages of the process. At the same time, some companies may need to start by getting comfortable with the impact assessment process first – drawing on the results of existing stakeholder engagement processes and then gradually maturing this to include direct engagement with stakeholders about particular human rights issues or country contexts.

ONLY LOOKING 'INSIDE THE FENCE'

For many companies, their most significant human rights risks may be connected to their business relationships rather than their own activities. It is important that companies avoid exclusively focusing on their own activities, or where they have the most control, even if this initially feels like expanding the scope of the exercise beyond what is manageable.

TRYING TO DO IT ALL PERFECTLY

The processes outlined in this chapter will be new for most companies. For those with large or complex businesses, it is advisable to start in a targeted way, prioritising particular countries or parts of the business to build learning about how to assess and evaluate human rights risks. Over time, the effort will need to expand to cover the company's entire operations, but if a company tries to do it all at once, it can lead to 'paralysis by analysis' and prevent meaningful steps from being taken.

Some suggestions for SMEs

Start with a focus on a set of issues

Often, an SME provides a very particular or targeted product, so it will be dealing with a relatively specific set of human rights impacts related to the sector or type of business in which its products or services are involved (for example, water engineering company: right to water; Internet start-up company: right to privacy and freedom of expression; hardwood importer: rights of indigenous peoples and other forest communities where wood is sourced from). This can help make it very clear where the company should prioritise its attention.

Benefit from other sources

Industry and issue-specific multi-stakeholder initiatives, as well as government agencies, can help provide information to assist in evaluating risks and appropriate action in particular countries or on certain topics. ◀



Key sources and websites

- Shift, 'Business and Human Rights Impacts: Identifying and Prioritizing Human Rights Risks', 2014 www.goo.gl/HMk5VI
- International Business Leaders Forum, the International Finance Corporation, 'Guide to Human Rights Impact Assessment and Management', 2010 www.goo.gl/AIFT8q
- Oxfam America, 'Community Voice in Human Rights Impact Assessments', 2015 www.goo.gl/n1PI16