

Human rights in the mining and metals industry  
**Integrating human rights due diligence into corporate risk management processes**

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Welcome to the latest in a series of guidance notes on human rights in the mining and metals sector by the International Council on Mining and Metals (ICMM). Respect for human rights is a key aspect of sustainable development. One of the core principles of ICMM's Sustainable Development Framework, which all company members are required to implement, is to "uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities" (ICMM Principle 3).

Previous ICMM documents provided guidance on an overall management approach for human rights (*Human Rights in the Metals and Mining Industry: Overview, Management Approach and Issues*) and on handling local level concerns and grievances (*Human Rights in the Metals and Mining Industry: Handling and Resolving Local Level Concerns & Grievances*). This document (the guide) focuses on integrating human rights due diligence into corporate risk management processes – which is already a focus of activity across ICMM's membership. The aim of this guide is both to describe some of these existing positive practices through case studies and also to assist companies to check whether their approach in this area covers the ground sufficiently.

Human Rights due diligence is currently a topic of significant debate, with a number of methodologies being developed, tested and/or refined. The debate assumed prominence after the UN Special Representative of the Secretary General (SRSG) on Human Rights and Business, Professor John Ruggie, identified human rights due diligence as the key mechanism for companies to deliver on their "responsibility to respect" human rights (in the context of his "protect, respect and remedy" framework) and later expanded on the concept of human rights due diligence within the UN Guiding Principles for Business and Human Rights (UN Guiding Principles).

In spite of the ongoing debate and different methodologies being developed in this area, however, there is a lack of succinct guidance focused on the mining sector. Among the topics that remain unclear are a) how to build on existing risk management processes such as Environmental and Social Impact Assessments (ESIAs), which may already cover much of the ground, and b) what tools are most useful to apply in different circumstances. This document aims to set out practical steps that mining companies can take amid a potentially confusing array of options and approaches.

Finally, it is important to acknowledge that the catalyst and frame of reference for this guide and almost all of ICMM's work on business and human rights has been the work that Professor John Ruggie took forward during his time as SRSG. ICMM and its members are very grateful to him for his unstinting commitment to developing a clear and comprehensive framework that clarifies and untangles the state-business human rights nexus. We recognize the professional and personal investment (and sacrifices) that his work has entailed, and the strong emphasis throughout on multi-stakeholder engagement. We also believe that the outcomes will be of enduring benefit to all with an interest in ensuring that business supports, rather than hinders, the realization and enjoyment of human rights.



**R. Anthony Hodge**  
President, ICMM

# 1

## SECTION 1: Overview and summary

### What is the aim of this guide?

The aims of this guide are to:

- explain what is meant by human rights due diligence and the central role that it plays in delivering on the corporate responsibility to respect human rights
- assist mining companies in the review of their existing risk management processes and to consider the extent to which they address human rights and
- identify how mining companies can enhance or build upon their existing risk management processes, where necessary, to ensure that their approach to human rights due diligence is adequate and consistent with the UN Guiding Principles.<sup>1</sup>

In addition, the guide aims to introduce a range of the currently available tools on risk management and aspects of human rights due diligence, and assist members to identify which of these may provide useful supporting guidance depending on circumstances.

The guide's purpose is not, however, to duplicate these more detailed documents, nor set out in detail how to undertake a comprehensive ESIA or other such processes that are documented elsewhere. The guide does not prescribe a "one-size-fits-all" approach to human rights due diligence. Rather, it emphasizes that companies need to ensure that their approach adequately responds to the local contexts in which they operate. As such, ICMM members should bear in mind the commentary to UN Guiding Principle 17, and seek expert advice where appropriate.

### Who is the intended audience for this guide?

The guide may be useful for those ICMM members working in a number of corporate areas, including community relations, security, human resources, supplier and contractor management, social performance and external affairs, both at group and operational level.

### What is the context for this guide?

Building upon John Ruggie's "Protect, Respect and Remedy Framework",<sup>2</sup> which was endorsed by the UN Human Rights Council (HRC) in June 2008, the UN Guiding Principles were endorsed by the HRC in June 2011. The UN Guiding Principles further define the concept of human rights due diligence and the expectations of how it should be conducted. The introduction to the UN Guiding Principles emphasises that a company's responsibility to respect human rights can be discharged through effective due diligence:

"...business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved... Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation".

The need for companies to assess and address human rights risks and impacts in a more systematic fashion has also been flagged in:

- the 2011 revisions to the International Finance Corporation's (IFC) Policy and Performance Standards on Social and Environmental Sustainability (see [www.ifc.org](http://www.ifc.org)) and
- the Organisation for Economic Co-operation and Development's (OECD) Guidelines for Multinational Enterprises (see [www.oecd.org](http://www.oecd.org)).

More broadly, there are increasing calls from civil society and the investment community for companies in the extractive and other sectors to demonstrate publicly their approach to respecting human rights, with various methodologies being promoted.

It is important, however, to emphasise that companies are not expected to substitute for the role of governments, which bear the primary duty for the respect, protection, promotion and fulfilment of human rights.

The SRSG highlighted the distinct responsibility of companies to "respect" human rights, meaning not to infringe on the enjoyment of rights by others and addressing negative impacts with which they are involved (see Guiding Principle 11). While it is recognized that business has extraordinary potential to enable and contribute to the realization of human rights in a variety of ways, the responsibility to respect human rights is now a baseline expectation that all companies should be working towards.

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# Overview and summary

## How does human rights due diligence relate to the broader corporate responsibility to respect?

The UN Guiding Principles include 31 principles, which cover all three aspects of the UN Protect, Respect and Remedy Framework. UN Guiding Principles 1 to 10 relate to the “**State duty to protect human rights**”, and do not apply to companies. UN Guiding Principles 11 to 24 address the “**Corporate responsibility to respect human rights**” (see summary in Box 2 below). UN Guiding Principles 25 to 31 relate to “**Access to remedy**” (which is addressed in ICMM’s *Human Rights in the Metals and Mining Industry: Handling and Resolving Local Level Complaints and Grievances*). For ease of reference, the full text of the UN Guiding Principles and the related commentary are included in Appendix 1.

UN Guiding Principles 11 to 15 are referred to as the “**Foundational Principles**” of the responsibility to respect human rights, and address issues such as what it means to respect human rights (UN Guiding Principle 11) and define concepts such as internationally accepted human rights (UN Guiding Principle 12).

The Foundational Principles state that the responsibility to respect requires companies to “avoid causing or contributing to adverse human rights impacts through their own activities, and to address such impacts when they occur”. The responsibility to respect also requires companies to “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (UN Guiding Principle 13).

The Foundational Principles signal that the responsibility to respect applies to all businesses (UN Guiding Principle 14), and that companies must have appropriate policies and processes in place to deliver on the responsibility to respect (UN Guiding Principle 15).

The Foundational Principles form the basis for the “**Operational Principles**” (UN Guiding Principles 16 to 24), which elaborate on the policies and processes that companies need to have in place to ensure that they respect human rights. The Operational Principles are clustered under the following four sub-headings:

- Policy Commitment (Guiding Principle 16),
- Human Rights Due Diligence (Guiding Principles 17 to 21),
- Remediation (Guiding Principle 22),
- Issues of Context (Guiding Principles 23 and 24).

### Box 1: What do we mean by Human Rights?

The term “human rights” describes the fundamental rights and freedoms that everyone is entitled to. They provide the basis for individuals to lead a dignified life, to freely express independent beliefs and to live free from abuse. They are inherent to all individuals, regardless of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. Everyone is equally entitled to enjoy their human rights without discrimination.

Universal human rights are often expressed and guaranteed by international law in the form of treaties, customary international law and general principles. At the domestic level, human rights are often enshrined in national constitutions or other domestic laws. International human rights law prescribes the obligations of governments to act (and refrain from acting) in certain ways in order to promote and protect human rights and fundamental freedoms of individuals and groups.

The principle of universality of human rights is the cornerstone of international human rights law. The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights ([www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx)). These, together with the core labour standards of the International Labour Organisation ([www.ilo.org](http://www.ilo.org)), form the most widely accepted codification of human rights standards as enshrined in international law.

All human rights are indivisible, whether they are civil and political rights (e.g. the right to life, equality before the law and freedom of expression), economic, social and cultural rights (e.g. the rights to work, social security and education), or collective rights (e.g. the rights to development and self-determination). Human rights are also interdependent – the improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.

It is also worth noting that human rights are subject to progressive clarification, as evident from the 2010 adoption by the UN General Assembly of Resolution 64/292 (the right to safe and clean drinking water and sanitation). Prior to the adoption of this resolution, many human rights specialists had argued that the right to safe and clean drinking water and sanitation was implicitly guaranteed by Article 11 (right to an adequate standard of living) of the International Covenant on Economic, Social and Cultural Rights. However, Resolution 64/292 explicitly identifies a discrete right to water and sanitation.

Source: Derived from website of the UN Office of the High Commissioner for Human Rights ([www.ohchr.org](http://www.ohchr.org))

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The main focus of this guide is on UN Guiding Principles 17 to 21, which address human rights due diligence, as this is a central aspect of the corporate responsibility to respect human rights.

The preferred approach to human rights due diligence will vary depending on a number of factors, but sectoral considerations are important. For that reason, the guide aims to provide a sectoral perspective on how human rights due diligence can be conducted by mining and metals companies, with special emphasis on the challenges facing the mining sector. However, UN Guiding Principles 11 to 24 are also referred to within this guide, albeit in less detail.

## Why focus on human rights due diligence?

In business, the first step to effectively and responsibly managing any issue is to develop a sufficient understanding of it – this is as true for human rights as for any other issue of relevance to business. ICMM members accept the business case for managing human rights issues responsibly: above all, it can help build a strong social licence to operate and relationships with communities, customers and other stakeholders based on trust. This understanding is the basis for Principle 3 of ICMM's Sustainable Development Framework.

Conversely, it is increasingly evident that failure to effectively manage human rights issues effectively – as part of a broader corporate commitment towards respectful engagement with communities, employees and other key stakeholders – carries significant financial, legal and reputational risks. Such risks may manifest themselves in production shutdowns due to health and safety concerns, disruption of business and potential harm to employees and others due to community protest. There may be reputational and legal risks related to the actions of security forces in responding to such situations. Failure to effectively address human rights risks can lead to significant costs in terms of the management time required to respond to crises,<sup>3</sup> and may impact a company's ability to access resources elsewhere or receive funding/insurance from some financial institutions or export credit agencies. Company practices and approaches will be judged by stakeholders (including investors) and this guide outlines a process/procedural lens to assessing current due diligence processes.

## Box 2: Summary of UN Guiding Principles on the Corporate Responsibility to Respect

### A. Foundational principles

**GP11:** The responsibility to respect human rights means that companies should avoid infringing on the rights of others and address adverse impacts with which they are involved.

**GP12:** At a minimum, internationally recognized human rights should include those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

**GP13:** The responsibility to respect requires that companies: a) avoid causing or contributing to adverse human rights impacts through their own activities, and addresses such impacts when they occur, and b) seeks to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships.

**GP14:** The responsibility to respect applies to all companies. Meeting that responsibility may vary according to factors such as size, sector, etc. and with the severity of a company's adverse human rights impacts.

**GP15:** To meet the responsibility to respect, companies should have: a) a policy commitment to respect human rights, b) a due diligence process to identify, prevent, mitigate and account for how they address their human rights impacts, and c) processes to enable the remediation of any adverse human rights impacts they cause or contribute to.

### B. Operational principles

#### Policy commitment

**GP16:** Companies should make a policy commitment to respect human rights that: a) is approved at the most senior level, b) is informed by relevant expertise, c) states the human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services, d) is publicly available and communicated, and e) is reflected in operational policies and procedures.

#### Human rights due diligence

**GP17:** Companies should carry out human rights due diligence to identify, prevent, mitigate and account for how they address their adverse human rights impacts. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.

*continued*

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# Overview and summary

## Box 2: Summary of UN Guiding Principles on the Corporate Responsibility to Respect *continued*

**GP18:** Companies should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships.

**GP19:** Companies should integrate the findings from their impact assessments across relevant internal functions and processes and take appropriate action to prevent and mitigate adverse human rights impacts.

**GP20:** Companies should track the effectiveness of their response to verify whether adverse human rights impacts are being addressed, based on appropriate indicators and drawing on internal and external feedback, including from affected stakeholders.

**GP21:** Companies should be prepared to communicate how they address human rights impacts externally, particularly when concerns are raised by or on behalf of affected stakeholders. Where operations or contexts pose risks of severe human rights impacts, companies should report formally on how they address them.

### Remediation

**GP22:** Companies should provide for or cooperate in the remediation of impacts through legitimate processes, where they have caused or contributed to adverse impacts.

### Issues of context

**GP23:** Companies should always: a) comply with all applicable laws and respect internationally recognized human rights, b) seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements, and c) treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue.

**GP24:** Where companies need to prioritise actions to address actual and potential adverse human rights impacts, they should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.

It is important to understand that while some human rights are absolute (and should never be compromised, such as the right to freedom from torture), the realization of many civil and political rights will impose limits on the realization of others; for example, unrestricted freedom of expression has the potential to conflict with the right to privacy, and vice versa. In addition, the fulfilment of economic, social and cultural rights by States is subject to available financial resources. This means that companies seeking to ensure respect for human rights on the ground may need to carefully balance potentially competing human rights with the corporate responsibility to respect. By carrying out robust due diligence in this area, companies can become aware of competing human rights and find appropriate ways to ensure that their activities are not infringing on these rights.

All ICMM member companies are committed to carrying out human rights due diligence. While it is generally preferable for that human rights due diligence procedures be integrated into a company's internal control systems rather than being stand-alone exercises (albeit depending on the project circumstances), the key objective for members is to ensure that their risk management frameworks adequately address human rights concerns. With the universal endorsement of the UN Guiding Principles and their mainstreaming into other international and domestic standards, the expectations of adequate human rights due diligence have been clearly established.

# Overview and summary

## What do we mean by due diligence and what is the scope of this guide?

“Due diligence” can be defined in a number of ways. This guide approaches human rights due diligence as a process of building internal awareness and understanding of where a company’s activities may have the potential to intersect with human rights or infringe upon the enjoyment of human rights by others. It then looks at how to prevent or mitigate potential human rights impacts and remediate actual impacts that have occurred.

The SRSG describes the scope, objectives and process steps of human rights due diligence within the UN Guiding Principles, as illustrated in Figure 1. UN Guiding Principle 17 states that human rights due diligence should:

- address human rights impacts that are caused or contributed to by a company’s own activities, which that company should prevent, mitigate and, where appropriate, remediate
- address human rights impacts directly linked to a company’s own operations, products or services through business relationships, which that company should seek to prevent and mitigate
- recognize that due diligence processes may vary in complexity with the size of a company, the risk of severe impacts and the nature and context of a company’s operations
- be on-going, recognizing that human rights risks may change over time.

Within the UN Guiding Principles, the objectives of human rights due diligence are described as identifying, preventing, mitigating and accounting for (communicating and/or reporting on) adverse impacts. This guide aims to provide operational context and practical advice which draws on the substance of the UN Guiding Principles.

The four due diligence process steps outlined in the UN Guiding Principles are: 1) assessing actual and potential human rights impacts, 2) integrating the findings of such assessments into relevant functions and processes and taking appropriate action, 3) tracking the effectiveness of the response and 4) communicating externally on actions to address impacts (see Figure 3). The primary focus of this guide is on the initial “impact assessment” step rather than the other three, which are partially covered by other ICMM guidance documents and in particular by *Human Rights in the Metals and Mining Industry: Overview, Management Approach and Issues*, published in 2009.

As a consequence, Sections 2–4 of this guide address how mining and metals companies can assess human rights impacts by ensuring that existing risk management processes adequately consider human rights and by extending the reach of such processes where appropriate. The other three due diligence process steps (integration, tracking responses and communication) are also briefly addressed in Section 5.

The UN Guiding Principles also emphasise the importance of effective stakeholder engagement if companies are to accurately assess their human rights impacts. The commentary to UN Guiding Principle 18 states that companies should “seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement”. However, while effective stakeholder engagement is clearly a critical component of human rights due diligence, it is not addressed in detail in this guide. Further guidance on effective stakeholder engagement is available from IFC’s *Stakeholder Engagement Handbook* and ICMM’s *Community Development Toolkit*.

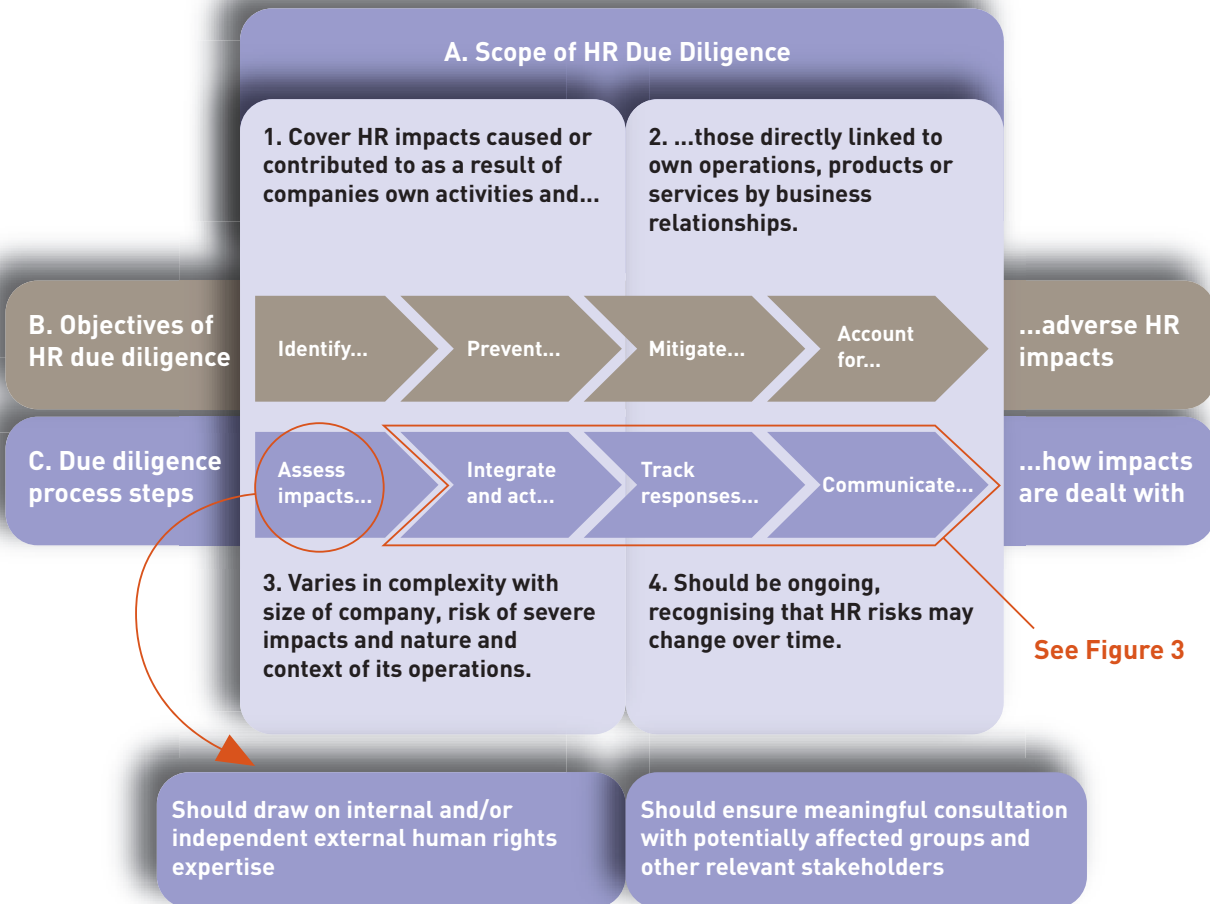
The guide’s starting point is that companies cannot be selective in choosing which human rights to respect, while recognizing that there may be a need to prioritise when it comes to the level of human rights due diligence. It acknowledges the importance of the SRSG’s statement that “there are few if any internationally recognized rights business cannot impact – or be perceived to impact – in some manner. Therefore, companies should consider all such rights”. It also acknowledges the SRSG’s statement that “because the responsibility to respect is a baseline expectation, a company cannot compensate for human rights harm by performing good deeds elsewhere”.

So while mining companies may voluntarily engage in activities to support or promote human rights, which may contribute to the enjoyment of rights, this does not offset a failure to respect human rights throughout their operations. The guide highlights potential human rights which the mining sector may have the greatest potential to impact (see Table 2 for some examples). However, the guide does not limit the scope of the rights that companies in the mining sector may need to evaluate and the full range of potential impacts that should be considered.<sup>4</sup>

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Figure 1: Human Rights (HR) Due Diligence – scope, objectives and process steps (GP17/18)



Issues currently considered by business to be environmental, social or economic in nature are increasingly being viewed through a human rights lens (especially by advocates of human rights). While this shift is partially semantic, it is important for companies to ensure there are no gaps in their understanding of how environmental, economic or social impacts have the capacity to infringe upon the enjoyment of rights by others.

In terms of the appropriate level of human rights due diligence, as stated in UN Guiding Principle 17, due diligence “will vary in complexity with the size of a company, the risk of severe impacts and the nature and context of a company’s operations”. UN Guiding Principle 14 also emphasises the importance of “the severity of the enterprises adverse human rights impacts” in determining the “scale and complexity” of human rights due diligence. The commentary around UN Guiding Principle 14 underscores the importance of considering the severity of impacts, which relates to the “scale, scope and irremediable character” of human rights.

Therefore, where there is a risk that a company might significantly affect the human rights of individuals in a manner that may be difficult to remediate, especially where large numbers of people may be affected, it should take special care to ensure that robust due diligence processes are in place. This will enable a full understanding of the nature of the potential human rights risks and the potential for remediation, to help inform decision making. This might apply, for example, where a company proposes to resettle large numbers of people or where a company is operating in conflict-affected or otherwise difficult operating environments, where the legitimate need to provide security for personnel and assets may increase the likelihood of severe impacts on the human rights of local communities.

To support consistent interpretation of the guide, some of the key terms used throughout this document are defined in Box 3 on the following page.

# Overview and summary

## Box 3: Some key terms and definitions used within this guide

### Actual human rights impact

An “actual human rights impact” is an adverse impact that has already occurred or is occurring.

### Potential human rights impact

A “potential human rights impact” is an adverse impact that may occur but has not yet done so. Potential impacts are analogous to human rights risks, i.e. the risks that an activity may lead to one or more adverse human rights impacts.

### Adverse human rights impact

An “adverse human rights impact” occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights.

### Cause and contribution to human rights impacts

A company may cause human rights impacts through its own activities. It may contribute to human rights impacts through its own activities – either directly or through some outside entity (government, business or other). It may neither cause nor contribute to a human rights impact, but be involved because the impact is both carried out by an entity with which it has a business relationship and is linked to its own operations, products and services.

### Complicity

As a legal matter, most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases. The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime. As a non-legal matter, business enterprises may be perceived as being “complicit” in the acts of another party where, for example, they are seen to benefit from an abuse committed by that party.

### Leverage

Leverage is a form of advantage that gives power to act effectively. In the context of the UN Guiding Principles it refers to the ability of a business enterprise to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact.

### Mitigation

The mitigation of adverse human rights impacts refers to actions taken to reduce the extent of an impact, with any residual impact then requiring remediation. The mitigation of human rights risks refers to actions taken to reduce the likelihood of a certain adverse impact occurring.

### Prevention

The prevention of adverse human rights impacts refers to actions taken to avoid such impacts occurring.

### Remediation/Remedy

Remediation and remedy refer to both the processes of providing remedy for an adverse human rights impact and to the substantive outcomes that can counteract, or make good, the adverse impact. These outcomes may take a range of forms, including apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.

Source: Derived from the UN's *The Corporate Responsibility to Respect Human Rights: An Interpretative Guide* – see reference list for details

## Box 4. The challenges of conducting due diligence in conflict-affected areas

In a number of areas, the UN Guiding Principles make an explicit link between conflict-affected areas and a greater risk of human rights abuses occurring. For example, UN Guiding Principle 7 – which is concerned with what host or home countries might do to ensure that businesses are not involved in gross-human rights abuses – states that “the risk of gross human rights abuses is heightened in conflict-affected areas”. The related commentary notes that “Some of the worst human rights abuses involving business occur amid conflict over the control of territory, resources or a Government itself – where the human rights regime cannot be expected to function as intended.... In particular, it is important to pay attention to the risk of sexual and gender-based violence, which is especially prevalent during times of conflict”. The commentary to UN Guiding Principle 23 notes that “some operating environments, such as conflict-affected areas, may increase the risks of enterprises being complicit in gross human rights abuses committed by other actors (security forces, for example)”, and advises business to treat this risk as a legal compliance issue.

Given this emphasis on conflict-affected countries, how can companies identify which countries (or regions) are conflict-affected? At face value this ought to be fairly straightforward. However, in practice there is not a generally accepted authority that companies or human rights experts can refer to to ask which countries present a higher risk of gross human rights violations, although a company's “home” state's foreign ministry should not be ruled out as a potential source. This is important for companies to better understand either where they may need to do enhanced due diligence or when there may be practical constraints to how they approach due diligence.

Though there are several sources of information which may be useful, many do not explicitly define “conflict-affected” or aggregate several indicators of political instability into a single index. For example, Fund for Peace has produced a ‘Failed States Index’ for the past seven years (see [www.fundforpeace.org/global/?q=program-fsi](http://www.fundforpeace.org/global/?q=program-fsi)) which provides a valuable early warning indicator of the potential for conflict. It is based on numerous information sources and 12 key indicators, including violations of human rights and mass movements of refugees. The 2011 index assigns ‘alert status’ to 35 countries and “warning status” to a further 89 – signifying that these countries have either a very high or high risk of vulnerability to collapse or conflict (respectively).

The World Bank refers to “Fragility and Conflict Situations” (see World Development Report 2011, available at <http://wdr2011.worldbank.org>), and defines “fragile states” as countries facing particularly severe development challenges, weak institutional capacity, poor governance, and political instability. Often these countries experience on-going violence linked to past severe conflict – and armed conflicts affect three out of four fragile states. The World Bank has identified 33 countries as fragile states, and 21 of these have also been assigned alert status under the Failed States Index. Fragile states are defined based on an aggregate measure of various indicators – yet it is still a useful one. While the World Bank does not define an official list of conflict-affected or post-conflict countries, the International Peace Research Institute in Oslo maintains an Armed Conflict Database, which differentiates between international conflicts and civil wars.

Having trusted sources of information (and understanding how these are constituted) is important. The 2011 “World Development Report” has a focus on Conflict, Security and Development. It asks important questions such as what factors increase the risks of violence, why conflict prevention and recovery are so difficult to address, and what practically can be done. The report states that 25% of the world's population lives in fragile or conflict-affected states – and that no low-income fragile or conflict-affected country has achieved a single Millennium Development Goal.

# Overview and summary

## What are the main messages of the guide?

Corresponding to the four core sections of this guide, the main messages are as follows:

- ICMM members already have in place significant **existing risk management processes** which cover a number of issues relevant to human rights, even if these processes do not use “human rights” language explicitly. They include not just ESIA’s, but also internal compliance systems, due diligence relating to investment decision making, employee surveys and political risk assessments. To the extent possible, making use of these tools for the conduct of human rights due diligence avoids reinventing the wheel. At the same time, if coverage of relevant human rights is to be maximised all such processes need to be undertaken in a way which is thorough and robust. For ESIA’s, for example, this may require a very detailed baseline of the social context with particular attention to impacts on vulnerable groups (see Section 2). It would also require consideration of the extent to which proposed activities may infringe upon the enjoyment of human rights (such as access to clean water) by others.
- To ensure human rights are fully covered, a number of **additional aspects** may need to be incorporated in existing risk management processes. These include some general approaches, such as: ensuring human rights are considered within baseline studies; understanding potential human rights issues arising from relationships with third parties such as the host government and other business partners; and reviewing potential project impacts with reference to international human rights standards. It is also important to ensure that existing risk management processes adequately address the human rights dimensions of specific challenges for the mining industry – these may include artisanal and small-scale mining, security issues, conflict risk, resettlement and issues relating to gender and indigenous peoples (see Section 3). Understanding the perspectives of potentially affected individuals and groups is a key aspect of human rights due diligence. Where possible and appropriate to the enterprise’s size or human rights risk profile, due diligence should be informed through direct engagement with those who may be affected or their legitimate representatives.
- In terms of **practical approaches and external tools** for reinforcing risk management processes in this way, there is no single solution for all situations. Internal systems and processes – which are likely to vary significantly between companies – should be reviewed against the potential additional aspects in Section 3, and tailored and adapted if any gaps are identified. In terms of external assessments at particular operations, there are three basic options which could be pursued: 1) build human rights into the ESIA, 2) conduct a separate assessment focused on a particular human rights issue or set of issues that have been identified as significant in previous assessments, or 3) conduct a stand-alone human rights impact assessment (HRIA). The right approach will depend partly on the nature and severity of the potential impacts and also on the stage of the operation; stand-alone HRIsAs are not the only way forward. Different external tools are appropriate for each of these options, and all the tools will need to be tailored to the situation facing the operation (see Section 4).
- Beyond the identification and assessment of human rights impacts, it is important to ensure that potential adverse human rights impacts are either **prevented** or **mitigated**, or in the case of actual human rights impacts, **remediated**. This requires companies to follow through on the outcomes of assessment activities by integrating the findings into relevant functions and processes and by taking appropriate action. Once preventative or remedial actions are agreed, companies also need to ensure that they track the effectiveness of their response. Furthermore, they should publicly communicate on actions to address impacts to ensure a degree of transparency and accountability to potentially impacted individuals or groups and other relevant stakeholders. The nature and extent of external communications needs to balance the legitimate interests of affected parties and other stakeholders with the need to ensure the protection of affected stakeholders, employees and commercial confidentiality (see Section 5).

# 2

## SECTION 2: Human rights and existing risk management processes

This section outlines some of the human rights that may already be covered by existing risk management processes including ESIA's, country/political risk assessments and internal compliance systems. Though often not explicitly framed in human rights terms, many companies apply a range of risk management processes. This section considers the potential for such processes to identify and assess actual and potential human rights risks and impacts. This includes those that:

- are caused by a company's activities, products or services (such as discrimination against employees or exposure of employees to unacceptable health impacts)
- a company may contribute to through its activities (such as detaining youths that may have damaged company property and handing them over to authorities with a poor human rights track record)
- are linked to a company's operations, products or services by its business relationships (for example, by contracting with a service provider with a poor track record of complying with labour laws as opposed to one that has a good record of compliance, this increases the risk that they may infringe human rights in providing you with a service).

ESIA's, for example, highlight environmental, social and economic impacts that may impact on rights, either positively or negatively. For example, the loss of sacred sites has the potential to adversely affect the right of individuals to "freely participate in the cultural life of the community"<sup>5</sup> or the loss of access to grazing lands might potentially deprive pastoralists of their means of subsistence.<sup>6</sup> Similarly, internal control systems are often in place that address human rights related aspects of employment while many ICMM members have also set up anonymous "hot-lines" for employee whistle-blowing. Such systems help strengthen due diligence on human rights in the workplace such as the rights to safe working conditions and freedom from discrimination.

Table 1 below sets out some of the risk management processes already well established among ICMM corporate members and other leading extractives companies and ways in which they are likely to cover human rights.

Table 1: Coverage of human rights by existing risk management processes – illustrative			
Risk management process	When typically used	Ways in which process may cover human rights	Examples of potentially relevant human rights <sup>7</sup>
ESIA's	Undertaken for most major projects or where legally required	Well designed ESIA's can pick up on range of human rights issues – economic, social and cultural – relevant to local communities around operations	<ul style="list-style-type: none"> <li>• Right to adequate standard of living (including food, clean drinking water, clothing and housing)</li> <li>• Right to participate in cultural life</li> <li>• Right to hold opinions, freedom of information and expression</li> <li>• Right to health</li> <li>• Right to education</li> </ul>
Political risk assessments	Undertaken for a significant proportion of projects and existing operations, particularly when moving into new geographies	Such assessments often include examination of human rights record and reputation of host government, as well as its ability to enforce the rule of law	<ul style="list-style-type: none"> <li>• Freedom of thought, conscience and religion</li> <li>• Right to life, liberty and security of person</li> <li>• Right to hold opinions, freedom of information and expression</li> <li>• Right to political life</li> </ul>

*continued*

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# Human rights and existing risk management processes

**Table 1: Coverage of human rights by existing risk management processes – illustrative** *continued*

Risk management process	When typically used	Ways in which process may cover human rights	Examples of potentially relevant human rights <sup>7</sup>
Conflict assessments	Undertaken by companies who may be operating in or considering entering a conflict-affected country to better understand the dynamics of conflict	Such processes can identify the origins of and tensions that lie beneath nascent or current sources of conflict within countries or regions, and point to either existing or possible future sources of human rights impacts	<ul style="list-style-type: none"> <li>• Right to life, liberty and security of person</li> <li>• Right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment</li> <li>• Right to freedom of movement</li> <li>• Right to freedom of opinion and expression</li> <li>• Right to non-discrimination</li> </ul>
Legal due diligence	Undertaken for acquisitions and other significant transactions, including business development through joint ventures	Such due diligence will often cover topics such as compliance with national and international laws and standards, including HSE, land acquisition and anti-corruption standards. It can also identify potential gaps or conflicts between national laws and international law and/or corporate policies	<ul style="list-style-type: none"> <li>• Right to self-determination</li> <li>• Equal recognition and protection under the law</li> <li>• Rights of minorities</li> </ul>
Pre-investment or divestment due diligence	As above for legal due diligence	Addresses non-legal aspects, including potential costs of bringing new acquisitions into compliance with company policies and standards, any liabilities as a result of poor management of environmental or social issues, etc.	<ul style="list-style-type: none"> <li>• Right to adequate standard of living (including food, clothing and housing)</li> <li>• Right to participate in cultural life</li> <li>• Right to health</li> <li>• Right to education</li> <li>• Rights of minorities</li> </ul>
Employee surveys, audits and whistle-blowing systems	In widespread general use both at particular operations and group-wide	Such processes can help pick up on issues around discrimination and harassment, union representation, corruption, and potential infractions of labour laws and standards	<ul style="list-style-type: none"> <li>• Right to non-discrimination</li> <li>• Right to just and favourable remuneration</li> <li>• Right to a safe work environment</li> <li>• Right to rest and leisure</li> <li>• Right to a family life</li> <li>• Freedom of association</li> <li>• Right to organize and participate in collective bargaining</li> <li>• Right to access to remedy</li> </ul>

*continued*



# Human rights and existing risk management processes

**Table 1: Coverage of human rights by existing risk management processes – illustrative *continued***

Risk management process	When typically used	Ways in which process may cover human rights	Examples of potentially relevant human rights <sup>7</sup>
Internal control and assurance systems to ensure compliance with group policies	Internal control systems or equivalent in place at all ICMM corporate members	These systems can help drive implementation of policies on (and surface internal challenges associated with) issues such as anti-corruption, equality and fair treatment in the workforce, and HSEC standards	<ul style="list-style-type: none"> <li>• Right to a safe work environment</li> <li>• Right to life, liberty and security of person</li> <li>• Right to non-discrimination</li> </ul>
Stakeholder engagement	Used as part of other stand-alone processes (such as ESIA or conflict assessments), and also used as a basis for on-going company-community interactions	Effective stakeholder engagement supports accurate assessments of human rights impacts, by enabling companies to understand the concerns of potentially affected stakeholders	<ul style="list-style-type: none"> <li>• All of those listed above</li> </ul>

The fact that existing risk management processes potentially cover a range of human rights does not necessarily mean that coverage of these rights is sufficiently broad. Taking ESIA as an example, one limitation is that while they are well suited to identifying environmental and social impacts, they do not necessarily explicitly address how these have the potential to infringe on the enjoyment of human rights by others. For example, a social impact assessment in a community that accepts or entrenches certain forms of discrimination may not recognize that discrimination is prevalent and that it may impact on groups' or individuals' potential to benefit from the project, for example through employment opportunities. Similarly, human rights are often only identified after careful inquiries and observations. Often it is the most vulnerable (women, children, etc.) that are the most impacted and they can be hesitant to come forward.

Section 3 below pinpoints additional aspects to help ensure comprehensive coverage of human rights. By strengthening existing risk management processes in a manner that ensures actual and potential human rights impacts are explicitly addressed, this makes it more likely that human rights will be picked up to a significant extent.

Another issue with ESIA is that they are generally only undertaken before development of the asset, so by the time a company has been operating for a few years they become dated. As a result, other approaches need to be applied to ensure an ongoing level of due diligence (as stipulated in UN Guiding Principle 17).

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# Human rights and existing risk management processes

In the case of ESIA, best practices which could help maximise the coverage of human rights include (but are not limited to):

- ensuring the social context around operations is fully understood with a thorough examination of local issues from a human rights-based perspective, based on extensive fieldwork and interviews with a range of stakeholders
- identifying likely human rights impacts across the full range of social and economic issues, with particular attention to potential impacts on minorities and vulnerable groups
- recognizing that some areas of potential importance from a human rights perspective are not always well covered within ESIA (such as labour issues, cumulative impacts and influx management) and taking steps to address such gaps, where appropriate
- ensuring the team undertaking the ESIA includes sufficient human rights expertise, including knowledge of social, political and cultural issues in the region and how these issues may intersect with human rights (establishing an independent panel of experts to review the ESIA can add to its robustness)
- ensuring the ESIA process includes effective consultations with, and participation of, affected communities and other stakeholders, that issues relating to human rights are explicitly addressed, that the process is transparent and that outputs are published and made widely available
- developing robust management systems to mitigate potential negative impacts, consistently monitoring and evaluating the impacts and their mitigation over time, and ensuring management buy-in and accountability in this area.

It should also be recognized that ESIA are often made available for public consultation and are almost always submitted to regulatory authorities as part of project approval processes. While ICMM is strongly supportive of disclosure and transparency, there are potential sensitivities around the inclusion of information on human rights risks or impacts in such documents – particularly where governments may be involved, where the ESIA reports on the disadvantage of, or discrimination towards, vulnerable groups. In such instances, a company should balance the desirability of inclusive and meaningful disclosure with the responsibility to not infringe on the rights of parties who might be adversely affected as a consequence of such disclosures. At the same time, the company should ensure that adequate preventative or remedial measures are put in place, in the event that the project goes ahead, irrespective of the specificity of public disclosures on such issues within the ESIA.

Country/political risk assessments are another mechanism that can help to ensure human rights are adequately addressed. These may identify gaps or potential conflicts between national laws and international law and/or corporate policies. They are especially relevant to understanding the broader operating context (as emphasised in UN Guiding Principle 17) and the influence this can have on a company's potential impact on human rights. For example, in countries where labour practices may be out of step with generally accepted human rights norms, such as the International Labour Organisation (ILO) conventions, the risks of association with labour rights abuses by business partners will likely increase (and can be assessed through the country risk process). While such processes provide important high-level information, for example, of the reputation of security providers or dynamics of conflict within a country, the local operational context is often not covered in such reports.

Thorough political risk assessments would examine the direct commercial risks posed by potential political instability in the country concerned and also the potential indirect impacts – including, for example, the damage that may be inflicted on the company's reputation if state agencies in the country are reported to abuse human rights. Country risk assessments can also facilitate an understanding of the potential human rights impacts arising from involvement in the actions of third parties linked to an operation through business relationships. If security is to be provided by state authorities, for example, with a poor human rights record, potential impacts on human rights should be flagged through a country risk assessment. In addition, such assessments can be extended to identify existing avenues of recourse or access to remedy within the particular State, and whether these provide effective or credible means of redress (in line with the State duty to protect human rights).

In summary, where existing processes adequately address the human rights issues discussed above, companies will already be covering some important aspects of human rights due diligence. Where they do not address such issues, the processes ought to be adapted or supplemented to ensure that relevant human rights are adequately addressed.

# 3

## SECTION 3: Additional aspects to ensure full coverage of human rights

This section briefly outlines additional aspects that may need to be considered to ensure that human rights due diligence is adequate. It also addresses some issues of particular relevance to the mining sector that have the potential to result in human rights impacts.

The purpose of this section is to assist ICMM members and other companies in checking that their human rights due diligence is adequate and consistent with the UN Guiding Principles.

Section 4 will then identify practical approaches and tools that companies can use to ensure any gaps are filled.

### Applying a human rights “lens”

Human rights due diligence involves adopting a specific perspective on corporate impacts and activities, which takes into account the perspectives of affected communities based on meaningful consultation and engagement. In particular, applying a human rights “lens” entails:

- **Incorporating human rights sources of information as part of baseline assessments or risk analyses.** A wealth of information often exists on human rights issues and concerns in particular regions or countries where operations are planned or underway (some key sources are highlighted in Section 4). For a proposed new investment in a country, a starting point is to establish which international human rights agreements that country has agreed to follow and how these have been translated into law, regulations and policies. This process may require input from human rights experts and can help identify relevant gaps or conflicts in coverage of domestic law against international human rights standards and also in the implementation of relevant laws. Particularly important questions to ask are: have there been allegations of human rights abuses in the project area and if so by whom, and what assessments have been made by international agencies, NGOs or other states (especially the company’s home state(s)) of the rights record of the host government? Understanding these perspectives, however critical of the government, is important, and need not imply public endorsement of them by the company. Where national laws may conflict with internationally recognized human rights, companies are expected to respect the latter to the extent possible, and be able to demonstrate their efforts to do so.

- **Reviewing potential project impacts with reference to international human rights standards.** The SRSG has indicated that the minimum standards to refer to in this respect are the International Bill of Human Rights<sup>8</sup> and the core conventions of the ILO. Depending on the situation, other standards may also be relevant. As noted above, adopting such a “lens” does not imply that the company is responsible for addressing all human rights issues identified, rather that the responsibility to respect relates to those potential and actual impacts that it may cause or contribute to. At the same time, using international human rights standards as a reference point for analysis – as opposed to examining potential changes from the current socio-economic baseline – may result in important issues being more clearly identified. This includes the potential for a company’s activities to have positive impacts (for example, on the right to education or to health or to an adequate standard of living, in the region of operations), recognizing, however, that the primary focus of human rights due diligence should be on the potential for a company’s activities to infringe upon the rights of others (for example, through impeding access to clean water). This approach can also help to flag negative aspects of the operating context which could rebound on the company (for example, state restrictions on freedom of expression, which might make company efforts to build trust with local communities more difficult). If companies are to fully understand potential human rights impacts and how these may be prevented or mitigated, it is also important to identify potential conflicts between international human rights standards and local laws or practices.

Such reference to human rights standards can take place within the context of broader risk management processes, but should not be assumed to be captured by them. According to the SRSG, “While [human rights impact] assessments can be linked with other processes like risk assessments or environmental and social impact assessments, they should include explicit references to internationally recognized human rights.”<sup>9</sup>

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# Additional aspects to ensure full coverage of human rights

- **Pinpointing key impacts and issues that company actions may contribute to or that may be linked to its operations as a result of the behaviour of parties with which it is associated, rather than focusing solely on impacts the company may directly cause.** Such parties may include the host government, public agencies, security forces, suppliers and contractors, major business partners and previous or future owners of the asset concerned. Many human rights criticisms against extractive companies in recent years have focused on their perceived association with alleged abuses by other parties, rather than their direct activities. As noted in the UN Guiding Principles, questions of complicity may arise when a business enterprise contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties (see commentary under UN Guiding Principle 17). To give just one example, companies have been criticized for knowingly turning a blind eye to abuses by security providers, or in some cases giving the green light for abuse on their behalf, such as violently shutting down a protest. Drawing on expert knowledge on the local context, politics and culture is important.

Again there may be limits to what companies should be held responsible for in such situations and also limits to the influence they should be expected to exert (see also Section 5.1 which discusses the issue of leverage). Nonetheless, due diligence processes should involve a specific effort to understand where the key exposures – and opportunities – lie in this respect, so that appropriate and responsible mitigation plans can be put in place (including, in the case of pre-acquisition due diligence, to embed human rights related conditions in the acquisition agreement or a decision not to become involved in a particular operation).

- **Widening the scope of assessments both externally to include relevant national-level issues, and internally to include relevant employee issues.** The emphasis of assessment processes for many individual mining operations is often on the local external environment – that is, impacts on local communities and the surrounding environment. Certain national issues may be picked up (for example in political risk assessments) and employee issues (for example through employee surveys and whistle-blowing mechanisms) may also arise. Coverage of these issues may not always be sufficient or adopt the explicit human rights perspective that may be needed.

- **Surveys of the national context, for example, need to consider not just the political stability of the host government but also its reputation and respect for human rights and ability to enforce the rule of law.** It is also important to consider the human rights performance of local or regional industry peers, which can affect local stakeholder attitudes to proposed new and existing operations, and may highlight potential areas of human rights concern. Peer performance can also more broadly affect company reputation, as well as the risk profile of projects.

Likewise, employee processes should pick up on all relevant human rights topics, including, for example, non-discrimination, freedom of religion, freedom of association and labour conditions. This is relevant to human resources policies and practices, including those relating to recruitment and training. It is also important to ensure that processes intended to provide protection to employees, such as incident investigation or whistle-blowing, are designed in a manner that respects human rights. Such processes need to be culturally and socially sensitive to ensure that they are being used appropriately, recognizing that processes developed for a particular cultural context may not adequately protect rights in another.

- **Drawing on specific expertise on human rights to reinforce risk management processes.** People with a deep knowledge of the business and human rights agenda, and the extent and limits of corporate human rights obligations, can provide important practical help for companies seeking to apply the above points and to responsibly navigate the debates in this area. Building such expertise within the company or group (by appointing a senior or group level advisor on human rights and community issues, for example) is one option for this. Another is to draw on respected external experts or appoint a respected external body to provide input on a case-by-case basis for particular projects.

# Additional aspects to ensure full coverage of human rights

## Adequately addressing particular human rights

In addition to applying a human rights “lens”, there are certain issues of particular relevance to the mining sector and the operating context that should be considered to ensure that the impact assessment stage of risk management processes fully incorporate human rights. Defining what constitutes “adequacy” in addressing human rights should involve stakeholders, to ensure that a company’s perspective of adequacy is informed by the perspectives of affected stakeholders. A number of factors could influence how companies address particular human rights issues (for example, multi-stakeholder processes, societal and community expectations, government expectations or relevant legislation).

Table 2 below provides a list of potential questions which may assist mining companies to ensure that human rights are adequately addressed – and if not, to plug any gaps.

The list is not comprehensive but reflects the key human rights issues in the mining sector, including the main potential exposures for companies. The aim is to identify those issues on which companies need to build awareness and understanding (i.e. the “assessment” element of human rights due diligence) rather than detail the actual management approaches for each of them that need to be established (on the latter, the ICMM publication *Human Rights in the Metals and Mining Industry: Overview, Management Approach and Issues* provides further guidance).

While Table 2 is intended to provide some examples of key issues which it may be important for companies to consider when conducting human rights due diligence, the UN Guiding Principles state that all internationally recognized human rights should be considered by companies initially. Any of the issues listed in Table 2 may be applicable throughout the project life cycle.

<b>Issue area</b>	<b>Examples of key questions<sup>11</sup></b>	<b>Examples of potentially relevant human rights<sup>12</sup></b>
Artisanal and small scale mining	<ul style="list-style-type: none"> <li>• How will disputes between the operation and artisanal miners be managed, especially if they are operating illegally in the mining concession area?</li> <li>• Is there a risk that the operation may undermine the rights of artisanal miners that have been allocated legal concessions?</li> <li>• What measures are being taken to prevent potential human rights abuses of artisanal miners by security forces?</li> </ul>	<ul style="list-style-type: none"> <li>• Right to life, liberty and security of person</li> <li>• Right not to be subjected to torture, cruel, inhumane and/or degrading treatment or punishment</li> <li>• Right to freedom of movement</li> <li>• Right to work</li> <li>• Right to safe work environment</li> <li>• Right not to be arbitrarily deprived of property</li> </ul>
Child rights and child labour	<ul style="list-style-type: none"> <li>• Is it likely that consultation and engagement will not adequately identify potential risks to children, e.g. by virtue of their exclusion from the process or the inability of parents to reflect their concerns?</li> <li>• Are children especially vulnerable to the impacts of development, e.g. are households in the area of operation headed by children as a result of factors such as HIV/AIDS?</li> <li>• Where land acquisition takes place, is there a risk of children being disadvantaged, for example through disinheritance, lack of access to education for relocated children, etc.</li> <li>• Is there a risk of harmful child labour taking place within the supply chain?</li> </ul>	<ul style="list-style-type: none"> <li>• Rights of protection for the child</li> <li>• Right to life, liberty and security of person</li> <li>• Right to health</li> <li>• Right to education</li> <li>• Equal recognition and protection under the law</li> <li>• Right to a family life</li> <li>• Right not to be subjected to slavery, servitude or forced labour</li> </ul>

*continued*

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# Additional aspects to ensure full coverage of human rights

**Table 2: Potential human rights issues related to the mining sector<sup>10</sup> continued**

Issue area	Examples of key questions <sup>11</sup>	Examples of potentially relevant human rights <sup>12</sup>
Conflict	<ul style="list-style-type: none"> <li>• Is there a risk of, or presence of, civil conflict in the region or host country, and how does this currently affect rights?</li> <li>• Does the risk of conflict affect the security environment in a manner that might infringe upon the rights of local communities?</li> <li>• What is the track record of either public or private security providers in terms of human rights and are they adequately trained in this area?</li> <li>• Is there a risk of tension leading to violence as a result of the distribution of resource revenues, employment opportunities or supply contracts within the country/region becoming violent?</li> <li>• Is there evidence of gender-based sexual or physical violence?</li> <li>• Is there a risk of resource revenues being used to fund conflict?</li> </ul>	<ul style="list-style-type: none"> <li>• Right to life, liberty and security of person</li> <li>• Right to freedom of movement</li> <li>• Right not to be subjected to torture, cruel, inhumane and/or degrading treatment or punishment</li> <li>• Right to freedom from arbitrary arrest and exile</li> <li>• Right of detained persons to humane treatment</li> <li>• Right to freedom from incitement to racial, religious or national hatred</li> <li>• Right to freedom of assembly</li> <li>• Right to equal recognition and protection under the law</li> <li>• Right to access to remedy</li> </ul>
Employment	<ul style="list-style-type: none"> <li>• Is there any evidence of discrimination in the workplace and are measures in place that support a diverse workforce?</li> <li>• Are processes and other measures to ensure safe working conditions sufficiently robust?</li> <li>• Are recruitment processes fair and transparent, reducing the likelihood of conflict over vacancies?</li> <li>• Are sufficient processes in place to ensure no use of forced, compulsory or child labour (either directly or in supply or processing chains)?</li> <li>• Is freedom of association and the effective recognition of the right to collective bargaining upheld by the operation?</li> </ul>	<ul style="list-style-type: none"> <li>• Right to non-discrimination</li> <li>• Right to just and favorable conditions of work</li> <li>• Right to safe work environment</li> <li>• Right to health</li> <li>• Right to rest and leisure</li> <li>• Right to a family life</li> <li>• Right to freedom of association</li> <li>• Right to organize and participate in collective bargaining</li> <li>• Right to effective remedy</li> </ul>

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# Additional aspects to ensure full coverage of human rights

Table 2: Potential human rights issues related to the mining sector <sup>10</sup> <i>continued</i>		
Issue area	Examples of key questions <sup>11</sup>	Examples of potentially relevant human rights <sup>12</sup>
Gender	<ul style="list-style-type: none"> <li>• Is domestic abuse or sexual assault prevalent?</li> <li>• Are sufficient processes in place to prevent sexual harassment and discrimination in the workforce and also in community programs?</li> <li>• What efforts are being made to increase the participation of women in the workforce and also in community programs?</li> <li>• What efforts are being taken to address risks that may affect women to a greater extent than men, such as loss of water resources?</li> <li>• How are gender considerations being incorporated into social baselines, impact and risk assessments?</li> <li>• Are gender-sensitive methodologies used to plan and implement community initiatives?<sup>13</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Right to equal recognition and protection under the law</li> <li>• Right to non-discrimination</li> <li>• Right to a family life</li> <li>• Rights of protection for the child</li> <li>• Right to just and favorable conditions of work</li> <li>• Right to health</li> <li>• Right to an adequate standard of living</li> </ul>
Indigenous peoples and other community issues	<ul style="list-style-type: none"> <li>• Does the operation concerned implement all the commitments in the ICMM Position Statement on Mining and Indigenous Peoples (including to gain a full understanding of the perspectives of indigenous peoples, to consult with them, and to seek broad community support for new projects)?</li> <li>• Are there other especially vulnerable groups among local communities, and if so, are their rights currently respected? Could the project in some way infringe on their enjoyment of rights?</li> <li>• Are the cultural and religious rights and the cultural property of local communities respected?</li> </ul>	<ul style="list-style-type: none"> <li>• Right to life, liberty and security of person</li> <li>• Right to participate in cultural life</li> <li>• Right to hold opinions, freedom of information and expression</li> <li>• Right not to be arbitrarily deprived of property</li> <li>• Right to self determination</li> <li>• Right to equal recognition and protection under the law</li> <li>• Rights of minorities</li> <li>• Right to non-discrimination</li> <li>• Right to effective remedy</li> </ul>

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# Additional aspects to ensure full coverage of human rights

**Table 2: Potential human rights issues related to the mining sector<sup>10</sup> continued**

Issue area	Examples of key questions <sup>11</sup>	Examples of potentially relevant human rights <sup>12</sup>
Macroeconomic and local economic issues	<ul style="list-style-type: none"> <li>• Is there capacity at the national and sub-national levels for the effective management of mineral revenues?</li> <li>• Are there provisions for transparently accounting for mineral revenues in-country, such as the Extractive Industries Transparency Initiative, and has this resulted in such revenues being effectively managed and accounted for?</li> <li>• Is there discontent at how resource revenues are being managed or at the respective shares of governments, local communities and private investors?</li> <li>• What are the positive impacts of the operation on economic rights (including, for example, the livelihoods of employees, and access to public services such as education resulting from mineral revenues)?</li> <li>• Do local communities generally consider themselves to be better or worse off as a result of the operation – and if worse, what are the reasons for their perceptions?</li> <li>• Is the project likely to have adverse local economic consequences, such as inflation of housing or food prices?</li> <li>• Are procedures to prevent bribery and corruption by employees sufficiently robust?</li> </ul>	<p><b>Note:</b> Rather than link specific rights to these questions, they are relevant to the fulfillment and realization of a broad range of rights</p>
Relations with business partners	<ul style="list-style-type: none"> <li>• Is there any evidence that business partners – whether equity partners, contractors, suppliers or major customers – are failing to respect human rights (including across any of the dimensions above)?</li> <li>• What is the risk that the company could somehow be involved in any such human rights abuses?</li> <li>• What is the risk that the companies' reputation will be tarred by association with the human rights record or performance of any of its business partners?</li> </ul>	<ul style="list-style-type: none"> <li>• Potentially impacts any of the rights listed under other issue areas (for example rights related to employment listed on page 19)</li> </ul>

*continued*

# Additional aspects to ensure full coverage of human rights

Table 2: Potential human rights issues related to the mining sector <sup>10</sup> <i>continued</i>		
Issue area	Examples of key questions <sup>11</sup>	Examples of potentially relevant human rights <sup>12</sup>
Relations with host government/state agencies	<ul style="list-style-type: none"> <li>• What is the general record of the host government/key state agencies on human rights and enforcement of the rule of law?</li> <li>• What is the risk that the government or state agencies will undermine the ability of the company to respect human rights (including across any of the dimensions above)?</li> <li>• What is the risk that the company's reputation will be tarred by association with the government based on the latter's human rights record?</li> </ul>	<ul style="list-style-type: none"> <li>• Potentially impacts any of the rights listed under other issue areas (for example rights related to employment listed on page 19)</li> </ul>
Resettlement	<ul style="list-style-type: none"> <li>• If there has been, or there are any plans for, involuntary resettlement of local communities, has this been (or will it be) carefully and responsibly managed?</li> <li>• For example has there been (or will there be) appropriate consultation with and compensation for resettled people? How have the livelihoods of resettled people been affected? If any resettlement was undertaken by previous operators of the project, were these responsibly managed?</li> </ul>	<ul style="list-style-type: none"> <li>• Right to life, liberty and security of person</li> <li>• Right to freedom of movement</li> <li>• Right to own property</li> <li>• Right to an adequate standard of living</li> <li>• Right to effective remedy</li> </ul>
Security	<ul style="list-style-type: none"> <li>• Has the provision of security to the operation required the use of force by either contracted private security or the police or military, or is there a risk that it might?</li> <li>• Is there any risk of (or evidence of past) human rights abuses against local communities by security forces, whether these be directly employed by the company, contractors or state security forces? (See the requirements on "Risk Assessment" which form one of the three main aspects of the Voluntary Principles on Security and Human Rights<sup>14</sup>)</li> <li>• Are human rights included as part of the current training of the police or military?</li> </ul>	<ul style="list-style-type: none"> <li>• Right to life, liberty and security of person</li> <li>• Right not to be subjected to torture, cruel, inhumane and/or degrading treatment or punishment</li> <li>• Right to freedom from arbitrary arrest and exile</li> <li>• Right of detained persons to humane treatment</li> <li>• Right to freedom of assembly</li> <li>• Right to effective remedy</li> <li>• Right to a fair trial</li> </ul>

*continued*

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# Additional aspects to ensure full coverage of human rights

**Table 2: Potential human rights issues related to the mining sector<sup>10</sup> continued**

Issue area	Examples of key questions <sup>11</sup>	Examples of potentially relevant human rights <sup>12</sup>
Water and ecosystem services	<ul style="list-style-type: none"> <li>• Who are the current users of water or other ecosystem services within the vicinity of the operation/project?</li> <li>• What is the current status of water supplies to the various users (for example, in terms of quality and quantity)? Is water scarcity an issue?</li> <li>• How might the development of a project (or how does an operation) affect either the quality or quantity of water or availability of ecosystem services?</li> <li>• Is the company engaged with the communities or other groups on their concerns regarding water quality or quantity or other ecosystem services?</li> </ul>	<ul style="list-style-type: none"> <li>• Right to life</li> <li>• Right to health</li> <li>• Right to an adequate standard of living</li> </ul>



A woman stands next to police officers during a protest against a proposed new mining law in Nabon, 330 km south of Quito, Ecuador  
Image courtesy of Silvia Izquierdo, STR, Associated Press



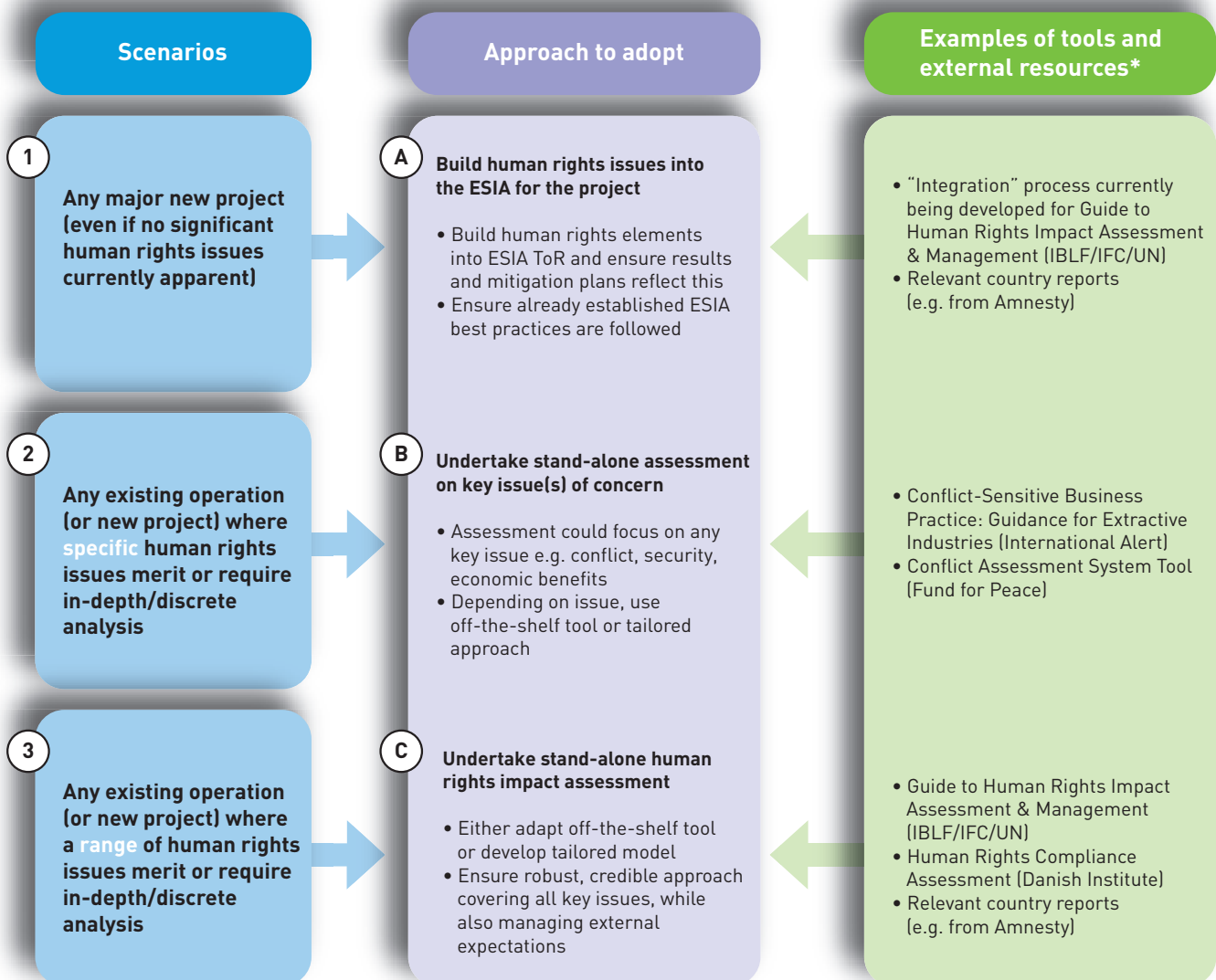
# 4

## SECTION 4: Practical approaches to assessing operational impacts

This section sets out practical ways in which companies can ensure that potential human rights impacts at the operational level (outlined in Section 3) are adequately assessed in the impact assessment stage of their risk management processes. As noted previously, a growing number of external tools and guides are being developed in this area. As some may be more useful than others, this section briefly highlights which tools may be helpful to draw upon in different circumstances.

An overview of the possible approaches to assessing human rights impacts for three operational scenarios is provided in Figure 2 below, which also identifies applicable tools and sources of information. The table in Appendix 2 provides a more detailed description and analysis of a broader range of the available tools and guides. Approaches to preventing, mitigating or remediating adverse human rights impacts are addressed in Section 5.

Figure 2: Assessing potential impacts on human rights at the operational level



\* These are illustrative examples, see text and Appendix 2 for more details

# Practical approaches to assessing operational impacts

The third and final ICMM submission to the SRSB prior to his 2008 report outlining the “Protect, Respect and Remedy Framework” stated that:

“ICMM supports moves to incorporate human rights issues into Social & Environmental Impact Assessments or similar due diligence processes for all proposed large-scale projects where there is a legitimate concern that human rights may be adversely impacted.”

There have been calls from some groups for stand-alone human rights impact assessments to become the norm for all significant projects and operations. However, provided human rights are explicitly and sufficiently incorporated into existing processes such as ESIA, this may not be necessary (and indeed has the potential to create confusion for managers by duplicating identification of the issues). In addition, by assessing human rights in the social, economic and political context, managers will be best placed to identify potential opportunities as well as risks and impacts, which might not be possible if human rights are assessed without a thorough consideration of the context.

There are three alternative approaches (see A–C in Figure 2 – Option A, Option B and Option C). The approach that is used will depend partly on the stage of a project or operation (see Scenarios 1–3 in Figure 2). Option A is generally most appropriate for proposed new projects as ESIA will likely be required and, provided human rights are sufficiently incorporated into the ESIA, this can be the most effective approach. For existing operations or potential acquisitions which are facing human rights issues requiring additional attention, Options B and C, which involve stand-alone assessments, may make more sense given that other risk management processes are likely to have already been concluded.

However, this does not rule out the possibility that stand-alone assessments may be appropriate for new projects. It may be judged in the circumstances that the human rights issues (perhaps because of their potential nature, scale or severity, or country context) would be better tackled through such an analysis. Equally, however, it may be more effective to analyze them in an integrated manner in the ESIA. Either way, what may help for all projects and operations in choosing Option A, B or C is a rapid initial evaluation of the potential issues – drawing on publicly available information and existing company knowledge of the local and national context, and using appropriate expertise in social impacts or human rights so as to inform the internal discussion. Irrespective of which option is chosen, it is important to ensure that the approach adopted addresses the internal policy frameworks and management processes that are relevant to the potential human rights impacts identified.

## Option A: Build human rights into the ESIA for new projects

As noted above, this option might be considered a default or standard approach for all major proposed projects, including those where no problematic or significant human rights issues are currently apparent. It assumes that established best practices for ESIA should be followed, such as ensuring the participation of stakeholders in the assessment.

No standard procedure has yet been developed for using ESIA in this way. The closest to such a procedure is an “integration process” for building human rights in ESIA, which was developed as part of the final version of the *Guide to Human Rights Impact Assessment and Management* by the International Business Leaders Forum (IBLF), the IFC and the UN Global Compact.<sup>15</sup>

In the absence of a standard model, a simple approach is to incorporate all the key points in Section 2 (notably, the bullet points on best practices to help maximise the coverage of human rights in ESIA) and Section 3 into the ESIA by:

- including these in the terms of reference for the ESIA consulting team
- ensuring that their significance and importance is understood by the team and that there is sufficient expertise to implement them
- checking that the team’s outputs and mitigation plans adequately address all relevant issues.

In terms of the structure of the resulting ESIA report, it may be that additional human rights issues are incorporated across the various different sections of the report or alternatively that they form a separate stand-alone section. All established best practices for ESIA themselves should be followed, such as ensuring the participation of stakeholders in the assessment and putting in place systems to monitor impacts over time (see Section 2). In incorporating human rights sources of information into the baseline, the ESIA team should draw upon relevant external country reports as mentioned above (i.e. from Amnesty International, Human Rights Watch, the Danish Institute’s Country Risk Assessment Portal and the US State Department), as well as from some of the additional sources listed in Appendix 2.

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# Practical approaches to assessing operational impacts

## Option B: Undertake a stand-alone assessment focused on a particular human rights issue of concern

This option is appropriate for existing operations (as well as for acquisitions and some new projects) facing one or more potentially problematic human rights issues that have been identified as significant from earlier assessments. It may be appropriate where additional attention on a particular issue (or issues) is needed and where this is likely to be more effectively analyzed in depth through an issue-focused assessment rather than through either an ESIA (Option A) or a broader stand-alone human rights impact assessment (Option C).

The potential focus for such an assessment could be any of the issues listed in Table 2 above, including security, conflict, discrimination or economic impacts.

In some areas tools exist which can be used as the framework or model for the assessment. For conflict-related issues, for example, key tools include *Conflict-Sensitive Business Practice: Guidance for Extractive Industries* and the *Global Compact Business Guide for Conflict Impact Assessment & Risk Management* (see Appendix 2 for more such examples). For economic issues, ICMM's *Mining: Partnerships for Development Toolkit* outlines a robust approach for assessing and enhancing the development benefits of mining projects.

On other key issues – such as assessing the human rights approach of business partners – few, if any, standard methodologies exist, so a research approach may have to be developed and tailored as part of the assessment.

In light of UN Guiding Principle 13 (in particular) companies should also consider requiring service providers, joint venture partners or other entities in their supply chains to adopt human rights due diligence processes.

## Option C: Undertake a stand-alone human rights impact assessment

This option may be appropriate for existing operations facing widespread concerns over a range of human rights (for example from NGOs or local communities). It may also be adopted for proposed new projects or acquisitions where there are a range of potentially problematic human rights issues (this is most likely for projects in countries that are conflict-affected or where governance is weak)<sup>16</sup> and also where analyzing these separately, rather than as part of the ESIA, may bring greater clarity and enhance the credibility of the analysis.

As with Option B, the approach taken can be either to use or adapt an existing tool or to develop a tailored assessment (or a combination of the two). A number of the tools which have recently been developed in this area have already been mentioned. The most useful of these for ICMM members is likely to be the *Guide to Human Rights Impact Assessment and Management*, while the *Human Rights Compliance Assessment* tool may also be helpful in shaping the overall approach and content of the assessment. The sources of information regarding state's human rights records as mentioned above should also be drawn upon.

Furthermore, depending on whether the operation concerned is a proposed investment or an existing operation, the analysis could be framed either as a forward looking "impact assessment" or as an "audit" of the performance of the operation to date. Either way, it is critical that the assessment is undertaken by someone with appropriate human rights expertise. Commissioning respected independent third parties to conduct the analysis can help strengthen its external credibility.

Footnotes on page 62

# Practical approaches to assessing operational impacts

Human rights “impact assessments” (and “audits”) are relatively new approaches and, as yet, no standard methodologies exist in this area. Rather than following a particular model, it may be more appropriate for operations to ensure that the approach they adopt is suitable for the situation they are facing. It is important that the approach, while still consistent with the broader company values and processes, addresses – and is seen to address – all the relevant issues, and also that it does not raise unrealistic stakeholder expectations (for example that it does not blur the distinction between the corporate responsibility to respect human rights and states’ responsibilities to protect and fulfill human rights). As with all the options and practical steps outlined in this guide, companies should be looking to use human right impact assessments to help them understand the extent and the limits of their responsibilities as well as to better understand and address the responsibilities they have.



Army and police preside over forced eviction of a Maya Q’eqchi’ community from a proposed mining area, Guatemala  
*Image courtesy of James Rodriguez, independent photographer and photo journalist*

# 5

## SECTION 5: Preventing, mitigating and remediating adverse impacts on human rights

Having undertaken an assessment of potential and actual human rights impacts, measures should be taken to prevent or mitigate potential impacts on human rights from occurring and to remediate adverse impacts that the company has either caused or contributed to.

As outlined in Figure 3, this can be achieved by:

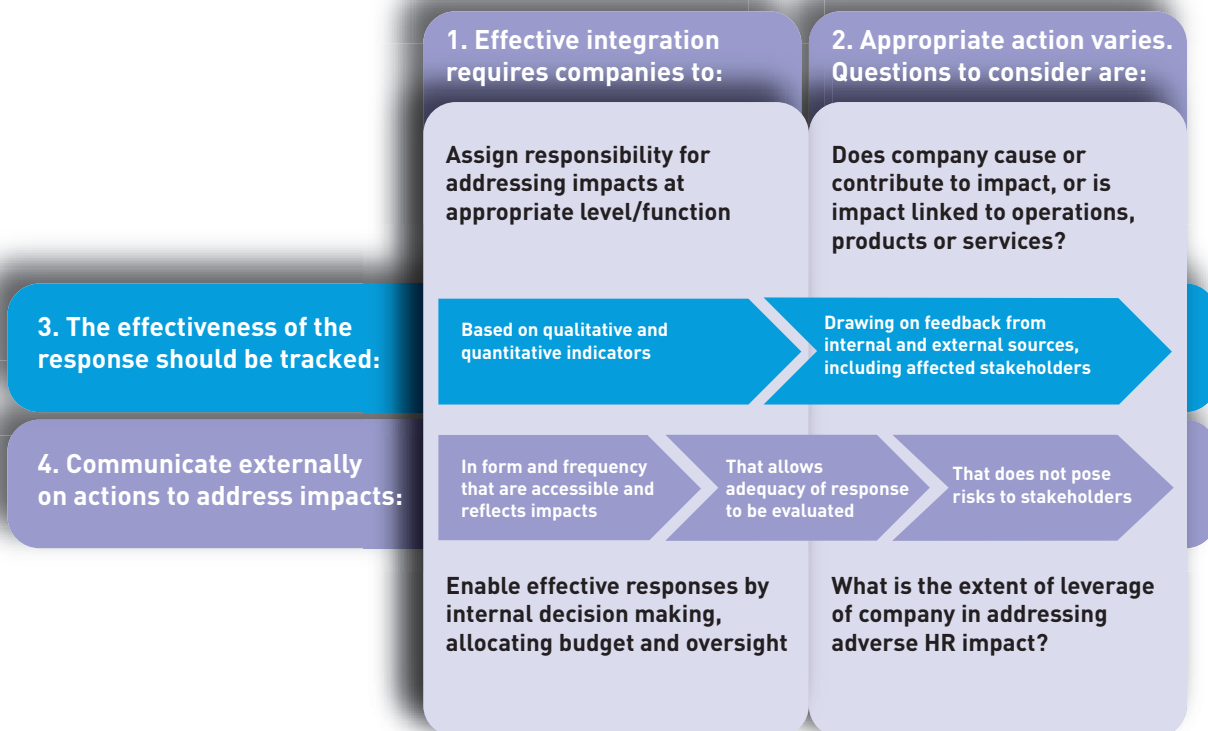
- effectively integrating the findings of such assessments into relevant functions and risk management processes
- taking appropriate action, depending on the nature of the impact (actual or potential) and the extent of leverage the company has.

These aspects are covered by UN Guiding Principle 19 and supporting commentary, and discussed in further detail in Section 5.1 below.

### Effective integration and appropriate action

As described in Section 2, ICMM corporate members have in place a variety of internal risk management processes which may already cover a range of human rights. Relevant processes include: group-wide internal control and assurance systems to ensure compliance with company policies; internal health, safety and environment and community risk assessment procedures; protocols for legal due diligence or for political risk assessment; and employee surveys and grievance mechanisms. Given the variety of different combinations of such processes currently in place in different companies, there is no single solution in this area. Instead, a tailored approach focused on adapting existing systems as required, is needed.

Figure 3: Preventing and mitigating adverse HR impacts through: Effective integration, appropriate action, tracking responses and communication (GP19-21)





# Preventing, mitigating and remediating adverse impacts on human rights

To effectively integrate the findings from approaches to identifying human rights impacts, the basic steps for a company could be as follows:

- **Review the extent to which existing systems already cover human rights and clearly define responsibilities.** This would involve identifying relevant systems and processes in place across the broad range of potentially affected departments (e.g. Exploration, Construction, HSE, Corporate Affairs, Human Resources, Security, Procurement, Internal Audit etc.) and, through a basic mapping process, determining whether these adequately and comprehensively cover the additional aspects set out in Section 3. It would also involve ensuring that responsibilities are clearly defined within these systems and processes.
- **Identify any adaptations needed to existing systems to ensure full coverage.** There are various ways to plug any gaps that are identified from the review. One of these may be to directly adapt existing processes to incorporate key human rights topics (this might involve including questions on sexual discrimination in employee surveys, or adding security and human rights as a potential risk area in internal protocols for community assessments). Basic tools or questionnaires could also be developed to aid operations in identifying human rights risks. External tools, guides and information sources could also be drawn upon (discussed further below).
- **Publicly state a clear group-wide policy and approach to human rights assessment.** A group commitment to assessing human right impacts explicitly as part of its risk management processes is ideal in this respect, as it sets a clear standard internally and externally. This shows that the group is committed, albeit on a company by company basis, to applying a human rights lens to its existing or future assessments (even if a stand-alone HRIA is not always appropriate). A commitment to communicating the results of human rights assessments, even if in aggregated form, can also help build trust externally (see also Section 5.2).
- **Take the opportunity to strengthen other aspects of the company's approach to human rights as needed.** The internal review of assessment processes should also consider whether the management approach needs strengthening in any way. Some key questions to consider might include: are group policies on human rights sufficient, given the very clear signal provided about the attributes of a comprehensive policy commitment in UN Guiding Principle 16? are processes in place to identify allegations of human rights infringements by the company or others (such as local level concerns and grievance mechanisms) to investigate such allegations and to provide or direct affected parties to appropriate avenues of remedy?<sup>17</sup> are robust processes in place to track performance on these issues (see Section 5.2)?

In terms of external sources, guides and tools, it may help to draw upon various different materials to inform the approach (over and above the UN Guiding Principles).

For example, in reviewing whether existing systems adequately cover human rights, the *Human Rights Compliance Assessment* tool (including the "quick check" version) and the *OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones* may be useful as they contain more detailed checklists of issues to consider.

In reviewing whether the company's overall management approach on human rights is sufficiently robust, useful suggestions and material can be found in both the *Guide to Human Rights Impact Assessment and Management* and the *Guide for Integrating Human Rights into Business Management*. Companies should also consider the various annual reports or overviews on different countries produced by, for example, Amnesty International, the Danish Institute for Human Rights, Human Rights Watch, the UN's Universal Periodic Review and the US Department of State. Further guidance on effective stakeholder engagement is available from the IFC's *Stakeholder Engagement Handbook* and ICMM's *Community Development Toolkit*.<sup>18</sup>

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# Preventing, mitigating and remediating adverse impacts on human rights

As regards appropriate action once human rights impacts have been identified, this will vary depending on a number of factors, including:

- **Whether the company causes or contributes to potential or actual impacts.** Where potential human rights impacts may be caused by a company, it should take action to prevent or mitigate such impacts from occurring. Where actual human rights impacts have occurred or are occurring, companies should take appropriate remedial actions to ensure that they are stopped. The same applies where companies contribute to potential or actual human rights impacts. In addition, companies should use their leverage to influence other contributing parties (such as contractors or business partners) to take appropriate preventative or remedial action.
- **Whether actual or potential human rights impacts are caused by a third party linked to a company's operations, products or services.** This could include situations such as a) government clearing a concession of people prior to allocation to a mining company without adequate consideration of the rights of former occupants, b) a military group providing security to a mining company, who infringe on the rights of community members while providing security to the company, c) suppliers of work garments using child labour in their factories. For some such situations, existing sources of guidance should be referred to (such as the Voluntary Principles Implementation Guidance Tools). In all such situations, a careful assessment of the extent of leverage a company may be able to exert will be important.
- **The extent of leverage the company has in addressing an impact.** The commentary to UN Guiding Principle 19 suggests that companies may benefit from independent advice in more complex situations where an obvious solution is not apparent. Where leverage exists with a third party companies should consider, together (to the extent possible) with their legal advisors, how best to use it. If a company has weak leverage, this might be enhanced by offering capacity building or other incentives to the third party; again, legal advisors should, if possible, be consulted before doing so. Taking collective action with others where possible (for example other companies in the sector) can be an effective means of addressing adverse impacts. Where leverage cannot be exerted and there are adverse impacts that are not being prevented or mitigated, companies ought to consider ending the relationship. A more thorough consideration of the factors that influence leverage and guidance on how companies might respond, depending on the extent of their leverage and the importance of the business relationship, is provided in section 8.5 of the UN's interpretative guide to the corporate responsibility to respect.<sup>19</sup>

It is the understanding of impacts, relationships and the ability to leverage influence that allows a business to prioritise its actions.

## Tracking responses and communicating externally

Having addressed effective integration and appropriate action, as illustrated in Figure 3 above, the UN recommends that:

- the effectiveness of the response in addressing human rights impacts should be tracked (UN Guiding Principle 20)
- companies ought to communicate externally on how they address their human rights impacts (UN Guiding Principle 21).

As mentioned above in relation to effective integration and appropriate action, there is no universal approach in this area. However, performance tracking is important to ensure that internal systems of control and related actions are effective in achieving desired outcomes. Tracking can help to identify whether there are recurring issues relating to human rights performance that may indicate a need for systems to be strengthened. It is also important that measures to track human rights performance and to communicate externally should be aligned with companies' existing internal control and reporting systems and processes.

With regard to tracking the effectiveness of responses, the following should be considered:

- **Whether new indicators are required or whether existing performance measures already address human rights.** For certain human rights related issues, there are already well established indicators (in areas such as labour rights). In others, there may be qualitative or quantitative measures already available (for example based on an analysis of complaints received through operational level grievance mechanisms) that might serve this purpose. In other cases new indicators may be required. Given the centrality of people's concerns to human rights, stakeholder perspectives will be important to consider wherever practicable.

Footnotes on page 62

# Preventing, mitigating and remediating adverse impacts on human rights

- **Feedback from internal and external sources, including affected stakeholders.** The importance of capturing stakeholder perspectives and reviewing complaints has already been emphasised. Some internal functions (such as human resources or community liaison) are uniquely placed to provide informed observations about the effectiveness of a company's approaches to respecting human rights. Where mechanisms are in place for addressing local level concerns or grievances, there can be a valuable source of information to help track the effectiveness of responses. In addition, there may be a role for external parties (either community members of observers within civil society or local level institutions) in providing additional feedback.
- **Whether patterns or recurring issues are identified.** In tracking the effectiveness of the response, it is important to look for patterns and recurring issues so that potential system weaknesses can be identified and addressed. For example, if community protests are prevalent across several projects spanning different geographies and operating contexts, it would indicate that a more fundamental review of community engagement strategies and approaches may be required.

The question of external communication on actions to address human rights impacts raises a number of practical considerations, some of which are reflected in UN Guiding Principle 21 (and illustrated in Figure 3). These include the following:

- **The form and frequency of communications.** The emphasis within UN Guiding Principle 21 is on communicating in response to concerns raised by (or on behalf of) affected stakeholders. Where stakeholders raise such concerns through local level grievance mechanisms, these ought to include mechanisms for feedback and engagement. Where concerns are raised on behalf of affected stakeholders, deciding on an appropriate avenue of response may be more complicated. One avenue of communication is through the Business and Human Rights Resource Centre website ([www.business-humanrights.org](http://www.business-humanrights.org)), which has emerged as a forum for raising concerns and having these addressed.
- **Communicating in a manner that allows the adequacy of a company's response to be evaluated.** Where allegations are made about human rights related impacts at an operational level, the primary focus ought to be on communicating with local level stakeholders. For investors or other interested stakeholders, companies can provide an overview of their management approaches and human rights performance, for instance by reporting against the Global Reporting Initiative's Sustainability Reporting framework.
- **Reporting on severe human rights impacts.** UN Guiding Principle 21 also requires companies to report formally on how they address human rights impacts where their "operations or operating contexts pose risks of severe human rights impacts". The commentary to this principle states that reporting should cover "topics and indicators concerning how enterprises identify and address adverse impacts". The challenge for companies in such situations is to balance the public interest in obtaining assurances that companies are taking all reasonable measures to identify and address human rights, while ensuring that disclosures do not present risks to organizations or individuals (either within the company, the community or civil society).
- **Communicating so as not to pose risks to affected stakeholders or personnel.** The previous point alludes to the need to be sensitive to the risk that reporting and disclosures have the potential to pose risks in a variety of ways. For example, UN Guiding Principle 18 states that due diligence should "involve meaningful consultation with potentially affected groups and other relevant stakeholders". While this is desirable in principle, in practice there are some operating contexts (such as conflict situations) where this may pose risks to stakeholders and personnel. In addition, disclosure of details of individuals who may have raised allegations may also expose them to risks of retribution, as has occurred in a number of countries. Companies ought to be mindful of such risks while striving for meaningful engagement and communication on their actions to prevent, mitigate or remediate human rights impacts. For example, protecting the identities of people who raise concerns directly with the company can often be important.

# 6

## SECTION 6: Concluding remarks

This guide has sought to set out potential practical ways forward for ICMM members and other interested mining companies in the human rights arena. The evolving nature of the external debate and the limited number of practical examples from which to learn lessons makes this an inherently difficult area (although compared with other industries, the experience of ICMM members in building human rights into risk management processes is already relatively rich). This guide will need to be updated as areas of consensus emerge, though the purpose of the guide – to enable mining and metals companies to respect human rights in all their business activities – will remain the same.

In general, building human rights into existing risk management processes should not require very significant changes to existing processes – such as those designed to address social and environmental impacts – provided these are already robust and follow best practice. However, it may well mean strengthening them in various ways. This guide is intended to assist companies to identify and address potential gaps in existing processes, rather than to build completely new human rights due diligence systems.

Companies are advised to tailor external methodologies or approaches suggested by external groups to their requirements and operating contexts. They should seek to build on what they already have, rather than implementing frameworks which may duplicate and confuse existing efforts.

Ultimately, companies will be judged on their human rights performance and impacts – actual, potential and perceived – rather than the features of the management processes they have in place, even though the two are interlinked. The ability to effectively identify and manage risks relating to human rights is dependent on having robust management processes in place. For ICMM member companies the desired outcomes are summed up in Principle 3 of ICMM's Sustainable Development Framework, namely to "uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities". Human rights due diligence should be seen as a means to this end, rather than an end in itself.

# SECTION 7: Illustrative Case Studies

# 7

Key: which case studies are most relevant to which parts of the core text of the guide	
1	Relevant to <b>Human rights and existing risk management processes.</b> (Section 2)
2a	Relevant to <b>Additional aspects to ensure full coverage of human rights: Incorporating human rights sources of information as part of baseline assessments or risk analyses.</b> (Section 3.1)
2b	Relevant to <b>Additional aspects to ensure full coverage of human rights: Reviewing potential project impacts with reference to international human rights standards.</b> (Section 3.1)
2c	Relevant to <b>Additional aspects to ensure full coverage of human rights: Pinpointing key impacts and issues that company actions may contribute to or that may be linked to its operations as a result of the behavior of parties with which it is associated, rather than focusing solely on impacts the company may directly cause.</b> (Section 3.1)
2d	Relevant to <b>Additional aspects to ensure full coverage of human rights: Widening the scope of assessments both externally to include relevant national-level issues, and internally to include relevant employee issues.</b> (Section 3.1)
2e	Relevant to <b>Additional aspects to ensure full coverage of human rights: Drawing on specific expertise on human rights to reinforce risk management processes.</b> (Section 3.1)
3	Adequately addressing particular human rights. (Section 3.2)
4a	Relevant to <b>Building human rights issues into ESIA.</b> (Section 4: Option A)
4b	Relevant to <b>Undertaking stand-alone assessments focused on particular human rights issue of concern.</b> (Section 4: Option B)
4c	Relevant to <b>Undertaking a stand-alone human rights impact assessment.</b> (Section 4: Option C)

# Illustrative Case Studies

## Human Rights and Existing Risk Management Processes

1

2d

### Newmont

A detailed Environmental and Social Impact Assessment (SEIA) was undertaken at Newmont's Ahafo South project in Ghana in 2005. The assessment provided a thorough baseline of the local social context and potential impacts, though not under an explicit heading of human rights but rather "impacts on the human environment". Similarly an annual independent review of the project's "social compliance and performance", part of a joint commitment between Newmont and the IFC as project lender, also covers substantial human rights issues including the effects of potential loss of agricultural land on communities' livelihoods, displacement and resettlement of homes, the potential for spread of infectious diseases including HIV/AIDS and potential project impacts on vulnerable people. An extensive stakeholder consultation process for the SEIA was undertaken, the findings of which are documented in an *Issues and response report*.

Newmont now also undertakes country level risk assessments using Fund for Peace's Conflict Assessment Systems Tools to help identify potential human rights risks. The company's social impact assessments meanwhile continue to cover potential human rights risk areas, for example through the investigation of land rights and by mapping cultural heritage sites.

### Rio Tinto

Many ICMM members conduct employee surveys, both globally and at the operational level, as a means of gathering information about a number of issues relevant to human rights. Rio Tinto, for example, has undertaken a number of global "employee engagement surveys" which capture feedback from employees regarding the company's approach to diversity and non-discrimination (amongst other issues). Employee surveys are also carried out at site level – Rio's Murowa diamond project in Zimbabwe, for example, conducted an employee survey which identified employees' interest in counselling services for HIV/AIDS, a major human rights challenge in the country.

### Anglo American, Teck, Rio Tinto, Lonmin

Many ICMM members also have in place anonymous hotlines (subject to local laws) to provide employees with an independent and confidential means to raise concerns about a range of issues relevant to human rights, including business conduct, workforce conditions and non-discrimination. Anglo American's Speak-Up program, for example, routes concerns and complaints to an external service provider which forwards these anonymously to a response team within the company. Similarly Teck's Whistleblower Program and Rio Tinto's Speak-OUT system are based on a free telephone line available at all times and handled by independent operators. Rio Tinto's Speak-OUT system is supplemented by internet, email and secure letterbox drop communication options. Lonmin meanwhile runs an independently operated Ethics Hotline that is open to employees, contractors, customers and suppliers, and which provides a secure channel for reporting conduct that breaks the company's ethical standards.

# Illustrative Case Studies

## Stand-alone Human Rights Assessments

4c

### BP, Tangguh project in Indonesia

In early 2001, BP asked two human rights experts to undertake an independent assessment of human rights conditions in the area of its Tangguh project in Indonesia and the potential impacts of the project's presence in this respect. It was the first explicit "human rights impact assessment" commissioned by an extractive company and, as this case illustrates, can be seen in a number of ways to have applied a specifically human rights "lens".

Recommendations were made with reference to international human rights standards as the benchmark, for example, rather than conditions in the area at the start of the project. Importantly, potential impacts that could result indirectly from company actions and require mitigation efforts going beyond BP's direct influence were included in the assessment. The assessment recommended, for example, that BP encourage the central government to honour its revenue sharing agreement with Papua and help build human rights capacity in local communities and governance structures.

The assessment was undertaken in three main stages from August 2001 to March 2002. An initial three-month period of research focused on human rights issues and international standards relevant to the project as well as consultations with international human rights NGOs such as Human Rights Watch, Amnesty and Tapol (the UK-based Indonesia Human Rights Campaign). This was followed by a two week trip to Indonesia for the assessment team to meet with in-country BP personnel, international ambassadors, national human rights NGOs, the National Human Rights Commission and major national and local newspapers. The assessors also visited the project area for meetings with provincial governors, police chiefs, local NGOs and the managers of other extractive companies, as well as local communities at the Tanah Merah resettlement village. External meetings were conducted without the presence of BP personnel. The final stage of the assessment was the report write-up.

The final HRIA comprised some 70 pages. After some internal debate BP decided to make publicly available a summary of the report's recommendations and conclusions, together with a written company response. The findings of the assessment were presented by its authors at meetings in London and Washington. Although some NGOs refused to attend these meetings on the grounds that the assessment had not been published in full, the assessment has in general attracted widespread support.



## Assessing and mitigating short and long-term security and human rights risks for a mine suspension

1

2d

3

4c

### Xstrata, Falcondo project in the Dominican Republic

Xstrata routinely undertakes human rights risk assessments on its sites and for those locations considered of high-risk the risks are reviewed annually. Each site also has a closure plan to assess the social, environmental and economic impacts in the event of shutdown or suspension. This case highlights the company's due diligence across a range of human rights issues arising out of Xstrata Nickel's decision in August 2008 to temporarily suspend the Falcondo ferronickel mining operation due to unfavourable global market conditions.

Though Falcondo faced a series of violent protests in the late 1980s, community relations in the vicinity had since improved due in part to social investment by the Falcondo Foundation set up in 1989. Xstrata Nickel realized however that temporary suspension of the mine would mean laying off over half the 1,800 workforce and feared an increase in poverty in the local communities (the layoffs were projected to prompt up to a 75% reduction in regional earnings) and the potential long-term consequences on the right to food, health and education. A more immediate concern was that the announcement might spark social unrest, criminality and domestic violence.

Ahead of announcing the prolonged shutdown, Xstrata undertook a security assessment to understand the potential risks to employees and the community, and to plan its response strategy. Carried out in line with the *Voluntary Principles on Security and Human Rights*, the assessors established a baseline understanding of the current security situation and closely monitored changes to the security situation. Employee specific assessments were supplemented by evaluations of how the community and local leadership might react to the shutdown, and to gauge the risk of increased crime or violent political activism. Xstrata Nickel deliberately took its time in planning the layoff announcement to ready employees and the communities, and to allow management to work through hypothetical scenarios and prepare for handling potentially difficult situations in line with human rights principles. Xstrata was particularly eager to avoid "spill-over" tension into the community in the event that public security forces overreacted and exacerbated tensions.

To minimize the risks Xstrata Nickel chose to use internal teams rather than contracted personnel to oversee on site security. This made it easier to screen participants on a range of measures including ethical performance, trustworthiness and reliability, and to instruct them in the appropriate rules of engagement and how to act in accordance with international human rights principles. The company though also actively engaged with the local government, the Chief of Police and other public security forces, union leaders and the wider community to deepen their understanding of the security risks. Early on Falcondo's management made contact with the Dominican public security forces to jointly put in place an appropriate response plan, and to provide training on the *Voluntary Principles*, as well as on rules of engagement, use of force procedures and acting in accordance with human rights principles.

In parallel, the company assessed the potential economic impacts of the shutdown and identified which communities were likely to be worst affected and which local businesses could benefit most from further investment. Xstrata injected additional funds into the Falcondo Foundation, and working with unions, community leaders and development organizations used its assessment to develop a targeted three-year social investment plan.

By considering the short and long term potential impacts the company was able to suspend operations without any reported security incidents, and position itself for a resumption of business. In October 2010, Falcondo's operations were restarted to a planned 50% capacity.

# Illustrative Case Studies

## Responding to community concerns by a thorough human rights review of resettlement practices

2d

2e

3

4a

### Anglo American Platinum, South Africa

Anglo American incorporates human rights as a component in its social and environmental impact assessments for new projects. Additionally, each Anglo American operation is required to undertake a socio-economic assessment every three years using the company's Socio-Economic Assessment Toolbox (SEAT).

However, Anglo American has found that resettlement projects require additional levels of due diligence because of the many unforeseen issues that can arise. For example, when seeking to expand its Mogalakwena mine in Limpopo, South Africa, Anglo American had to resettle over 950 households. The company concluded individual agreements with 957 affected households. Nonetheless, various stakeholders criticized the resettlement and the mine's broader impacts, in particular impacts on water quality.

Although an independent report by the Institute of Groundwater Studies in South Africa refuted the water pollution claims, and an investigation by the South African Human Rights Commission (SAHRC) found no evidence of human rights abuses, SAHRC's report did highlight vulnerabilities facing communities living around large-scale mining operations in general. Anglo American decided to investigate and appointed consultants to conduct a thorough review of the Mothlotlo resettlement against current best practice, including by using IFC's Performance Standard 5 on Land Acquisition and Involuntary Resettlement as a benchmark (even though the standard had not been developed when the resettlement was planned). The assessors additionally drew on stakeholder testimony relating to experience of the resettlement process; interviewing a broad sample of affected stakeholders over a 6-month period.

The review found that the Mothlotlo resettlement was broadly aligned with the IFC standard, and that the company had applied lessons from earlier resettlements, and among other things had improved implementation of household audits and the valuation of assets. The assessors however noted areas which had caused difficulties to both the company and the community, including:

- Inadequate consideration of vulnerable groups and in particular youths who had become adults during the period the resettlement was planned and implemented.
- A lack of the systematic monitoring and evaluation procedures suited to such a resettlement, and especially an independent complaints and grievance procedure.

The company also recognized that there were lessons to be learnt in terms of maintaining the democratic legitimacy of representative bodies over time (which became an issue as the project experienced unforeseen delays); and managing the fact that resettlements can become a focus of discontent for existing issues in an area (including poverty and a pre-existing lack of community cohesion).

To address the review's findings, the company is enhancing its stakeholder engagement strategy and systems, and boosting its internal organizational capacity to manage community and social issues. In 2009 Anglo American also adopted a group-wide stakeholder complaints and grievance procedure and higher new standards on resettlement (which go beyond IFC requirements) as a part of the Anglo American Social Way, the company's social performance standards. Finally, the company has developed a cross-company forum for all those working on resettlements to ensure that lessons learned can be shared and that those undertaking the comparatively unusual task of managing a resettlement have a strong reference group within the company.

# Illustrative Case Studies

## Integrating human rights due diligence into a wider social study and medium-term benefits

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2b

4a

### AngloGold Ashanti (AGA), Obuasi, Ghana

This case illustrates the benefits to AngloGold Ashanti from building human rights into its wider social assessment process. AngloGold Ashanti was formed out of a business combination in 2004 between AngloGold and Ashanti Goldfields, which was the previous owner of Obuasi Gold Mine. Obuasi had undergone major mining expansion in the 1980s and 1990s that was accompanied by various environmental and social impacts. Post the business combination, AGA recognized it needed to address these legacy issues that continued to impact local communities, and as part of a wider process of making Obuasi a more sustainable operation, the company commissioned a social baseline study. Completed in early 2010, this comprised household surveys and focus groups in mine-affected communities, and specialist studies on land, artisanal mining, security and community perceptions; as well as an integrated human rights assessment (HRA).

For the HRA component, the assessors used the *UN Protect, Respect and Remedy Framework* as the main reference point in determining whether AGA was fulfilling its responsibility to respect human rights and how it could better meet that responsibility in the future. This approach helped demonstrate how AGA was impacting, or could impact, not just the more widely understood rights (e.g. labour and security related), but *also* all the rights in the International Bill of Rights, notably the rights to life, to health, and to an adequate standard of living. It also analyzed AGA's responsibilities towards impacted communities, which had been a source of ambiguity and heightened expectation in the region previously. AGA had faced human rights-related allegations based, for example, on the alleged failing to employ local community members. Using the UN Framework helped AGA articulate its responsibilities, namely to "respect" rather than to "protect" rights (a state duty), and clarified that in the case of employment – by employing several thousand staff and contractors – AGA was contributing positively to its responsibility to respect the right to work and enhancing access to other rights for those it did employ.

By focusing on the risk to the individual rather than the risk to the business or to communities in general, the HRA enhanced AGA's understanding of its impacts and put a far greater emphasis on the human rights context in AGA's area of operation. For example an analysis of the extent to which Ghana's government was fulfilling its Duty to Protect helped highlight gaps in the rights' protection in communities neighboring AGA's mine, including over the right to education, health, and adequate standards of living.

The HRA also equipped AGA to respond effectively to an investigation by Ghana's Commission for Human Rights and Administrative Justice (CHRAJ) into the human rights impact of the mining industry. Having worked through its own internal human rights process, AGA was able to understand CHRAJ's human rights approach and terminology, respond appropriately, engage in the human rights discourse and propose actionable commitments. The HRA experience has also given the company greater confidence in dealings with socially responsible investors and other stakeholders on human rights issues. Overall, AGA believes that integrating the HRA with the other elements of the social study helped it achieve more depth and breadth than would have been possible with a standalone HRA.

# Illustrative Case Studies

## Integrating human rights into security and communities assessments

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4b

### Rio Tinto, La Granja Project, Northern Peru

Rio Tinto Minera Peru's (RTMP) La Granja copper project is at a pre-feasibility stage. In 2009, Rio Tinto's security and community relations experts conducted comprehensive security and community risk assessment for RTMP as the basis for a security strategy that included a human rights assessment. Previously Rio Tinto's security risk management had focused on the interplay between company security personnel, local and national security forces, and the surrounding communities. RTMP sought to go further by trying to identify and understand the effects of existing social conflicts, human rights and community issues in the vicinity, and the potential for RTMP to exacerbate old tensions or contribute to new ones.

The assessment team consisted of both on site and corporate personnel, and staff from several functional areas not just limited to security and community relations, and involved: 1) interviews with key stakeholders – including with local community leaders, economists, police and government representatives, and Peruvian security and human rights experts, 2) an independent human rights assessment, 3) a conflict assessment and 4) an assessment against the *Voluntary Principles on Security and Human Rights*.

An independent human rights expert was commissioned to carry out the human rights assessment, and involved both an overview of any human rights issues likely to arise, and a security risk analysis. By examining the history of local conflict, the assessor was able to identify a legacy of social tension over mining projects (some earlier protests had culminated in violence). The study also highlighted several challenges arising from among other things the overlapping public security roles of the National Police and Rondas Campesinas (local community groups with the dominant on-ground security presence); behaviors related to small firearms and conflict; and real and perceived inequities over the project's economic benefits. These findings reinforced insights gained through the stakeholder interview process.

Meanwhile the conflict assessment, which used International Alert's *Conflict-Sensitive Business Practice: Guidance for Extractive Industries* matrix, analyzed actual and potential conflicts in the project area, and focused for example on the causes of the conflict, and potential sources of conflicts, with particular emphasis on any impacts facing communities directly affected by the project. In parallel the Voluntary Principles assessment identified scope to improve RTMP's management of private security contractors.

By bringing together the findings from all four lines of inquiry – achieved by adapting International Alert's matrix – the company gained a more rounded understanding of the importance both of going beyond simply “protecting the perimeter” for its security, and of acting proactively to prevent conflicts that might have security and human rights consequences. Another key lesson was the value of underpinning the community and security strategies with a thorough understanding of the local social and cultural context, including any ongoing sources of tension. The process also heightened RTMP's appreciation of the need to work effectively with local communities and organizations, including in managing the social and economic changes generated by the project, in the interests of project security.

The process has prompted RTMP to review its local employment, social investment and community engagement activities to better understand and anticipate socio-economic impacts and strengthen the integration of project activities into the local economic and social context. The company has also been following up on several recommendations including the need: to establish a formal grievance resolution process; to hold periodic reviews of social risks; and to find ways to improve the management of private security forces.

## Responding to a shareholder request for a stand-alone Human Rights Assessment on an operational project

4c

### Goldcorp, Marlin Mine, Guatemala

Goldcorp commissioned an independent, stand alone human rights assessment following a request from a group of socially responsible investors in 2008 for a transparent and inclusive study of human rights issues at the Marlin mine. A Steering Committee oversaw the process (comprising representatives from the shareholder group, Guatemalan civil society and the company), which began in October 2008 and was conducted over an 18 month period. It is notable that while Goldcorp paid for the assessment, they nonetheless agreed to relinquish editorial control, and to have no say about the content, form or findings of the report.

The assessment began with a desk-based study that included an analysis of the national and local human rights context in Guatemala. From November 2008 to June 2009 this was supplemented by several rounds of confidential interviews and focus groups, while in parallel, a gap analysis of company policies and management systems was carried out to assess their human rights coverage. The Danish Institute for Human Rights' *Human Rights Compliance Assessment* (HRCA) tool provided the basis for gauging company compliance with international human rights standards, and some of the HRCA's questions and indicators were adapted to facilitate interviews with a wide variety of stakeholders (priority was given to identifying those in close proximity to the mine or directly affected by its activities). The upshot of this phase was the emergence of seven key issues, notably land acquisition, labour, security and access to remedy.

The assessment confronted several obstacles, among them the novelty of the field of human rights impact assessments; the fact that the process was conducted on an already operational project; and difficulties stemming from the lack of baseline data or ongoing monitoring of human rights. The process itself also seemed to heighten tensions among and between the communities. Marlin Mine's original Environmental and Social Impact Assessment had focused on the impacts on the people of San Miguel, largely to the exclusion of the effects upon the Sipacapa people, with the result that some stakeholders in Sipacapa and NGOs critical of the mine refused to participate in the process, rendering it impossible to fully include their views.

The assessors ultimately adapted the initial methodology to reflect some of these challenges, including by reframing it as a Human Rights Assessment (HRA).

The HRA results, made public in May 2010, outlined positive and negative effects and addressed the degree to which company policies, procedures and practices met international human rights standards. It identified a number of areas of concern, risk and impact, notably in relation to the management of conflict and indigenous peoples' rights, and structured recommendations for: 1) immediate action, 2) to address legacy issues, and 3) for on-going due diligence. The HRA stressed the need to improve respect for human rights at the mine itself, and for Goldcorp to integrate human rights into its global operations.

Goldcorp released its initial response in June 2010, along with strategies and actions plans for implementing the HRA's recommendations, and this has been followed up with several public progress reports. Towards the end of 2010, Goldcorp met a key HRA recommendation with the publication of an official Human Rights Policy, and is now in the process of seeking a potential partner to assist with the global integration and implementation of that policy. Meanwhile Fund for Peace is assisting Goldcorp with human rights training.

# Illustrative Case Studies

## Systematic approach encompassing training, grievance mechanisms and human rights impact assessment

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### Cerrejón, Joint-Venture Mine, Colombia

In 2007 Cerrejón – an open pit coal mine joint venture between Anglo American, BHP Billiton, and Xstrata – recognized a need to build on its social performance and address legacy issues with surrounding communities by commissioning an independent social review of its social engagement practices, designed to assess the mine's social impacts and to identify any outstanding concerns. Among other things this prompted Cerrejón to enhance its engagement with neighbouring communities, and to reinforce its human rights efforts, including adopting the *Voluntary Principles on Security and Human Rights* and elements of the *UN Guiding Principles on Business and Human Rights*.

In applying the *Voluntary Principles*, Cerrejón has implemented special training programmes for members of the private and public security forces. The instruction includes information and discussions to better understand the customs and traditions of the Wayuu people (the indigenous community living near to the mine). By 2010, 1,821 private security personnel (74% of the total security force) had participated in training sessions and workshops, including one held with the national army. Cerrejón has also developed a system of performance indicators to monitor the implementation of the *Voluntary Principles* in conjunction with International Alert and a company member of the Mining and Energy Committee (which implements the *Voluntary Principles* in Colombia). The indicators seek to determine the depth of implementation of the guidelines in relation to the company's risk and impact analysis, as well as its engagement with public forces and private security contractors. Cerrejón piloted them in 2010 and produced a *Voluntary Principles* baseline, and is currently working to enhance its performance against each of the 10 indicators.

Cerrejón has also established a formal grievance procedure arising out of a pilot project led by the UNSRSG in 2009 to test the criteria he developed for operational level grievance mechanisms. With input from employees, contractors and community members, Cerrejón's complaints register attempts to address concerns from those same three stakeholder groups on possible impacts caused by the mine. This complaints process has increased the joint venture's focus on its impacts and is feeding into the development of policies and processes dedicated to preventing violations from occurring. Cerrejón has been public about the many lessons it has taken from the SRS's pilot and its establishment of a rights-based Grievance Office, which it believes has provided "a new means of engagement with, and better knowledge of, neighbour communities and our impacts."

Cerrejón states that its approach to corporate responsibility is defined by human rights. In 2010 it contracted independent consultants to carry out a Human Rights Impact Assessment (HRIA) to further understand its operating environment and the mine's social impacts, to identify possible human rights violations associated with the operation, and to develop action plans to help prevent and mitigate such risks. The HRIA comprised interviews with employees, contractors, and community members, as well as workshops with company management. At Cerrejón's request, International Alert's Conflict-Sensitive Business Practice methodology was used to provide a better context of the security situation in Cerrejón's area of influence. Currently Cerrejón is internally validating the results and is developing action plans to mitigate and prevent any possible adverse impacts. The company is also cross checking to be sure that each impact is considered within the company's risk register. Meanwhile it is also holding meetings with external stakeholders to present the findings, as well as the actions plans.



# Illustrative Case Studies

## Incorporating human rights into internal processes and systems: some examples

1

### Anglo American

Anglo American includes human rights in a number of assessment tools across the project lifecycle, notably its Socio-Economic Assessment Toolbox (SEAT). First launched in 2003, the SEAT process is designed to help operations identify and manage their social and environmental impacts, and has been completed at over 60 sites in 16 countries. SEAT is regularly updated and now comprises a human rights screening exercise and several human rights-specific tools, including ones on community health, gender, and conflict prevention and resolution, and most recently on working with Indigenous Peoples tool. In addition, Anglo American's Social and Environmental Impact Assessment Standard for new developments also entails a human rights component so as to identify, predict and evaluate the significance of potential impacts. Projects are screened for among other things socio-political risks (including the potential for human rights abuses, conflict and other political instability) and potential impacts on Indigenous Peoples and/or other vulnerable individuals or groups, and as appropriate are subject to a full impact assessment.

By using SEAT's specific guidance and protocols for engagement with indigenous groups, Anglo American was able to work with the Sami people of Finnmark in Northern Norway to understand what impact the company's operations may have had on their way of life, and to minimise any disruption to the Sami's traditions. This helped the company gain an exploration licence, the first ever granted to a major mining company for the area.

### BHP Billiton

BHP Billiton has embedded human rights into its company-wide health, safety, environment and community (HSEC) management system. A key element of this system is the audit process which monitors compliance against the company's group-level documents.

The Community group-level document contains mandatory requirements for all operations and projects, including controls to address human rights issues. Some of these controls are to undertake a human rights impact assessment (HRIA) to identify human rights impacts and internally review this assessment annually; have a qualified specialist validate the HRIA every three years; where a material risk is identified through the HRIA, develop and implement a Human Rights Management Plan that includes training employees and contractors; and facilitate resolution of complaints from and grievances with communities using a complaints and grievance mechanism commensurate with the country risk.

### Newmont

Newmont has built conflict assessment into its group-wide "Stage Gate" process designed to enable more effective planning and evaluation of projects across HSEC and other functional areas at five stages of project development (from exploration through to operation). Specifically, conflict assessments are conducted during the feasibility and planning stage of mine development, either externally by the research organization Fund for Peace using its methodology *Conflict assessment system tool*, or internally using such tools as International Alert's *Conflict-sensitive business practice toolkit*. Conflict assessments based on these methodologies were recently undertaken in Peru and Indonesia respectively. The assessments provide local managers with a better understanding of the drivers of local conflict at an early stage, so that engagement practices and community programs can be designed to prevent conflict before it arises.

# Illustrative Case Studies

## Diagnostic and planning system for carrying out human rights due diligence

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### Vale, group level system

Vale has put in place a system to review the extent to which its management processes address human rights. To this end Vale published a Guide to Human Rights in December 2010 designed to help the company embed the company's human rights policy (approved in 2009) and integrate human rights considerations into Vale's daily activities. Piloted in 2010, an internal assessment and planning tool the *Social Diagnosis and Planning Tool* is used to monitor performance. This covers six topics: Social Impact Management; Child Labour; Slave/Forced Labour; Relations with Indigenous Groups, Former Slave Communities (Quilombolas) and Fishing Villages; Artisanal and Small-Scale Mining; and Resettlement. For each topic the Tool aims to capture and analyze any processes already in place, especially ones consistent with international standards such as those of the IFC, WTO, GRI, UN Global Compact and the UN "Protect, Respect and Remedy" Framework. For child and forced labour the Tool also comprises a risk analysis component, which aims to underpin management of these issues across the company's value chain.

The Tool is intended to enable each operational unit to carry out a diagnosis that leads to short, medium and long term management strategies. For each of the six topics, the Tool sets out performance levels or "Levels of Maturity", ranging from Level 1 – where the business unit has no defined processes, through to Level 5 – where the unit carries out benchmarks against international standards. Business units are required to complete a questionnaire about the operational unit itself and to provide feedback on the results of the diagnosis, which comprises the Level of Maturity evaluation, Synthesis of Maturity (a graphical representation of the Levels of Maturity across all six topics) and an Action Plan (currently with initiatives running up to 2013). Based on the results, Vale hopes to identify and disseminate best practices already being pursued internally within the company and to establish a process of continuous improvement.

In 2010 the Tool was road-tested in eight countries, including Brazil, Chile, Colombia, Mozambique and Australia, and involved 22 different departments. Prior to its launch Vale convened training workshops to equip the contact persons at each operational unit to complete the task. In the second half of 2011 Vale has put in place "a second party auditing process" in order to collect and analyze the information provided during the Tool's initial use. The goal is to expand the scope of the diagnosis over time to cover all the company's facilities, and for it to be applied annually.

# APPENDIX 1:

## Extract from Guiding Principles on Business and Human Rights: Section II. The corporate responsibility to respect human rights

**Note:** The text below is reproduced directly from the UN Guiding Principles and includes all the principles and commentary relating to the corporate responsibility to respect human rights.

### A. FOUNDATIONAL PRINCIPLES

**11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.**

#### Commentary

The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.

Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation.

Business enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations.

Business enterprises should not undermine States' abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes.

**12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.**

#### Commentary

Because business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights. In practice, some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention. However, situations may change, so all human rights should be the subject of periodic review.

An authoritative list of the core internationally recognized human rights is contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work. These are the benchmarks against which other social actors assess the human rights impacts of business enterprises. The responsibility of business enterprises to respect human rights is distinct from issues of legal liability and enforcement, which remain defined largely by national law provisions in relevant jurisdictions.

Depending on circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law.

# Extract from Guiding Principles on Business and Human Rights: Section II. The corporate responsibility to respect human rights

## 13. The responsibility to respect human rights requires that business enterprises:

- (a) **Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;**
- (b) **Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.**

### Commentary

Business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. Guiding Principle 19 elaborates further on the implications for how business enterprises should address these situations. For the purpose of these Guiding Principles a business enterprise's "activities" are understood to include both actions and omissions; and its "business relationships" are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.

## 14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.

### Commentary

The means through which a business enterprise meets its responsibility to respect human rights will be proportional to, among other factors, its size. Small and medium-sized enterprises may have less capacity as well as more informal processes and management structures than larger companies, so their respective policies and processes will take on different forms. But some small and medium-sized enterprises can have severe human rights impacts, which will require corresponding measures regardless of their size. Severity of impacts will be judged by their scale, scope and irremediable character. The means through which a business enterprise meets its responsibility to respect human rights may also vary depending on whether, and the extent to which, it conducts business through a corporate group or individually. However, the responsibility to respect human rights applies fully and equally to all business enterprises.

# Extract from Guiding Principles on Business and Human Rights: Section II. The corporate responsibility to respect human rights

**15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:**

- (a) A policy commitment to meet their responsibility to respect human rights;**
- (b) A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;**
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.**

## **Commentary**

Business enterprises need to know and show that they respect human rights. They cannot do so unless they have certain policies and processes in place. Principles 16 to 24 elaborate further on these.

## **B. OPERATIONAL PRINCIPLES**

### **Policy commitment**

**16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:**

- (a) Is approved at the most senior level of the business enterprise;**
- (b) Is informed by relevant internal and/or external expertise;**
- (c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;**
- (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;**
- (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.**

## **Commentary**

The term "statement" is used generically, to describe whatever means an enterprise employs to set out publicly its responsibilities, commitments, and expectations.

The level of expertise required to ensure that the policy statement is adequately informed will vary according to the complexity of the business enterprise's operations. Expertise can be drawn from various sources, ranging from credible online or written resources to consultation with recognized experts.

The statement of commitment should be publicly available. It should be communicated actively to entities with which the enterprise has contractual relationships; others directly linked to its operations, which may include State security forces; investors; and, in the case of operations with significant human rights risks, to the potentially affected stakeholders.

Internal communication of the statement and of related policies and procedures should make clear what the lines and systems of accountability will be, and should be supported by any necessary training for personnel in relevant business functions.

Just as States should work towards policy coherence, so business enterprises need to strive for coherence between their responsibility to respect human rights and policies and procedures that govern their wider business activities and relationships. This should include, for example, policies and procedures that set financial and other performance incentives for personnel; procurement practices; and lobbying activities where human rights are at stake.

Through these and any other appropriate means, the policy statement should be embedded from the top of the business enterprise through all its functions, which otherwise may act without awareness or regard for human rights.

# Extract from Guiding Principles on Business and Human Rights: Section II. The corporate responsibility to respect human rights

## Human rights due diligence

**17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:**

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;**
- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;**
- (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.**

### Commentary

This Principle defines the parameters for human rights due diligence, while Principles 18 through 21 elaborate its essential components. Human rights risks are understood to be the business enterprise's potential adverse human rights impacts. Potential impacts should be addressed through prevention or mitigation, while actual impacts – those that have already occurred – should be a subject for remediation (Principle 22).

Human rights due diligence can be included within broader enterprise risk-management systems, provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders.

Human rights due diligence should be initiated as early as possible in the development of a new activity or relationship, given that human rights risks can be increased or mitigated already at the stage of structuring contracts or other agreements, and may be inherited through mergers or acquisitions.

Where business enterprises have large numbers of entities in their value chains it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. If so, business enterprises should identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers' or clients' operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence.

Questions of complicity may arise when a business enterprise contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties. Complicity has both non-legal and legal meanings. As a non-legal matter, business enterprises may be perceived as being "complicit" in the acts of another party where, for example, they are seen to benefit from an abuse committed by that party.

As a legal matter, most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases.

Typically, civil actions can also be based on an enterprise's alleged contribution to a harm, although these may not be framed in human rights terms. The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime.

Conducting appropriate human rights due diligence should help business enterprises address the risk of legal claims against them by showing that they took every reasonable step to avoid involvement with an alleged human rights abuse. However, business enterprises conducting such due diligence should not assume that, by itself, this will automatically and fully absolve them from liability for causing or contributing to human rights abuses.



# Extract from Guiding Principles on Business and Human Rights: Section II. The corporate responsibility to respect human rights

**18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:**

- (a) Draw on internal and/or independent external human rights expertise;**
- (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.**

## Commentary

The initial step in conducting human rights due diligence is to identify and assess the nature of the actual and potential adverse human rights impacts with which a business enterprise may be involved. The purpose is to understand the specific impacts on specific people, given a specific context of operations. Typically this includes assessing the human rights context prior to a proposed business activity, where possible; identifying who may be affected; cataloguing the relevant human rights standards and issues; and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified. In this process, business enterprises should pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization, and bear in mind the different risks that may be faced by women and men.

While processes for assessing human rights impacts can be incorporated within other processes such as risk assessments or environmental and social impact assessments, they should include all internationally recognized human rights as a reference point, since enterprises may potentially impact virtually any of these rights.

Because human rights situations are dynamic, assessments of human rights impacts should be undertaken at regular intervals: prior to a new activity or relationship; prior to major decisions or changes in the operation (e.g. market entry, product launch, policy change, or wider changes to the business); in response to or anticipation of changes in the operating environment (e.g. rising social tensions); and periodically throughout the life of an activity or relationship.

To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society.

The assessment of human rights impacts informs subsequent steps in the human rights due diligence process.

**19. In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.**

- (a) Effective integration requires that:**
  - (i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;**
  - (ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.**
- (b) Appropriate action will vary according to:**
  - (i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;**
  - (ii) The extent of its leverage in addressing the adverse impact.**

## Commentary

The horizontal integration across the business enterprise of specific findings from assessing human rights impacts can only be effective if its human rights policy commitment has been embedded into all relevant business functions. This is required to ensure that the assessment findings are properly understood, given due weight, and acted upon.

In assessing human rights impacts, business enterprises will have looked for both actual and potential adverse impacts. Potential impacts should be prevented or mitigated through the horizontal integration of findings across the business enterprise, while actual impacts – those that have already occurred – should be a subject for remediation (Principle 22).

## Extract from Guiding Principles on Business and Human Rights: Section II. The corporate responsibility to respect human rights

Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact.

Where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm.

Where a business enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity, the situation is more complex. Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise's leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences.

The more complex the situation and its implications for human rights, the stronger is the case for the enterprise to draw on independent expert advice in deciding how to respond.

If the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it. And if it lacks leverage there may be ways for the enterprise to increase it. Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors.

There are situations in which the enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage. Here, the enterprise should consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so.

Where the relationship is "crucial" to the enterprise, ending it raises further challenges. A relationship could be deemed as crucial if it provides a product or service that is essential to the enterprise's business, and for which no reasonable alternative source exists. Here the severity of the adverse human rights impact must also be considered: the more severe the abuse, the more quickly the enterprise will need to see change before it takes a decision on whether it should end the relationship. In any case, for as long as the abuse continues and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial or legal – of the continuing connection.

### **20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response.**

#### **Tracking should:**

- (a) Be based on appropriate qualitative and quantitative indicators;**
- (b) Draw on feedback from both internal and external sources, including affected stakeholders.**

#### **Commentary**

Tracking is necessary in order for a business enterprise to know if its human rights policies are being implemented optimally, whether it has responded effectively to the identified human rights impacts, and to drive continuous improvement.

Business enterprises should make particular efforts to track the effectiveness of their responses to impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization.

Tracking should be integrated into relevant internal reporting processes. Business enterprises might employ tools they already use in relation to other issues. This could include performance contracts and reviews as well as surveys and audits, using gender disaggregated data where relevant. Operational-level grievance mechanisms can also provide important feedback on the effectiveness of the business enterprise's human rights due diligence from those directly affected (see Principle 29).

# Extract from Guiding Principles on Business and Human Rights: Section II. The corporate responsibility to respect human rights

**21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:**

- (a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;**
- (b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;**
- (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.**

#### Commentary

The responsibility to respect human rights requires that business enterprises have in place policies and processes through which they can both know and show that they respect human rights in practice. Showing involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors.

Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholders, and formal public reports. Formal reporting is itself evolving, from traditional annual reports and corporate responsibility/sustainability reports, to include on-line updates and integrated financial and non-financial reports.

Formal reporting by enterprises is expected where risks of severe human rights impacts exist, whether this is due to the nature of the business operations or operating contexts. The reporting should cover topics and indicators concerning how enterprises identify and address adverse impacts on human rights. Independent verification of human rights reporting can strengthen its content and credibility. Sector-specific indicators can provide helpful additional detail.

#### Remediation

**22. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.**

#### Commentary

Even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent.

Where a business enterprise identifies such a situation, whether through its human rights due diligence process or other means, its responsibility to respect human rights requires active engagement in remediation, by itself or in cooperation with other actors.

Operational-level grievance mechanisms for those potentially impacted by the business enterprise's activities can be one effective means of enabling remediation when they meet certain core criteria, as set out in Principle 31.

Where adverse impacts have occurred that the business enterprise has not caused or contributed to, but which are directly linked to its operations, products or services by a business relationship, the responsibility to respect human rights does not require that the enterprise itself provide for remediation, though it may take a role in doing so.

Some situations, in particular where crimes are alleged, typically will require cooperation with judicial mechanisms.

Further guidance on mechanisms through which remediation may be sought, including where allegations of adverse human rights impacts are contested, is included in Chapter III on access to remedy.

# Extract from Guiding Principles on Business and Human Rights: Section II. The corporate responsibility to respect human rights

## Issues of context

### 23. In all contexts, business enterprises should:

- (a) **Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;**
- (b) **Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;**
- (c) **Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.**

#### Commentary

Although particular country and local contexts may affect the human rights risks of an enterprise's activities and business relationships, all business enterprises have the same responsibility to respect human rights wherever they operate. Where the domestic context renders it impossible to meet this responsibility fully, business enterprises are expected to respect the principles of internationally recognized human rights to the greatest extent possible in the circumstances, and to be able to demonstrate their efforts in this regard.

Some operating environments, such as conflict-affected areas, may increase the risks of enterprises being complicit in gross human rights abuses committed by other actors (security forces, for example). Business enterprises should treat this risk as a legal compliance issue, given the expanding web of potential corporate legal liability arising from extraterritorial civil claims, and from the incorporation of the provisions of the Rome Statute of the International Criminal Court in jurisdictions that provide for corporate criminal responsibility. In addition, corporate directors, officers and employees may be subject to individual liability for acts that amount to gross human rights abuses.

In complex contexts such as these, business enterprises should ensure that they do not exacerbate the situation. In assessing how best to respond, they will often be well advised to draw on not only expertise and cross-functional consultation within the enterprise, but also to consult externally with credible, independent experts, including from governments, civil society, national human rights institutions and relevant multi-stakeholder initiatives.

**24. Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.**

#### Commentary

While business enterprises should address all their adverse human rights impacts, it may not always be possible to address them simultaneously. In the absence of specific legal guidance, if prioritization is necessary business enterprises should begin with those human rights impacts that would be most severe, recognizing that a delayed response may affect. Severity is not an absolute concept in this context, but is relative to the other human rights impacts the business enterprise has identified.

# APPENDIX 2:

## Overview of relevant tools and guides

**Note:** The table below is not comprehensive: it highlights a selection of the main tools or sources of information which are directly relevant to corporate human rights impact assessments or related corporate human rights due diligence processes. Inclusion in the table does not necessarily imply formal ICMM endorsement of the tool, model or source of information concerned.

Key: which tools are most relevant to which parts of the core text of the guide	
1	Relevant to <b>Human Rights and existing risk management processes.</b> (Section 2)
2a	Relevant to <b>Building human rights issues into ESIA's.</b> (Section 4.2: Option A)
2b	Relevant to <b>Undertaking stand-alone assessments focused on particular human rights issue of concern.</b> (Section 4.2: Option B)
2c	Relevant to <b>Undertaking a stand-alone human rights impact assessment.</b> (Section 4.2: Option C)

Tool/guide	Supporting organization(s)	Description	Particular relevance or usefulness for ICMM members? (see key on page 52)	Weblink				
Amnesty International annual report and library	Amnesty International	Annual report provides succinct (1-3 page) overview of the human rights situation in each of over 150 countries and update on past year's events. Also includes summary of regional human rights developments (-5-6 pages). Online library provides access to recent and archived reports, press releases and appeals on the human rights situation in these countries.	<table border="1"> <tr> <td>1</td> <td>2a</td> <td>2b</td> <td>2c</td> </tr> </table> <p>Useful source of information on human rights context in different countries.</p>	1	2a	2b	2c	<a href="http://www.amnesty.org">www.amnesty.org</a>
1	2a	2b	2c					
Human Rights Watch World Report	Human Rights Watch	Annual report provides information on recent human rights developments (positive or negative) in 90 countries. Also identifies the key international actors involved.	<table border="1"> <tr> <td>1</td> <td>2a</td> <td>2b</td> <td>2c</td> </tr> </table> <p>Useful source of information on human rights context in different countries.</p>	1	2a	2b	2c	<a href="http://www.hrw.org">www.hrw.org</a>
1	2a	2b	2c					
Universal Periodic Review	UN Human Rights Council	Process involving a review of the human rights records of all 192 UN Member States once every four years. The UPR is a State-driven process, under the auspices of the Human Rights Council, and provides an opportunity for each State to identify actions taken to improve the human rights situations in their countries and to fulfil their human rights obligations.	<table border="1"> <tr> <td>1</td> <td>2a</td> <td>2b</td> <td>2c</td> </tr> </table> <p>Useful source of information on human rights context in different countries.</p>	1	2a	2b	2c	<a href="http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx">www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx</a>
1	2a	2b	2c					
Country Reports on Human Rights Practices	US Department of State	Annual report provides comprehensive, in-depth research on full range of human rights issues. Detailed country reports (-50 pages) on human rights situation in some 200 countries, as well as regional overviews.	<table border="1"> <tr> <td>1</td> <td>2a</td> <td>2b</td> <td>2c</td> </tr> </table> <p>Useful source of information on human rights context in different countries.</p>	1	2a	2b	2c	<a href="http://www.state.gov/g/drl/rls/hrrpt">www.state.gov/g/drl/rls/hrrpt</a>
1	2a	2b	2c					
Human rights by country (webpage)	UN Office of the High Commissioner for Human Rights (OHCHR)	Databases of all UN member states' ratification and reporting status with regards to UN treaties. Country pages also cover relationship with various UN human rights bodies, and some general background of the national human rights context and priorities.	<table border="1"> <tr> <td>1</td> <td>2a</td> <td>2b</td> <td>2c</td> </tr> </table> <p>Useful reference e.g. on status of countries' ratifications of human rights treaties.</p>	1	2a	2b	2c	<a href="http://www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx">www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx</a>
1	2a	2b	2c					



# Overview of relevant tools and guides

Tool/guide	Supporting organization(s)	Description	Particular relevance or usefulness for ICMM members? (see key on page 52)	Weblink
Red Flags	International Alert and Fafo Institute	High-level guidance for companies particularly when operating in areas of serious human rights abuses – provides a list of company activities which should raise a “red flag”, that is, alert the company to a potential legal liability and the need for urgent action. Each “red flag” activity is underpinned by a summary of relevant international laws and selected court cases – this information is accessible via the “Red Flags” website. A total of nine “red flags” are listed including, for example, “expelling people from their communities”, “engaging abusive security forces” or “providing the means to kill”.	<p><b>1 2a</b></p> <p>Potentially useful, albeit relatively basic, reference for projects, especially in areas where serious human rights violations have previously taken place.</p>	<a href="http://www.redflags.info">www.redflags.info</a>
Guidelines on Business, Land Acquisition, and Land Use: A Human Rights Approach (forthcoming)	Institute of Human Rights and Business (IHRB)	These draft guidelines for business acquisition and use of land, drawn from the human rights framework and principles of rights-based approaches to development, are intended to provide practical guidance for companies facing land related conflicts.	<p><b>1 2a</b></p>	<a href="http://www.ihrb.org/pdf/Guidelines_on_Business_Land_Acquisition_and_Land_UseDraft_for_Consultation.pdf">www.ihrb.org/pdf/Guidelines_on_Business_Land_Acquisition_and_Land_UseDraft_for_Consultation.pdf</a>
From Red to Green Flags: The corporate responsibility to respect human rights in high-risk countries	Institute of Human Rights and Business (IHRB)	Building on the UN endorsed Protect, Respect, Remedy framework on business and human rights, this new report explores the specific human rights dilemmas and challenges facing companies operating in weak governance zones and provides detailed guidance for business leaders in meeting their human rights responsibilities.	<p><b>1 2a 2b 2c</b></p> <p>Designed to assist corporate managers as well as others with an interest in business and human rights and related fields.</p>	<a href="http://www.ihrb.org/pdf/from_red_to_green_flags/complete_report.pdf">www.ihrb.org/pdf/from_red_to_green_flags/complete_report.pdf</a>
OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones	Organization for Economic Cooperation and Development (OECD)	High-level guidance note (~35 pages) for companies operating in so-called “weak governance zones”. Poses a long series of “questions for consideration” regarding the risks and ethical dilemmas that companies are likely to face in such weak governance zones, including in the areas of obeying the law and observing international instruments, heightened care in managing investments, knowing business partners and clients, and dealing with public sector officials, and speaking out about wrongdoing.	<p><b>1 2a</b></p> <p>Useful checklist for reviewing whether existing systems/ESIA approach adequately cover human rights.</p>	<a href="http://www.berr.gov.uk/files/file46193.pdf">www.berr.gov.uk/files/file46193.pdf</a>

Tool/guide	Supporting organization(s)	Description	Particular relevance or usefulness for ICMM members? (see key on page 52)	Weblink
A Guide to Integrating Human Rights into Business management + Online Tool	Business Leaders Initiative on Human Rights (BLIHR)	Step-by-step guide designed to help any company to integrate practices consistent with human rights standards into their existing management system. Clear structure based on seven aspects common to most management systems (namely, strategy, policy, processes and procedure, communications, training, measuring impact and auditing and reporting). Detailed guidance in each section, illustrated by short company-focused case studies.	<p><b>1</b></p> <p>Potentially useful for reviewing company's overall management approach on human rights.</p>	<p><a href="http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resource/guide_hr.pdf">www.unglobalcompact.org/docs/issues_doc/human_rights/Resource/guide_hr.pdf</a></p> <p><a href="http://www.integrating-humanrights.org/home">www.integrating-humanrights.org/home</a></p>
Human Rights Translated: A Business Reference Guide	International Business Leaders Forum (IBLF), Castan Centre for Human Rights Law, Office of the UN High Commissioner for Human Rights and the UN Global Compact	Detailed reference guide (~170 pages) designed to help companies understand human rights in way that makes sense to them. The guide covers each of the rights contained in the UN treaties – the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) – providing a description of what each right means in general terms, how it may be relevant to a company's activities and suggested company actions.	<p><b>1</b> <b>2c</b></p> <p>Good source of general background for companies on international human rights law and issues. Potentially useful for reviewing whether human rights issues adequately covered by existing risk management processes, or in shaping approach/content of stand-alone human rights impact assessment.</p>	<p><a href="http://www.unglobalcompact.org/docs/news_events/8.1/human_rights_translated.pdf">www.unglobalcompact.org/docs/news_events/8.1/human_rights_translated.pdf</a></p>
A Guide to Human Rights Impact Assessment and Management ("road testing" draft plus "integration process")	International Business Leaders Forum (IBLF), the International Finance Corporation (IFC), in close collaboration with the UN Global Compact	Detailed, practical guidance (~110 pages) setting out a process for companies to assess and manage human rights impacts. Structure of the guide is based on eight-step impact assessment process, beginning with determining whether full HRIA is needed and information gathering, then assessing and managing human rights risks and impacts, and concluding by monitoring, evaluating and reporting on the management process. Each section includes a series of practical tips. The guide is currently being "road-tested" by companies at particular projects – an updated version is expected to be published in 2010. An "integration process" is also being developed build human rights issues in ESIA's.	<p><b>1</b> <b>2a</b> <b>2c</b></p> <p>Useful as an input both for enhancing internal risk management systems and for developing stand-alone HRIAs. The forthcoming "integration process", meanwhile, should provide guidance on strengthening ESIA's.</p>	<p><a href="http://www.guidetohriam.org/welcome">www.guidetohriam.org/welcome</a></p>

# Overview of relevant tools and guides

Tool/guide	Supporting organization(s)	Description	Particular relevance or usefulness for ICMM members? (see key on page 52)	Weblink
Human Rights Compliance Assessment (HRCA) Full Check	Danish Institute for Human Rights	Comprehensive web-based self-assessment tool designed to help companies detect human rights risks and opportunities at their operations. Over 350 questions and 1,000 corresponding human rights indicators developed from international human rights law. Questionnaire generates a report outlining areas of high, medium and low risk. Designed to be used at different stages of operation as well as fit into existing processes.	<p><b>1</b> <b>2a</b> <b>2c</b></p> <p>Potentially useful albeit long checklist for reviewing whether human rights issues adequately covered in existing systems or ESIA. Also potentially useful for shaping content of stand-alone human rights impact assessment.</p>	<a href="http://www.humanrights.dk/what+we+dofocus+areas/human+rights+and+business/tools+and+methods/asessment+tools+for+businesses">www.humanrights.dk/what+we+dofocus+areas/human+rights+and+business/tools+and+methods/asessment+tools+for+businesses</a>
Human Rights Compliance Assessment (HRCA) Quick Check	Danish Institute for Human Rights	Condensed version of the full HRCA tool (see above). Self-assessment checklist for companies to gather a more a general overview of the human rights risks in their operations. Consists of ~28 questions covering, for example, violations in employment practices, community impacts and supply chain management. Better suited for SME or larger companies requiring a quick introduction to human rights assessments.	<p><b>1</b> <b>2a</b></p> <p>Potentially useful checklist for reviewing whether existing systems or ESIA cover all relevant human rights issues.</p>	<a href="http://www.humanrights.dk/what+we+dofocus+areas/human+rights+and+business/tools+and+methods/asessment+tools+for+businesses">www.humanrights.dk/what+we+dofocus+areas/human+rights+and+business/tools+and+methods/asessment+tools+for+businesses</a>
Country Risk Assessment Reports (CRA) (also a HRCA tool)	Danish Institute for Human Rights	Comprehensive reports on the human rights risks faced by companies in particular countries. Each right is rated according to risk level (high, medium, low) and is accompanied by recommended due diligence steps for the company to take to help avoid violations and improve performance.	<p><b>1</b> <b>2a</b> <b>2c</b></p> <p>Potentially useful source of information on human rights context in country.</p>	<a href="http://www.humanrightsbusiness.org/?f=country_risk">www.humanrightsbusiness.org/?f=country_risk</a>

Tool/guide	Supporting organization(s)	Description	Particular relevance or usefulness for ICMM members? (see key on page 52)	Weblink
Conflict Sensitive Business Practices (CSBP)	International Alert	Set of tools for companies in the extractive industries seeking to adopt a "conflict-sensitive" approach to their operations, that is, to better understand and manage risks and impacts associated with operating in conflict zones or areas prone to conflict. Involvement of industry professionals in development of the toolkit has helped make it practical and readable. Main sections of the toolkit include an overview of possible company/conflict issues that can arise at the different stages of projects, and three core tools. These are a "screening tool" to help confirm whether country is at risk of conflict, and both macro-level and project-level conflict risk and impact assessment tools. Final section includes guidance on series of "flashpoint issues", such as resettlement, dealing with armed groups, security arrangements and corruption.	<b>2b</b> Useful tool for stand-alone assessment on security or conflict issues.	<a href="http://www.international-alert.org/resources/publications/conflict-sensitive-business-practice-guidance-extractive-industries">www.international-alert.org/resources/publications/conflict-sensitive-business-practice-guidance-extractive-industries</a>
Global Compact Business Guide for Conflict Impact Assessment and Risk Management	UN Global Compact	Guide for companies to assess and manage risk in conflict and conflict-prone context. Also supports the development of strategies that minimize the negative effects and maximize the positive effects of investing in such areas.	<b>2b</b> Useful tool for companies undertaking stand-alone assessment on security or conflict issues.	<a href="http://www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/BusinessGuide.pdf">www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/BusinessGuide.pdf</a>
Conflict Assessment System Tool (CAST)	Fund for Peace	A methodology for early warning and assessment of internal conflict. The methodology is designed particularly for use by international agencies and governments, but has also been used to conduct conflict assessments on behalf of mining companies (see case-study on Newmont). The model is based on a five-step framework, including twelve sets of indicators (social, economic and political) and a rating system that can help track a conflict over time. Further details on the methodology and indicators are available on the CAST website. The Fund for Peace uses the CAST methodology to generate the Failed States Index. Generic products based on the CAST system include country profiles (short reports providing more detailed insight behind the Failed States Index) and country assessments (more in-depth reports for individual clients).	<b>2b</b> Useful tool for companies undertaking stand-alone assessment on security or conflict issues.	<a href="http://www.fundforpeace.org/cast">www.fundforpeace.org/cast</a>

# Overview of relevant tools and guides

Tool/guide	Supporting organization(s)	Description	Particular relevance or usefulness for ICMM members? (see key on page 52)	Weblink
Guide to Corporate Human Rights Impact Assessment Tools	Aim for Human Rights (previously "Humanist Committee for Human Rights" (HOM))	This document provides an overview of five of the main HRIA tools currently available – including those developed by Rights and Democracy, the Danish Institute, International Alert and the IBLF/IFC/UNGC – and guidance as to when and how these tools can best be used.	<p>2c</p> <p>Useful as general reference for companies exploring options in this area.</p>	<p><a href="http://www.humanrightsimpact.org/the-business-centre/hria-in-business/guide-to-corporate-human-rights-impact-assessment-tools">www.humanrightsimpact.org/the-business-centre/hria-in-business/guide-to-corporate-human-rights-impact-assessment-tools</a></p>
Handbook in human rights assessment: state obligations awareness and empowerment	Norwegian Agency for Development Cooperation (NORAD)	Handbook focuses particularly on state human rights obligations. Format of assessment is simple form sheet for recording human rights impacts, based on a number of questions and simple scoring system for positive/negative impacts. Includes useful list of human rights and country ratifications of key international human rights conventions.	<p>2c</p> <p>Intended mainly for development agencies to assess general human rights impacts of development projects, rather than for companies. Nonetheless, provides simple model and guidance companies could draw from in designing an HRIA.</p>	<p><a href="http://www.norad.no/en/Tools+and+publications/Publications/Publication+Page?key=109343">www.norad.no/en/Tools+and+publications/Publications/Publication+Page?key=109343</a></p>
Getting it Right: A step-by-step guide to assess the impact of foreign investment on human rights	Rights and Democracy	Step-by-step guide designed for local NGOs and community groups for assessing human rights impacts of foreign investment projects. The guide is provided in CD-ROM format, alongside a short written document. Simply presented, the guide is divided into six parts, setting out 24 steps to completing an assessment. The core of the methodology is an extensive list of human rights questions derived from international human rights law. The questionnaire is designed to support an assessment of how human rights are protected in the national context, and the actual impact of the investment on those rights. The guide is the result of a three-year research project which applied an earlier version of the methodology to five projects.	<p>2c</p> <p>Intended mainly for use by local NGOs and community groups, rather than by companies. Nonetheless, provides potentially useful checklist of issues.</p>	<p><a href="http://www.drd.ca/site/_PDF/publications/Getting-it-right_HRIA.pdf">www.drd.ca/site/_PDF/publications/Getting-it-right_HRIA.pdf</a></p>

Tool/guide	Supporting organization(s)	Description	Particular relevance or usefulness for ICMM members? (see key on page 52)	Weblink
Community Development Toolkit	ICMM	The Community Development Toolkit was published in 2005, jointly by ICMM, the World Bank and ESMAP. It was developed to support government, industry, and community efforts to realize more sustainable community development around mining and mineral processing operations. A revised and updated version was released in 2012.	<p>2a 2b 2c</p> <p>Intended mainly for companies to support effective stakeholder engagement and community development interventions.</p>	www.icmm.com
Stakeholder Engagement: A good practice handbook for companies doing business in emerging markets	International Finance Corporation (IFC)	Provides a comprehensive source of guidance for companies on how to conduct all aspects of stakeholder engagement, illustrated by numerous examples. While not written from a human rights perspective, it offers valuable guidance on the conduct of stakeholder engagement.	<p>2a 2b 2c</p> <p>Intended mainly for companies to support effective stakeholder engagement.</p>	www.ifc.org/ifcext/enviro.nsf/attachmentsbytitle/p_stakeholderengagement_full/\$file/ifc_stakeholderengagement.pdf
A Methodology for Human Rights Impact Assessment	Nomogaia	Sets out 12-step approach to conducting HRIAs for capital projects, distinguishing between desktop, rapid response and comprehensive assessments. Includes list of human rights and a catalogue of topics for companies to consider. Also suggests a scoring system for ranking severity of impacts.	<p>2c</p> <p>Potentially useful, albeit less comprehensive and polished than some other guides.</p>	www.nomogaia.org/HRIA/Entries/2011/1/1_A_Methodology_for_Human_Rights_Impact_Assessment_files/Methodology%20for%20HRIA%202.0.pdf
OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas	Organization for Economic Cooperation and Development (OECD)	Provides management recommendations for global responsible supply chains of minerals to help companies to respect human rights and avoid contributing to conflict through their mineral or metal purchasing decisions and practices. The Due Diligence Guidance is for use by any company potentially sourcing minerals or metals from conflict-affected and high-risk areas.	<p>2b</p> <p>Of potential value for supply chain due diligence for tin, tantalum, tungsten or gold.</p>	www.oecd.org/document/36/0,3746,en_2649_34889_4430740_1_1_1_1,00.html
Voluntary Principles Implementation Guidance Tools	ICMM, International Committee of the Red Cross (ICRC), IPIECA and the IFC	Aims to provide a comprehensive tools for companies to apply in implementing the Voluntary Principles on Security and Human Rights (VPS) at an operational level.	<p>1 2a 2b</p> <p>Valuable source of guidance on implementing the VPs.</p>	www.voluntaryprinciples.org/files/Implementation_Guidance_Tools.pdf



# APPENDIX 3:

## Additional reading and sources

Aim For Human Rights (2009). *Human Rights in Business: Guide to human rights impact assessment tools*. Aim For Human Rights, Utrecht, Netherlands. Available at: [www.humanrightsimpact.org](http://www.humanrightsimpact.org)

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# APPENDIX 4:

## Footnotes

- 1 John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, 2011.  
Available at [www.ohchr.org/Documents/Issues/Business/A-HRC-17-31\\_AEV.pdf](http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf)
- 2 John Ruggie, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, 2008.
- 3 Davis and Franks (2011). *The costs of conflict with local communities in the extractives industries*. See reference list for details.
- 4 John Ruggie notes that, as a minimum, companies can find an authoritative list of human rights in: the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), and the ILO core conventions.  
See: [www2.ohchr.org/english/issues/trans\\_corporations/docs/A-HRC-14-27.pdf](http://www2.ohchr.org/english/issues/trans_corporations/docs/A-HRC-14-27.pdf)
- 5 See Article 27 of the Universal Declaration on Human Rights.
- 6 Article 1 of the Covenant on Economic, Social and Cultural Rights states that “In no case may a people be deprived of its own means of subsistence”.
- 7 Please note that this is not intended to imply that fulfilment of these rights is a company’s responsibility, for example by building health clinics or schools to help fulfil the rights to health or education respectively. This is the role of the “host” state. In Professor John Ruggie’s words, “to respect rights essentially means not to infringe on the rights of others – put simply, to do no harm”. Professor John Ruggie has therefore distinguished between the “corporate responsibility to respect” and the “state duty to protect” human rights.
- 8 The International Bill of Human Rights in turn consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols.
- 9 *Protect, Respect and Remedy: A Framework for Business and Human Rights*, 2008.
- 10 These issues are listed in alphabetical order and no hierarchy is implied or intended.
- 11 Some of these questions go beyond the corporate responsibility to respect human rights, but are important in better understanding the potential of mining to contribute to social and economic development or become a source of discontent.
- 12 This list is not exhaustive and is intended to provide examples of human rights that companies should consider.
- 13 For further information about integrating gender considerations into project and program development and implementation, see Rio Tinto (2009) *Why Gender Matters*.  
[www.riotinto.com/documents/ReportsPublications/Rio\\_Tinto\\_gender\\_guide.pdf](http://www.riotinto.com/documents/ReportsPublications/Rio_Tinto_gender_guide.pdf)
- 14 See [www.voluntaryprinciples.org/principles/risk\\_assessment](http://www.voluntaryprinciples.org/principles/risk_assessment)
- 15 See: [www.ifc.org/ifcext/sustainability.nsf/Content/Publications\\_Handbook\\_HRIA](http://www.ifc.org/ifcext/sustainability.nsf/Content/Publications_Handbook_HRIA)
- 16 While there is no universally accepted definition of either weak governance or conflict-affected countries, a number of sources of information are strongly indicative – see Box 4.
- 17 See also ICMM’s guidance on *Handling and Resolving Local Level Concerns and Grievances* in the list of references.
- 18 Appendix 2 provides further details on each of these publications and sources.
- 19 See section 8.5 of UN document *The corporate responsibility to respect human rights: an interpretative guide*, in the reference listing.

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