



Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights



Background and acknowledgements

This Guide was written by Shift and the Institute for Human Rights and Business (IHRB).

In December 2011, IHRB and Shift were selected by the European Commission (Directorate-General for Enterprise and Industry) to develop sector-specific guidance on the corporate responsibility to respect human rights, as set out in the UN Guiding Principles on Business and Human Rights. The development of sector-specific human rights guidance is one of the deliverables of the European Commission's [policy on corporate social responsibility](#), adopted in October 2011.

Further to a public consultation, and on the basis of objective criteria, the services of the European Commission decided that guidance would be developed for employment and recruitment agencies, information and communications technologies ("ICT") companies, and oil and gas companies.

The development of this Guide involved extensive research and multi-stakeholder consultation. The process involved over 75 multi-stakeholder interviews per sector with individual experts, two periods of web-based public consultation, field-based research, and two multi-stakeholder roundtable discussions hosted by the European Commission. The European Commission, Shift and IHRB are very grateful to all the business, government, trade unions and civil society representatives, academics and other experts, whose input helped to shape the final document. (The full list of participants in the project can be found on the websites listed below.) In particular, they would like to thank:

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The above-mentioned people provided advice in a personal capacity. Their participation does not necessarily imply that they or the organisations they work for endorse the contents of this document.

Further information about the process by which this guidance was developed can be found on the websites of:

- ▶ The Institute for Human Rights and Business at www.ihrb.org/project/eu-sector-guidance/index.html and
- ▶ Shift at www.shiftproject.org/project/ec-sectoral-guides-corporateresponsibility-respect-human-rights.

Disclaimer: The content of this document does not necessarily reflect the official view of the European Commission.

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FOREWORD

The European Union is a strong believer in globalisation's potential for positive change. By harnessing the creative power of people and enterprises across the world, globalisation can improve living conditions for all. The ultimate purpose of our economy is to contribute to human development.

We also believe that globalisation needs to take place within a system of international norms in order to ensure its contribution to social and economic development, in full respect for human rights and fundamental freedoms. Indeed, we see these two goals as mutually reinforcing.

The United Nations Guiding Principles on Business and Human Rights are an important new step in the development of international norms that will help to realise the full potential of globalisation. Their implementation is integral to the European Union's human rights strategy and to the European Commission's policy on corporate social responsibility. Similarly, European Union Member States have committed to develop their own national plans for implementing the UN Guiding Principles.

We are pleased to present this practical guide for oil and gas companies on how to ensure respect for human rights. The guide, which is not a legally binding document, translates the expectations of the UN Guiding Principles into the particular context of the oil and gas sector. It is the fruit of intensive consultations with business people, trade union representatives, representatives of human rights organisations and other experts. We are very grateful to them all.

The European Union offers this guidance as a contribution towards global efforts to implement the UN Guiding Principles on Business and Human Rights. We welcome the prospect of further engagement with governments, enterprises, civil society, and other actors from all regions of the world. And we appreciate the need for close dialogue and partnership with international organisations, including the United Nations, the International Labour Organisation and the Organisation for Economic Cooperation and Development.

Not so long ago environmental management was something that concerned only a small number of companies. For many companies it has today become a natural part of doing business, considered vital for long-term success. We have a similar vision for the future of business and human rights: where respecting human rights is understood as being an intrinsic part of business excellence.



A handwritten signature in black ink, reading "Antonio Tajani".

Antonio Tajani
Vice-President of the European Commission
Enterprise and Industry



A handwritten signature in black ink, reading "Stavros Lambrinidis".

Stavros Lambrinidis
EU Special Representative on Human Rights



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Part 1

About This Guide

About This Guide

Objectives of the Guide

This Guide applies the [UN Guiding Principles on Business and Human Rights](#) (“Guiding Principles”) to the specific context of the oil and gas (“O&G”) sector. Recognising that each company is different, it is intended to help O&G companies “translate” respect for human rights into their own systems and company cultures. It summarises what the Guiding Principles expect, offers a range of ideas and examples for how to put them into practice, and links the user to additional resources that can support their work. It does not propose a set management system but rather leaves companies the flexibility they need to implement the Guiding Principles in their own particular circumstances. The Guide’s various sections can be referred to as and when needed during the on-going process of implementation. The Guide is not intended to be legally binding.

The Guiding Principles were unanimously endorsed by the UN Human Rights Council in 2011 and are now the authoritative global reference point on business and human rights. They are based on the three pillars of the [UN “Protect, Respect and Remedy” Framework](#), which recognise the complementary but distinct roles of states and business in protecting and respecting human rights. The three pillars are:

- ▶ The **state duty to protect** against human rights abuses by third parties, including businesses, through effective policies, legislation, regulations and adjudication;
- ▶ The **corporate responsibility to respect** human rights, meaning that companies should avoid infringing on the rights of others and address negative impacts with which they are involved; and
- ▶ The need for **greater access to effective remedy** for victims of business-related human rights abuses, through both judicial and non-judicial means.

Since this Guide is intended for companies, it focuses on implementation of the [corporate responsibility to respect](#) human rights. It builds on the [Interpretive Guide](#), developed by the Office of the UN High Commissioner for Human Rights, with the support of Professor Ruggie, the author of the Guiding Principles. It takes the reader through the key steps expected of companies, from setting out their commitment to respect human rights, to identifying and addressing their human rights risks, to providing remedy where actual harms occur.

The Guide also takes into account, wherever possible, the role of states in ensuring the rule of law and meeting their duty to protect human rights through effective laws and policies and by investigating, punishing and redressing any abuses that occur. States’ obligations and companies’ responsibilities are independent of each other. However, the Guide recognises that where governments are unwilling or unable to meet their own human rights obligations, this makes it more challenging for O&G companies to avoid being involved in harm to individuals’ human rights.

“No one size fits all” when it comes to putting respect for human rights into practice. Most oil and gas companies will not start with a “blank slate” – they are likely to have a range of existing policies and processes that are relevant to respecting human rights, as well as an established corporate culture or set of values that guide the company’s actions. Operating environments differ widely and it is important that O&G companies develop locally appropriate solutions that are consistent with human rights when responding to local impacts.

Finally, the Guide recognises that implementing respect for human rights across a company’s activities and business relationships is not simple. It takes commitment, resources and time to embed respect for human rights into the ways that a large and diverse workforce thinks and acts. Moreover, companies rarely control all the

Background to the UN Guiding Principles

The Guiding Principles and UN Framework were developed by the former Special Representative of the UN Secretary-General for Business and Human Rights, Harvard Professor John Ruggie, over the six years of his mandate from 2005 – 2011. Based on extensive research and consultations with representatives from government, business, and civil society (including trade unions, NGOs and legal and academic experts) across all continents, they gained broad acceptance and support. A new expert [UN Working Group](#) is now the UN body responsible for promoting implementation of the Guiding Principles and UN Framework.

There are several important international standards that draw directly on the Guiding Principles including: the revised [OECD Guidelines for Multinational Enterprises](#), the [IFC Performance Standards](#), and the [ISO 26000 Social Responsibility Guidance](#). What does this mean for business? Convergence around the Guiding Principles should lead to fewer conflicting standards and consistent expectations.

circumstances in which they operate; those contexts may change rapidly; and serious human rights dilemmas may arise. Implementation of the Guiding Principles is therefore a process of continuous improvement, and this Guide itself reflects learning that will continue to evolve.

Scope of the Guide

- ▶ **Upstream focus:** The Guide concentrates on upstream activities of O&G companies throughout the project lifecycle from pre-feasibility, through feasibility, development (including construction), implementation (including production), to decommissioning and post-closure. It therefore also focuses on the business actors involved in those activities, whether on-shore or off-shore, including international O&G companies, national O&G companies, joint ventures, exploration companies, pipeline companies, oil service companies and other contractors.
- ▶ **Human rights content:** The Guide covers respect for all [internationally recognised human rights](#), including human rights of workers and the rights of individuals or groups in a position of heightened [vulnerability or marginalisation](#) (such as women, children and indigenous peoples).
- ▶ **Companies' activities and business relationships:** The Guide applies to O&G companies' own activities and to their [business relationships](#) with third parties. This includes companies' direct relationships and those that are one or more steps removed in the value chain.
- ▶ **Companies of all sizes:** The Guide should be useful to all sizes of O&G companies engaged in upstream activities, with varying types of ownership and structure. Wherever possible, attention is given to approaches that may be more appropriate for smaller companies in the sector.
- ▶ **Global applicability:** The Guide takes particular account of the experience of EU companies, but aims to be as globally applicable as possible. It is relevant to EU companies operating inside and outside the EU, recognising that some non-EU contexts can raise the greatest challenges. It should also be useful to companies whose headquarters are outside the EU.

Audience of the Guide

This Guide is for those practitioners in O&G companies who have the lead responsibility for human rights issues, whatever function or department they sit in, at the corporate or business unit level. It offers a range of approaches that they can take and tailor to the needs of different departments, functions and individuals within their companies, in ways that make sense within their own systems and cultures.

This Guide should also be of use to those who are interested in promoting respect for human rights in the O&G sector, including trade unions, NGOs, representatives of affected communities, investors, industry associations, multi-stakeholder initiatives, governments, and consumer organisations.

Structure of the Guide

The Guide is divided into the following parts:

- ▶ Part 1: About this Guide
- ▶ Part 2: Human Rights and the Oil and Gas Sector
- ▶ Part 3: Putting Respect for Human Rights into Practice – which explores implementation of each of the six core elements of the corporate responsibility to respect. For each element, the Guide addresses the same key points:
 - “What do the Guiding Principles Require?”
 - “Why is this Important?”
 - “What are the Steps Involved?”, with each step supported by “Key Points for Implementation”, and a range of “Possible Approaches” that draw on good practice
 - “Where to Start” guidance for companies that are just beginning to engage with these issues
 - “Questions to Ask” to test consistency of a company's approaches with the Guiding Principles
- ▶ Annexes: [Key Resources](#) and [Key Concepts](#)



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Part 2

Human Rights and the Oil & Gas Sector

Human Rights and the Oil & Gas Sector

Human Rights Impacts in the Oil & Gas Sector

Human rights are basic standards aimed at securing dignity and equality for all. Every human being is entitled to enjoy them without discrimination. They include the rights contained in the “International Bill of Human Rights” – meaning the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Those documents set out a range of rights and freedoms such as the rights to life, to freedom of expression, to privacy, to education, and to favourable conditions of work, to name a few. Internationally-recognised human rights also include the principles concerning fundamental rights set out in the International Labour Organisation’s (ILO) Declaration on Fundamental Principles and Rights at Work, which addresses freedom of association and collective bargaining, forced labour, child labour and non-discrimination. In addition, some potentially vulnerable or marginalised individuals and groups are the subject of international human rights instruments that help provide clarity on how human rights apply to them (for more on this, see [Section II-A](#)). (See [Annex 1](#) for a list of relevant instruments.)

Responsible oil and gas companies have become increasingly active in recent years in understanding and addressing the range of human rights issues linked to their operations. They recognise that they can both positively and negatively impact their staff, the workers in their supply chains, or the communities around their operations.

The O&G sector plays an important role in supporting development through the provision of energy and the generation of significant revenues. These revenues can in turn contribute to poverty reduction (if well managed) and the realisation of many human rights, including rights to work, to health, to an adequate standard of living and to education. The sector is also a significant employer of highly skilled workers. Moreover, O&G companies that respect human rights tend to have strong health and safety performance, reduced environmental effects from their operations, and sustainable relationships with local communities that benefit from their presence.

On the other hand, where O&G companies do not pay enough attention to human rights, they can and do have negative impacts. This can lead to very real costs for the individuals whose rights are affected. It can also bring costs to O&G companies themselves, as a result of operational delays, lawsuits, reduced employee satisfaction, lost opportunities in expansion or new investments, and reputational harm.

Several large companies have come together with governments and civil society groups to launch multi-stakeholder initiatives aimed at preventing negative human rights impacts and maximising positive ones in the extractive industry more broadly, most notably through the [Voluntary Principles for Security and Human Rights](#), and the [Extractive Industries Transparency Initiative](#). The global oil and gas industry organisation for environmental and social issues, [IPIECA](#), has also undertaken important work to develop tools and support good practice with regard to respect for human rights, as have some regional associations.

Operating Contexts and Host State Challenges

The extent to which O&G companies may be involved with negative human rights impacts will be heavily influenced by both their operating context and the practices of their business partners. Both factors will shape the policies, processes and practices they need in order to prevent and address such impacts.

The locations where O&G companies operate (whether on or off-shore) are determined by where resources exist. The exploitation of natural resources can generate large revenues that enable states to foster growth, reduce poverty and help ensure the realisation of human rights. However, in states where governance is weak, such exploitation may instead contribute to poverty, corruption, crime and conflict with all the associated negative impacts on individuals’ human rights. When states fail to meet their duty to protect human rights, the responsibility of O&G companies to respect human rights does not change; however, it can become all the more challenging for them to meet that responsibility in practice. The scale of these challenges depends largely on the extent to which:

- ▶ Appropriate legislation exists and is enforced in areas relevant to the sector's impacts such as the human rights of workers, environmental protection and land title and usage;
- ▶ There is rule of law, including access for victims of human rights abuse to justice;
- ▶ There is adequate regulation and oversight of public security forces;
- ▶ There are efforts to combat corruption and provide revenue transparency;
- ▶ The government protects human rights in the terms of investment agreements and has the capacity to ensure their implementation;
- ▶ There is a strong civil society presence.

Where these conditions are weak or absent, merely obeying domestic laws is unlikely to be sufficient to demonstrate respect for human rights. Companies will typically need to do further, enhanced human rights due diligence to meet the increased challenges, as will be discussed in [Part 3](#) of the Guide.

Business Relationships

Historically, the majority of companies directly involved in the production of oil and gas were international O&G companies. Today they are outnumbered by national O&G companies, most of which are wholly or partly state-owned. Of these national companies, some operate only within their home state while others operate in multiple countries. Many national O&G companies have only recently started to engage with human rights issues, recognising that they have the same responsibility to respect human rights as other companies in the sector. In addition, the state's role in their ownership and management means that the state duty to protect human rights is relevant to how their business is conducted.

O&G operations are generally long-term investments (often 40–50 years), based on agreements with the host state that are negotiated during the initial exploration phase. These agreements may affect the state's ability to protect human rights. They can also reduce or increase a company's ability to respect human rights throughout the life of the investment, for instance to the extent they constrain or enable meaningful consultations with communities in advance of a project, or set shared expectations for how all members of a joint venture should implement a project.

The majority of O&G operations are undertaken by joint venture partnerships between a number of international O&G companies or between international and national O&G companies. They often enter into agreements to jointly bid for the management of a certain asset and then reach a joint operating agreement to share the operational and financial burdens and risks of the project. One partner will be designated as the operator (often the one with the most significant financial investment). When operating outside their home states, international O&G companies are usually required to contract with the relevant national company. The national company may then act as the operator, with the international company providing technical or other expertise and/or financial support.

Companies in the O&G sector – in particular the larger ones – typically have numerous contractor relationships for O&G field services and other activities. Those contractors may be international, national or local. Contractors have their own responsibility to respect human rights. In practice, smaller contractors may be less aware of, or lack the capacity to meet, this responsibility. This poses risks to the O&G company that is relying on them, as will be discussed in [Part 3](#) of the Guide.

Understanding Potential Negative Impacts

While this Guide acknowledges the range of positive impacts that the oil and gas sector can have on human rights, respecting rights – that is, the avoidance of harm to human rights – is the baseline expectation of all companies. The Guide therefore focuses on the prevention, mitigation and remediation of negative human rights impacts.

The following matrix provides examples of the kinds of negative impacts that O&G companies may have. It is not intended to imply that every company will have these impacts, nor does it represent the full range of potential impacts of an activity. Rather, it is illustrative of the kinds of impacts that may arise and the rights that may be involved.

The matrix is structured in the following way:

- ▶ On the vertical axis, it lists a number of typical activities of upstream O&G companies;
- ▶ On the horizontal axis, it lists some of the key stakeholder groups that upstream O&G activities may impact upon;
- ▶ In each box it gives an example of an impact that the particular activity may sometimes have on the stakeholder group, and the human rights that can be affected.

The matrix aims to show that:

- ▶ Different types of activities can have quite distinct impacts on different human rights;
- ▶ Negative impacts can happen throughout the project life cycle, not just at the start;
- ▶ Different kinds of negative impacts can fall on different groups, and even on individuals within certain groups. Impacts can be more severe where individuals or groups are vulnerable or marginalised.

Analytical Framework for Assessing Potential Impacts of Company Activities on Stakeholder Groups

	Company Workers	Supply Chain/ Contractor Workers	Affected Communities	Vulnerable or Marginalised Groups	Other Relevant Groups...
Land Acquisition/ Resettlement	E.g., Staff are required to carry out resettlement processes amidst strong resistance and conflict with affected communities, exposing them to risks to their safety – <i>Rights to Life, Liberty and Security of the Person, Right to Highest Attainable Standard of Health</i>	E.g., Contractor staff from local communities are involved in activities to acquire land in the face of local opposition, exposing them to retaliation by other community members – <i>Right to Security of the Person</i>	E.g., Compensation policies and processes are flawed, such as compensating for crops not land, below market rate compensation, or failure to compensate individuals who hold customary title to the land – <i>Right to an Adequate Standard of Living, Right to Housing</i>	E.g., Land acquisition process does not allow sufficient time to consult meaningfully with indigenous peoples, and obtain their consent where necessary – <i>Rights of Indigenous Peoples, including Right to Self-Determination and Cultural Property rights</i>	
Drilling/ Seismic Testing	E.g., Staff are pressured to obtain access agreements from resistant local landowners under extreme time pressure, leading to severe stress – <i>Right to Highest Attainable Standard of Health</i>	E.g., In remote areas, contractor staff are provided with poor living and housing conditions in worker camps – <i>Right to Just and Favourable Conditions of Work, Right to Highest Attainable Standard of Health</i>	E.g., Communities have restricted access to land/ fishing grounds due to drilling/ dredging activities/ seismic campaigns and are not provided with appropriate compensation – <i>Right to an Adequate Standard of Living, Right to Food, Right to Liberty of Movement</i>	E.g., Seismic testing results in destruction of sacred sites or places of cultural heritage belonging to indigenous peoples – <i>Rights of Indigenous Peoples, including Right to Self-Determination and Cultural Property rights</i>	
Construction of Facilities/Pipelines	E.g., Staff are pressured to work excessive amounts of overtime, or to abstain from taking religious holidays, to meet a project schedule – <i>Right to Just and Favourable Conditions of Work, Non-discrimination</i>	E.g., Migrant workers' passports are taken away by recruitment and employment agencies supplying workers for construction, and/or such workers are subjected to high fees, placing them in a position of bonded labour – <i>Freedom from all forms of Forced or Compulsory Labour</i>	E.g., Access to land needed for cattle grazing is restricted due to a pipeline route, with inadequate consultation and compensation; or the pipeline route blocks children's route to school, with inadequate consultation and mitigation measures – <i>Right to an Adequate Standard of Living, Right to Education</i>	E.g., Failure to prepare for influx of mostly male construction workers results in increased sexual exploitation of/abuse against local women and children and a rise in HIV/ AIDS – <i>Rights to Life, Liberty and Security of the Person, Prohibition Against Torture, Cruel, Inhuman or Degrading Treatment, children's rights (eg Freedom from Sexual Exploitation), Right to Highest Attainable Standard of Health</i>	
Environmental Management	E.g., Staff are exposed to petrochemicals without adequate preparation and training for handling potential industrial risks – <i>Right to Highest Attainable Standard of Health</i>	E.g., Contractor staff lack adequate protective equipment during the clean up of spills/leakages – <i>Right to Highest Attainable Standard of Health, Right to Just and Favourable Conditions of Work</i>	E.g., Air and water emissions are not effectively controlled, impacting on local community's land and environment – <i>Right to an Adequate Standard of Living, Right to Highest Attainable Standard of Health, Right to Food, Right to Access to Clean Water and Sanitation</i>	E.g., Due to the new location where communities have been resettled, women and children are required to travel greater distances to secure water supplies without protection – <i>Rights to Life, Liberty and Security of the Person, Right to Adequate Standard of Living, Right to Water and Sanitation</i>	

	Company Workers	Supply Chain/ Contractor Workers	Affected Communities	Vulnerable or Marginalised Groups	Other Relevant Groups...
Human Resources Management	E.g., Full-time staff and/or agency workers lack the opportunity to join a legitimate trade union – <i>Right to Form and Join a Trade Union and Right to Collective Bargaining</i>	E.g., On-site contractors are subject to poorer employment conditions than company employees and lack access to any grievance mechanism. – <i>Right to Just and Favourable Conditions of Work, Non-Discrimination; Right to Form and Join a Trade Union and Right to Collective Bargaining</i>	E.g., Job seekers from local communities are excluded from the company/contractor's selection process because of bias in the recruitment system that favours the dominant ethnic group – <i>Non-Discrimination</i>	E.g., Failure to foster a workplace that is free from severe forms of harassment of women – <i>Non-Discrimination, Prohibition Against Torture, Cruel, Inhuman or Degrading Treatment</i>	
Security	E.g., Use of force by security providers leads to threats from local community against company workers – <i>Rights to Life, Liberty and Security of the Person</i>	E.g., Private security providers lack opportunity to join a legitimate trade union – <i>Right to Form and Join a Trade Union and Right to Collective Bargaining</i>	E.g., Security providers use force to break up a peaceful community protest – <i>Right to Security of the Person, Freedom of Assembly</i>	E.g., Private security providers are hired from the dominant ethnic/racial group, with a subsequent rise in harassment and assaults against vulnerable or marginalised individuals from minority groups – <i>Non-discrimination, Right to Security of the Person</i>	
Planning/ Management of Decommissioning	E.g., Agency workers are given risky decommissioning work and no follow up health checks – <i>Right to Just and Favourable Conditions of Work; Right to Highest Attainable Standard of Health</i>	E.g., Contractor staff are dismissed without payment of benefits due to them – <i>Right to Just and Favourable Conditions of Work</i>	E.g., Lack of proper rehabilitation of industrial sites leads to long-term pollution resulting in erosion of food and water resources over time – <i>Right to an Adequate Standard of Living, Right to Food, Right to Water and Sanitation, Right to Highest Attainable Standard of Health</i>	E.g., Lack of adequate consultation with vulnerable or marginalised groups in the development of the decommissioning plan leads to them disproportionately suffering from impacts – <i>Right to an Adequate Standard of Living, Right to Highest Attainable Standard of Health</i>	
External Communication and Consultation	E.g., Management refuses to engage with trade union representatives duly elected by workers – <i>Right to Freedom of Association, Right to Collective Bargaining</i> .	E.g., Government Affairs staff lobby government against an increase in the minimum wage, which is insufficient to cover workers' basic needs – <i>Rights to Fair Wages and a Decent Living, Right to an Adequate Standard of Living</i> .	E.g., The Company does not inform local communities about a toxic spill that threatens local waterways – <i>Right to Highest Attainable Standard of Health, Right to Safe Drinking Water and Sanitation</i> .	E.g., Community consultations are held only in the majority language of communities, excluding the indigenous population – <i>Various Rights of Indigenous Peoples</i>	
Other Relevant Activities					



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Part 3

Putting Respect for Human Rights into Practice

Putting Respect for Human Rights into Practice

The following sections set out the six core elements of the corporate responsibility to respect human rights and apply them to the activities and business relationships of oil and gas companies. The core elements are:

- ▶ **A human rights policy commitment:** the company's overarching, public commitment to respect human rights, and the processes for **embedding** that commitment into the company's culture. (See [Section I](#))
- ▶ **Human rights due diligence:** the set of on-going processes through which the company "knows and shows" that it is respecting human rights in practice.

This involves:

- **Assessing** actual and potential human rights impacts; (See [Section II](#))
 - **Integrating** the findings **and acting** to prevent or mitigate the impacts; (See [Section III](#))
 - **Tracking** how effectively impacts are addressed; (See [Section IV](#))
 - **Communicating** how impacts are addressed. (See [Section V](#))
- ▶ **Remediation:** the processes through which the company actively engages in the remediation of impacts it has caused or contributed to. (See [Section VI](#))

Figure 1 to the right illustrates the relationship between the six elements of the corporate responsibility to respect human rights.

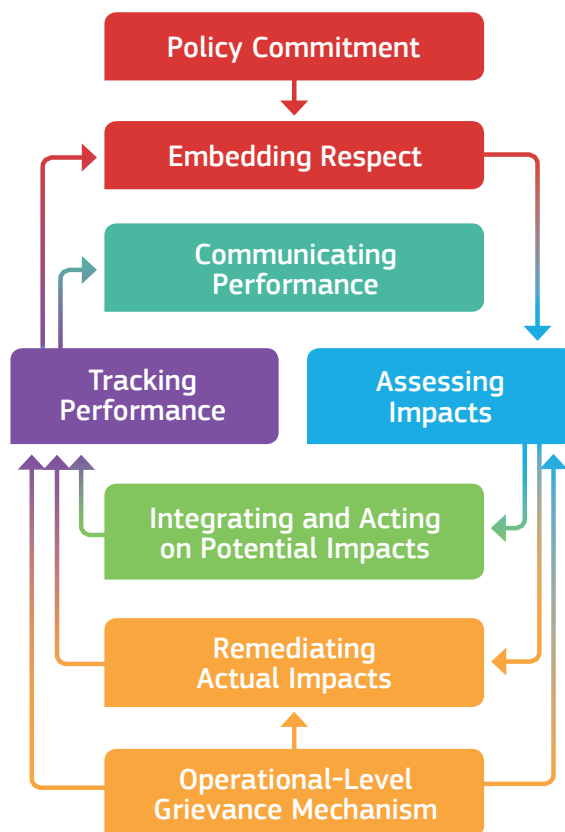


Figure 1: Key Elements of the Corporate Responsibility to Respect

Understanding Human Rights Due Diligence

Before exploring each of the six elements of the responsibility to respect in detail in the rest of this Guide, there are some important points to note about the concept of human rights due diligence.

- **Why is human rights due diligence important?** Human rights due diligence helps a company understand how its human rights risks can change over time and how to respond. It provides processes for looking both at external and internal factors that may raise human rights risks, and at external and internal resources that can help address them.
- **When should human rights due diligence happen?** Human rights due diligence should start at the earliest pre-contract stages of a project's lifecycle and continue through operations, to the project's decommissioning and post-closure stages. It is about on-going processes, not one-off events such as an impact assessment at the start of a new project, or an annual report.
- **How does human rights due diligence relate to a company's existing due diligence systems?** For many companies, there will be existing due diligence systems they can draw on or build on to develop their human rights due diligence. Examples include environmental or health and safety due diligence, "privilege to operate" reviews, peer reviews or other regular risk review processes. It is up to O&G companies to decide whether to have a stand-alone due diligence process for human rights, or to integrate human rights into their existing processes. Either way, it is usually most helpful to adopt approaches that are familiar to staff – and will therefore be easy for them to work with – while ensuring they take account of the unique features of human rights.

How does the Responsibility to Respect Apply to Smaller Companies?

Smaller companies will typically have simpler management systems and need less complex human rights due diligence processes. Moreover, issues such as internal communication will usually be less challenging. However, those that operate in challenging contexts, such as conflict-affected areas, will still need systems that can manage the greater level of risks present. In any situation, they will need to include the same six elements of the responsibility to respect.

The European Commission has published [guidance for small and medium-sized enterprises](#) on applying the UN Guiding Principles available in multiple languages and with accompanying case studies.

Developing a Policy Commitment and Embedding Respect for Human Rights

What do the UN Guiding Principles Expect?

- ▶ A policy commitment is a statement approved at the highest levels of the business that shows it is committed to respecting human rights and communicates this internally and externally.
- ▶ The statement needs to be reflected in other company policies, procedures and practices in order to [embed](#) respect for human rights throughout the business.

Why is this Important?

- A policy commitment sets the “tone at the top” of the company that is needed to continually drive respect for human rights into the core values and culture of the business.
- It indicates that top management considers respect for human rights to be a minimum standard for conducting business with legitimacy; it sets out their expectations of how staff and business partners should act, as well as what others can expect of the company.
- It should trigger a range of other internal actions that are necessary to meet the commitment in practice.

What are the Steps Involved?



Resources on “Internationally Recognised Human Rights”:

The Guiding Principles define these rights as including, at a minimum:

- ▶ The [International Bill of Human Rights](#) (meaning the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) and
- ▶ The principles concerning fundamental rights set out in the [International Labour Organisation's Declaration on Fundamental Principles and Rights at Work](#), which address:
 - freedom of association and collective bargaining,
 - forced labour,
 - child labour, and
 - non-discrimination.

A good “translation” of these rights is in [Human Rights Translated: A Business Reference Guide](#).

Where businesses might have impacts on individuals belonging to potentially vulnerable or marginalised groups (e.g., women, children, racial or ethnic minorities), they will need to consider the additional international standards that apply to those individuals or groups (see [Annex 1](#) for a full list).



Defining the Content of a Policy Commitment

Key Points for Implementation

- ▶ A policy commitment should be a general commitment to respect all “[internationally recognised human rights](#)” throughout the company's operations.
- ▶ The commitment should clearly explain how it applies to the company's staff (employees and contract workers), as well as the company's expectations of business partners, including those one or more steps removed in the value chain.
- ▶ The commitment will need to be reviewed periodically to reflect any significant changes in the company's human rights risks, for example due to new operating contexts or new business relationships.

Possible Approaches

- **Stand-alone or integrated policies?** An O&G company may integrate respect for human rights into an existing high-level policy that guides the business, such as a Code of Conduct or Business Principles. In the case of smaller companies, human rights might be added into existing policies on health, safety and the environment. Alternatively, companies may opt for a stand-alone human rights policy. Both approaches can be effective: the key is to take an approach that signals the importance of respecting human rights and helps embed respect into the corporate culture.

In determining the right “home” for the policy within the company, it will also be important to reflect on who, or which department, should have ownership over the policy and help drive the embedding process.

- **Key elements of the policy:** The policy needs at a minimum to reflect the company's commitment to meet its responsibility to respect all internationally-recognised human rights, and to set out the company's expectations of staff, business partners and others in its value chain with regard to respect for human rights. Companies could also include other information of interest to stakeholders, such as:
 - A commitment to conduct on-going human rights due diligence, perhaps specifying key phases of projects when risks will be assessed;
 - The extent to which they have in place operational-level grievance mechanisms;
 - The leading human rights risks they identified for the company as a whole and its approach to addressing them;
 - Their commitment or approach to engaging and consulting with potentially affected stakeholders;
 - Their approach to communicating with other stakeholders and the wider public;

- Direct references to international principles or initiatives that are consistent with internationally-recognised human rights, and which the company is committed to implement. An explicit commitment to the UN Guiding Principles is a good starting point. International initiatives particularly relevant for O&G companies include the [Voluntary Principles on Security and Human Rights](#) and the [IFC Performance Standards](#).
- **Identifying leading human rights risks:** O&G companies can have significant human rights risks. It can be helpful to identify leading risks in the policy commitment. In identifying these risks, a larger company may choose to:
 - Conduct a “bottom-up” process by gathering information on human rights issues at the site level, for example through local impact assessments or field surveys; then analyse the information across sites to understand leading human rights risks for the company as a whole;
 - Rely on a more high-level process that draws on external sources, including industry experts and the experience of peer companies.

Leading human rights issues for an O&G company often include:

- Certain human rights of workers, including the right to form and join a trade union and the elimination of forced labour, including in supply chains;
- Non-discrimination against both workers and community members;
- Impacts related to the actions of private or public security forces (including impacts on the rights to security, health and life);
- Rights related to the welfare of local communities (including rights to health, education, livelihoods, land use and access to food and water);
- The rights of indigenous peoples (including in relation to land use, cultural heritage and self-determination).

An O&G company with distinct operational sites may want to consider what issues are best addressed in its overarching, corporate policy commitment, and whether some are more appropriate to site-level policies. Site-level policies may reflect specific local human rights issues and stakeholders. For example, gender-related violence, caste-based discrimination or HIV health issues may be particularly relevant in some, but not all, contexts.

- **Operating in challenging contexts:** O&G companies with operations in high risk contexts, where human rights impacts are more likely to occur, will want to think through their approach to managing the additional risks involved. It can be helpful to reflect this in their policy commitment, or in a separate, supporting guideline. Possible approaches to managing human rights risks in such contexts are discussed in [Section III-E](#) below.



Developing the Policy Commitment

Key Points for Implementation

- ▶ The company should draw on expert resources to ensure the policy is well-informed and complete. These may be individuals with knowledge of human rights and of the business and/or – particularly where resources are more limited – credible written sources.

Example: Developing a Policy with External Stakeholders

One O&G company developed a human rights policy with the active involvement of an association of socially responsible investors. The company reported back in following years on its progress in implementing the policy, and later worked with another NGO on its first risk assessment. It found that the engagement process helped diffuse internal company fears about NGOs “meddling” in company processes, and built legitimacy for human rights issues internally. It led to the inclusion of human rights in the company’s annual report with senior management backing. It also created external credibility for the company’s reporting due to the on-going scrutiny by the investors’ association.

Lessons drawn from the experience included:

- ▶ The benefits of clear goals and agreed milestones for the engagement;
- ▶ The need to recognise initial mistrust and define exit strategies that would not harm either side, if the collaboration did not work;
- ▶ The benefits of starting with pilot efforts that could build trust.

Possible Approaches

- **Involving different parts of the company:** In larger O&G companies, there may be various departments or functions that have potential impacts on a range of different human rights. For example, human resources will mostly look at risks to the human rights of the company’s employees and contract workers; those sourcing supplies may look at the rights of workers in supply chains or any safety risks of products being sourced; those involved with exploration or production will probably focus on impacts on communities. In smaller companies, these roles may be concentrated among a few managers.

In addition, [legitimate trade unions](#) or worker representatives within the company may be a useful source of expertise regarding local labour laws, technical standards and specific conditions in the local labour market that may affect the human rights of workers.

It is a good idea to involve people from across relevant areas of responsibility in the development of the policy – what it should cover and how it should be implemented. This will help build understanding of the reasons for the policy and ownership of its implementation.

- **Involving external expertise:** Companies that do not have in-house expertise on human rights can use external sources as they develop their policy commitment. For smaller companies, written guidance from industry associations, multi-stakeholder initiatives or human rights organisations that have worked with the industry can provide a good starting point. A list of helpful resources is included in [Annex 1](#). O&G companies may also find it useful to benchmark their policies against their peers, in particular those recognised as industry leaders in human rights performance.
- **Engaging stakeholders:** Companies may find it particularly helpful to test a draft policy commitment with representatives of key stakeholder groups. This can help the company understand how the policy commitment is likely to be seen by these [stakeholders](#). Approaches could include:
 - Seeking the views of [legitimate trade unions](#) that represent company workers wherever that is possible;
 - Identifying key locations to informally test the draft commitment with representatives of local communities or NGOs;
 - Testing the policy commitment in draft with investors – particularly socially-responsible investors (SRIs) that have expertise on the issues;
 - Establishing a formal advisory group to seek feedback. This can include representatives of a national human rights institution, NGOs, trade unions, SRIs, and other relevant experts. Such a group might also play a longer-term role providing feedback on the company’s ongoing efforts to meet its responsibility to respect.



Communicating the Policy Commitment

Key Points for Implementation

- ▶ The policy commitment should be publicly available.
- ▶ It needs to be approved at the highest levels of the company and communicated internally to all workers in order to signal its importance and help embed it throughout the business.
- ▶ It also needs to be communicated externally to business partners and others in the company's value chain, as well as to people who may be affected by the company's operations.

Example: Top-level Commitment

At one O&G company, the lead person for human rights succeeded in getting a strong human rights policy agreed at the top level of the company, but had a hard time getting the CEO to make clear his continued commitment to it over time. The result was that some business units considered the policy to be a mere gesture designed to respond to the wishes of NGOs, and not something they needed to pay attention to in their work.

Possible Approaches

- **Demonstrating top-level commitment to the policy:** Clear and consistent messages over time from the CEO and senior management set the “tone at the top” of the company. They can help draw attention to the policy commitment and embed it into the business culture. Many O&G companies have experience doing this with regard to safety. Approaches for human rights could include:
 - Regular references to human rights issues and due diligence in top management speeches inside and outside the company;
 - Regular questions about human rights risks or performance from top management in meetings on core business issues, such as new project approvals;
 - Publicising internally examples where there has been accountability for human rights performance – whether rewards or sanctions (examples can be anonymised as necessary);
 - Making human rights part of top management's early-stage discussions with potential business partners and governments.
- **Choosing appropriate methods:** It will be important for O&G companies to consider how workers and other stakeholders, particularly local communities, access information – for example, through written, spoken or visual means, through which languages, and with or without the use of technology. This will help the company decide how best to communicate the policy commitment both internally and externally.
- **Choosing appropriate “language”:** Language can be a sensitive issue. There may be resistance within the company if “human rights” are perceived as an issue that is not relevant to the company's core business. Externally, there may be cultural considerations that make the use of human rights language challenging, including with local communities and governments. In some cases, there may be a good reason to avoid human rights terminology in the short-term or in a particular situation. If so, it will be important that at least those who lead on the issue, and any others who routinely engage with stakeholders, have an understanding of internationally-recognised human rights and their implications for company processes. In time, it may be possible to reintroduce the language of human rights to strengthen understanding of their relevance to the company's daily activities.

Example: Creating a Cross-functional Team

Many large O&G companies have found that creating a cross-functional team can help drive the embedding process at the corporate/head office level. Similar structures can also play an important role in implementation at site level.

For example, one company has established a group that involves representatives from a range of functions including legal, public affairs, procurement, security, exploration and production, and sustainability. It works closely with a senior management committee to promote awareness of relevant company standards; provide advice and support to operational teams and to other relevant teams at the corporate/head office level; and oversees the implementation of compliance assessments.



Aligning Internally with the Policy Commitment

Key Points for Implementation

- ▶ For the policy commitment to be effective in practice, other policies and processes across the company need to be consistent with it.
- ▶ Implementation of the commitment needs adequate support and resources, including through leadership, accountability, incentives, and training. These factors can directly affect staff assumptions and attitudes about the relevance of the commitment to their work and help embed it into the company's values and culture.

Possible Approaches

- **Alignment with existing policies:** Larger O&G companies often have a recognised hierarchy of standards within the company. This may start with a top-level policy document that sets the company's principles and values; there may then be a management systems document that describes how supporting policies and processes will embed these principles into company practice; and typically there are specific standards for applying this to the individual areas of the business. It will be much easier to implement a human rights policy if it is a seamless part of any such hierarchy, rather than a "misfit" within the system.

An O&G company is likely to have various existing internal policies and processes that incorporate aspects of human rights, even if they are not expressed in human rights language. This can be helpful in showing that human rights is not a new issue for the company. It is also important to check that these other policies and processes are consistent with the human rights policy commitment: meaning that they reinforce it, rather than work against or contradict it.

Examples of relevant policies and processes include those in the areas of:

- Sustainability/social performance;
- Health and Safety;
- Security;
- Human Resources;
- Community Relations, including resettlement and compensation;
- Environment;
- Legal compliance;
- Procurement/Contracting;
- Public Affairs/Communications;
- Risk Management and Project Approval.

Anti-corruption policies in an O&G company are also relevant: where corruption and bribery are accepted, human rights are rarely respected.

- **Training and awareness-raising:** Colleagues on the technical side of the business (for example, exploration and production, as well as business development teams) will be more likely to take human rights into account in their work if they understand what they are about, their relevance to the company, their significance to their own responsibilities, and the steps they need to take. There are various ways that O&G companies can “demystify” human rights in this way, including:

- Providing training for staff in key functions (such as procurement and security) and for technical specialists (especially engineers and those involved in exploration, such as geologists);
- Establishing focal points to support site-level staff in answering questions and dilemmas;
- Holding regular “human rights moments” at the start of meetings, as is done with safety. This could be a brief reminder that issues under discussion may have human rights implications that need to be considered;
- Connecting human rights “champions” across functions and sites to support knowledge sharing;
- Engaging trade unions and/or worker representatives to support efforts to raise awareness among workers of the policy commitment;
- Providing interactive seminars on specific human rights issues related to security, local content requirements, or high risk contexts;
- Preparing internal briefing reports on emerging human rights issues, such as access to water.

O&G companies should prioritise awareness-raising and offers of expert assistance in contexts where the risks of human rights impacts are greatest.

- **Establishing accountability:** Internal accountability for implementation of the policy commitment will be important. O&G companies can build on industry experience with embedding safety standards, which are today seen in many companies as a critical part of “everyone’s job”.

Approaches to embedding accountability for respect for human rights can include:

- Giving responsibility for overseeing human rights issues to an individual or committee of the Board or of senior management, such as an Ethics or Sustainability Committee;
- Establishing accountability mechanisms at both corporate/head office level and site level, for example:
 - > Placing ultimate responsibility for human rights with the CEO;
 - > Requiring managers at the country or regional level to sign off on reporting on human rights issues;
- Tying staff assessments and reward systems to implementation of the policy commitment; and doing so across all functions or departments, not just those with lead responsibility for human rights.

Example: Training for Business Partners

The lack of a shared understanding of human rights can be a particular problem in challenging contexts like weak governance zones and conflict-affected areas. Some companies have found that training for, or joint training with, their business partners in such cases can be especially valuable.

For example, one company operating in a challenging environment established a training program (joint with an international organisation) for government officials to learn about international law, including human rights, as well as developing training for local communities and authorities in their area of operations. The company found that discussing such issues was easier if they started from basic values or concepts such as “respect” and “being a good neighbour”.



Applying the Commitment to Business Relationships

Key Points for Implementation

- ▶ The human rights policy commitment needs to be embedded in how an O&G company conducts its [business relationships](#) from their earliest stages, including in the terms of contracts. This makes it clear that these expectations are not “negotiable extras”.
- ▶ Embedding the policy commitment into the terms of contracts and other agreements increases the company’s [leverage](#) – that is, its ability to influence behaviour – in those relationships. It can lay the foundations for regular engagement to discuss or review the management of human rights risks.

Possible Approaches

- **Getting it right from the start:** Many of an O&G company’s human rights risks – and its capacity to mitigate them – are established in the terms of its contracts with business partners, suppliers and contractors and in host government agreements and Memoranda of Understanding (MoUs) with government. Staff with responsibility for negotiating and concluding such agreements need clear guidance, including on:
 - The importance of specifying in the agreements who has responsibility for addressing human rights risks in the relationship;
 - What resources will be required to ensure respect for human rights and where those resources will come from;
 - How implementation of respect for human rights will be monitored and discussed with business partners. For more on these issues, see [Section III-D](#).

Companies will also want to consider:

- Looking for evidence before contracts are signed that a business partner, contractor or supplier has the capacity and will to comply with human rights provisions;
 - Clarifying that the company expects its contractors and suppliers to “pass on” expectations to respect human rights to their own supply chains, and seeking evidence that they do so wherever possible.
- **National O&G Companies and the Government:** National O&G Companies (NOCs) are subject to the same responsibility to respect human rights as all other O&G companies, but will also need to take into account the human rights obligations of the state that owns or controls them. These obligations suggest a number of roles for the state, for example:
 - Ensuring policies that are consistent with human rights standards and coherent across all ministries that engage with the NOC (such as energy, health, foreign affairs, education and research);
 - Including human rights issues in regular “owner dialogues” between the government and the company;
 - Developing guidance for all state-owned entities on human rights.

NOCs may be particularly well-placed to raise with government representatives the benefits of these kinds of approaches for both the state and the company.

Where to Start

For companies that are just starting to develop a human rights policy commitment, the following are some preliminary steps to consider:



Questions to Ask

The following questions correspond to sub-sections A, B, C, D and E above. They should help test the extent to which a company's policy commitment, and its efforts to embed it across the business, are consistent with the Guiding Principles:

I-A	Defining the Content of a Policy Commitment <ul style="list-style-type: none"> ▶ If we include our leading human rights risks in our policy commitment, how did we identify the risks? ▶ How will our policy commitment cope with major changes in the company's operating contexts (like entry into high-risk environments) or in relevant technology or methods of production?
I-B	Developing the Policy Commitment <ul style="list-style-type: none"> ▶ What internal and external expertise have we drawn on in developing the commitment? ▶ Has the commitment been tested with representatives of key stakeholder groups? If not, are we confident that it will be understood and supported by those groups?
I-C	Communicating the Policy Commitment <ul style="list-style-type: none"> ▶ Has the commitment been approved at the most senior levels of the company? ▶ How is top leadership commitment to the policy communicated internally? How is it communicated publicly? ▶ What appropriate means have we found to communicate our commitment to local communities that we may impact, taking into account information and communication barriers?
I-D	Aligning Internally with the Policy Commitment <ul style="list-style-type: none"> ▶ What steps have we taken to review whether our existing policies and processes are consistent with the policy commitment? ▶ Do our training methods and materials take full account of the policy commitment? How do we know if they are effective? ▶ Where does accountability for implementation of the policy sit? Are there appropriate incentives and resources in place to meet the commitment in practice?
I-E	Applying the Commitment to Business Relationships <ul style="list-style-type: none"> ▶ How is the policy commitment taken into account in our relationships with business partners, including joint venture partners, contractors, suppliers and host governments? ▶ Do relevant staff have the guidance and support that they need to raise these issues at the earliest stages of those relationships?

Assessing Human Rights Impacts

What do the UN Guiding Principles Expect?

- ▶ Companies need to identify and assess any negative impacts on human rights with which they may be involved. This includes:
 - Actual impacts (past or current) and potential impacts (those possible in the future);
 - Impacts from the company's own activities and from its business relationships – direct relationships and those one or more steps removed.
- ▶ The focus must be on risks to the human rights of people, as distinct from risks to the business itself, although the two are increasingly related.

Why is this Important?

- Assessing is the process by which the company gathers the basic information it needs in order to know what its human rights risks are so it can remove or reduce them.
- It is the starting point for a company to understand how to translate its human rights policy commitment into practice.
- Involving different parts of the company in the assessment process helps to build shared responsibility for addressing the potential impacts identified.

What are the Steps Involved?



Key Points for Implementation

- ▶ The assessment of human rights risks needs to be an on-going process, repeated whenever risks to human rights may substantially change, and not just a one-off process conducted at the start of a project or when required by law.
- ▶ Formal impact assessments play an important role; but there may be other important sources of information on impacts, such as, news or expert reports, issues raised by NGOs or trade unions, and operational-level grievance mechanisms.

Possible Approaches

- **On-going assessment:** Since human rights due diligence needs to be an on-going process, O&G companies will want to assess their potential impacts at key moments between and within project cycles. These are likely to include:
 - The start of a new activity (like drilling, or construction of a work camp);
 - The start of a new business relationship;
 - Major new decisions or changes in the operation (such as rerouting of a pipeline);
 - Changes in the operating environment (such as rising social tensions).
- **Forward-looking processes:** The focus of the assessment process is forward-looking to identify potential human rights impacts. Past or current impacts are one important indicator of future risks (and where identified, will also need to be remediated – see [Section VI](#)). However, they are not the only relevant indicator. Assessment processes will also need to review other indicators, looking across the range of human rights, such as:
 - The experience of other O&G companies in the same or similar operating contexts;
 - Political instability or latent conflict;
 - Concerns being raised by civil society organisations;
 - Social practices and attitudes;
 - Staff behaviour and attitudes.
- **Stand-alone or integrated assessment processes:** O&G Companies may choose to have stand-alone processes for assessing human rights impacts, or to integrate human rights into existing assessment processes. As O&G companies may already have formal processes to assess social, environmental and/or health impacts (SIAs/ESIAs/ESHAs), these can be an obvious place to integrate human rights considerations, subject to certain considerations:
 - On the one hand, many human rights risks have their roots in social, environmental and health impacts, making it is risky to draw a clear distinction between them. It can be more helpful to consider these impacts as existing on a continuum;
 - On the other hand, companies should be able to judge when a social or environmental issue starts to raise human rights implications – for instance, when impacts on water start to affect the right to access to clean water, or when impacts on individuals' movements may affect indigenous rights to access cultural heritage sites.

- SIAs/ESIAs/ESHIAAs are often one-off processes conducted as part of obtaining a license or permit, whereas processes to assess human rights need to be on-going during the life-cycle of a project;
- It will be important for someone within the company to have a holistic view of the company's human rights risks, whether or not they are identified partly through existing processes that address broader types of impact.
- **Benefiting from information from other company processes:** Oil and gas companies have a long history of assessing different types of risk as part of other processes throughout the project lifecycle. Many of these can provide information about human rights risks, for example:
 - Community relations procedures;
 - Health management procedures;
 - Political risk assessments;
 - Security and conflict risk assessments;
 - Social dialogue processes;
 - Specialised assessments where operations impact on indigenous peoples;
 - Legal due diligence;
 - Reviews of the results of employee surveys;
 - Audits and whistle-blower/incident reporting systems;
 - Internal controls;
 - Scoping and local capabilities reviews;
 - Infrastructure analyses for new capital projects.
- **What makes assessing human rights impacts unique?** Whatever methods an O&G company uses to assess impacts, the following factors will help make sure they reflect the particular demands of human rights:
 - **Who? Potentially affected stakeholders.** It is important to focus on the rights and perspectives of those stakeholders who may be affected in order to understand fully the company's impacts. For example, the loss of one field to a farmer may be addressed easily through financial or in-kind compensation. In other circumstances, it may represent the loss of basic livelihood over the longer term as well as social standing. For women in some societies, it may mean disenfranchisement if they had a stake in the land while compensation goes to the men.
 - **What? All internationally-recognised human rights.** Any process of assessing human rights impacts needs to take as its framework **internationally recognised human rights**, including **standards** applying to relevant individuals or groups that may be particularly vulnerable or marginalised.

This suggests that the assessment should:

- > Be broad in its scope, rather than limited to the narrower priorities of one department;
- > Consider impacts on individuals rather just at the level of households or communities;
- > Identify where national law provides less human rights protections to some groups (such as migrant workers or certain minorities) than others;

Resources: SIAs and Human Rights Impact Assessments

SIAs/ESIAs/ESHIAAs are most effective when treated as a resource to help get things right, rather than just a tool to get permits or licenses. Where they are most robust, they will have greatest overlap with processes to assess human rights impacts.

The IFC Performance Standards set the benchmark for robust SIAs

For more on the question of what makes social impact assessments robust, see the work of the International Association for Impact Assessment on this issue: IAIA, *International Principles for Social Impact Assessment*, Special Publication Series No 2

Example: Assessing Impacts Together with Affected Stakeholders

Cultural differences and information asymmetry between a company and communities may prevent the identification of potential human rights impacts. A company may not perceive certain issues as impacts; and a community may not understand certain concepts, technical representations and even maps presented by a company.

To overcome this challenge one oil company developed a social cartography or "partant maps" of a new operating area through workshops with communities. They helped establish an understanding of the environment, its uses and potential impacts on them, as perceived by the communities. This was both a powerful trust-building tool and also a source of valuable knowledge that a standard assessment would have missed.

- > Identify pre-existing, endemic human rights challenges within society (such as severe gender discrimination);
- > Look beyond the most obvious stakeholder groups that may be affected, to include groups both inside and outside the “fence” or “walls” of their operations, at both on-shore and off-shore sites, as well as vulnerable or marginalised groups, including indigenous peoples (see [Section II-E](#)).
- **How? Meaningful consultation.** It is through meaningful consultation with potentially affected stakeholders that the assessment process can take account of their perspectives. This means not taking a transactional approach to consultation or a focus on “just getting it done”. [Section II-E](#) discusses meaningful consultation with affected stakeholders in more detail.
- **Where? Across business relationships as well as company activities.** Human rights due diligence requires O&G companies to consider what impacts may arise as a result of their business relationships. “Legacy” impacts (those they inherit through mergers or acquisitions) may be seen as “out of scope” in standard SIA practice, as may issues arising from their relationships with governments or suppliers beyond the first tier. However, they are clearly in scope when it comes to assessing potential human rights impacts. See [Section II-C](#) below for more on business relationships.
- **Site-level and corporate-level roles:** Impact assessments necessarily take place at the site level where impacts occur. They may be led by staff at the site, involve individuals from the corporate/head office level or be conducted by external consultants. Where companies have multiple project sites, a review of those human rights risks that recur across sites, or are otherwise particularly significant, can help staff at the corporate/head office level identify the leading human rights issues for the company as a whole. It may choose to reflect these in its human rights policy commitment.

II B

Understanding your Operating Context

Key Points for Implementation

- ▶ States have their own obligations to respect, protect and fulfil human rights under international human rights law. Where they fail to do so, this creates additional challenges for companies trying to meet their responsibility to respect human rights.
- ▶ Companies need to understand these contextual risks so they can take steps to avoid contributing to human rights abuses.
- ▶ Where national laws to protect human rights are absent, weak or unenforced, companies should respect internationally-recognised human rights.
- ▶ Where national laws conflict with human rights, companies should honour the principles of human rights as best they can in the circumstances, and be able to demonstrate their efforts to do so.

Possible Approaches

- **Assessing contextual risks:** A range of factors can affect the risks of operating in a certain country context, including:
 - Socio-economic factors such as poverty and the marginalisation of groups within society;
 - Political instability that carries risks to democracy, rule of law, and/or peace and security;
 - Corruption within parts of society;

- Lack of access to effective remedy through the judicial system;
- Systematic state disregard for human rights in practice, or for the human rights of members of certain groups;
- Active or latent conflict – ranging from physical confrontation to armed violence.

When considering the implications of national laws for human rights, companies will need to distinguish between:

- National law that provides less human rights protection than internationally-recognised human rights;
- National law that reflects internationally-recognised human rights but is not enforced due to weak legal or administrative procedures;
- National law that actively conflicts with internationally recognised human rights.

Each of these situations has different implication for the action(s) that a company can take in response. These are discussed further in [Section III-E](#) below.

As the Guiding Principles make clear, companies should respect the standards of international humanitarian law in situations of armed conflict. (For more on this, see ICRC, [Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law](#).)

- **Operating in high-risk contexts:** Examples of high-risk contexts include those characterised by current or latent conflict, systematic disregard for certain human rights in law or practice, or pervasive corruption. Companies' responsibility to respect human rights does not change when they work in these environments, and nor do the elements of human rights due diligence. However, respecting human rights usually requires greater attention, effort and resources at every step of the process. Companies can provide this, for example, by:
 - Conducting a stand-alone human rights impact assessment and involving senior-level decision-makers in discussions on the results to ensure the issues are given proper attention;
 - Seeking to understand the root causes of a conflict (for example ethnic tensions or access to resources) and their implications for human rights and for company operations;
 - Identifying other sources of relevant expertise, such as journalists, political analysts, or socially-responsible investors who may have engaged with other companies in the same or similar contexts;
 - Committing particular efforts and resources to consultation with potentially affected stakeholders as part of the risk assessment process (see [Section II-E](#) below).

And, in the case of international O&G companies, by:

- Consulting with the company's home state embassy on the ground, or with appropriate government representatives back in the capital, to alert them to the challenges and seek relevant information and support. This might include information on the operating environment, the host government's human rights record, and information about local laws and reputable local law firms who can provide further advice;

Resources: Country-level Risk

There are various sources O&G companies can look to for information on human rights risks related to the countries where they are operating. Besides commercially-available sources, companies might review:

- Amnesty International, Country Reports
- Danish Institute for Human Right Country Risk Assessment Portal *forthcoming*
- Human Rights Resource Center, **ASEAN baseline Rule of Law report**
- Human Rights Watch World Reports
- UN Development Programme Human Development Index
- US State Department Annual Human Rights Reports
- ILO country information
- Transparency International, Corruptions Perception Index
- World Bank, Worldwide Governance Indicators

Additional sources of advice on assessing risks in countries affected by conflict include:

- International Crisis Group [reviews of conflict-affected countries](#)
- OECD, OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones
- UN Global Compact, [Guidance on Responsible Business in Conflict-Affected and High-Risk Areas](#)
- IPIECA, [Guide to operating in areas of conflict for the oil and gas industry](#)

Example: Addressing Human Rights Issues as a Condition to Contracts with Governments

Discussing legacy issues, especially those related to conflict, humanitarian crises or pandemics, can be sensitive for host governments in their dealings with O&G companies. Governments may fear implying that they accept certain responsibilities that could then be used against them. At the same time, O&G companies need to understand any risks that their exploration and production activities may aggravate an often complex set of human rights issues in these high-risk contexts.

For example, several oil and gas exploration companies entering a post-conflict zone secured an agreement from the government to have an independent third party clear land mines, as a pre-condition to starting operations. Another company sought an independent human rights risk assessment that included HIV-related issues, before signing a contract with the government. The assessment led the company to adopt a more stringent code of conduct with contractors. In both cases the companies were able to address the risks by demonstrating the benefits this would bring to the government as well.

- Identifying any specialised state agencies, such as an OECD [National Contact Point](#) in the company's home state, or a [National Human Rights Institution](#) in the host state, that may also be sources of advice.



Reviewing Business Relationships

Key Points for Implementation

- ▶ A company's responsibility to respect human rights extends to its business relationships. In particular, the company will need to assess the risks of:
 - Contributing to human rights impacts – by facilitating, encouraging or incentivising them;
 - Being directly linked to human rights impacts through a business relationship – where the actions of a business partner cause an impact in connection with the company's own operations, products or services.
- ▶ Relevant business relationships are not limited to those where the company has a direct contract or agreement; they include relationships one or more steps removed, including deeper levels in the supply chain.

Possible Approaches

O&G companies typically have a wide range of business relationships across the different stages of a project's life-cycle, up to and including decommissioning and post-closure. They include business partners who provide services and products related to the company's core business operations (exploration, production, transmission), as well as ancillary products and services (such as agency worker housing, field IT services or transportation). They will often include a host state government, which may also be the company's home state government – particularly for national O&G companies. All of these types of relationship will be relevant for assessing an O&G company's human rights risks. The following points illustrate some of the risks that may arise in the context of relationships.

- **Relationships with governments:** In assessing the risk of negative impacts arising through relationships with governments, O&G companies will need to be alert to legacy issues: for example, if the company is granted access to land that the host government acquired by evicting people without due process or compensation.

In some contexts, particular issues may arise where security is provided by public security forces that are inadequately trained in human rights or have a history of human rights abuses. [The Voluntary Principles on Security and Human Rights](#) suggest a number of steps in assessing risks related to public security, such as:

- Consulting civil society, home and host government representatives, and other sources to identify risks presented by the potential for violence;
- Examining patterns of violence in areas of company operations for educational, predictive and preventative purposes;

- Considering the available human rights records of public security forces, paramilitaries, and local and national law enforcement;
- Considering the local prosecuting authority and judiciary's capacity to hold accountable those responsible for human rights abuses and violations of international humanitarian law in a manner that respects the rights of the accused.
- **Acquisitions:** If an O&G company acquires a business or an asset that has been involved with human rights impacts, it typically acquires any outstanding responsibilities of the seller to remedy those impacts, as well as responsibilities to prevent or mitigate any risk of them recurring. Any acquisition of a project, licence, rights or company, including at the exploration stage, should therefore include an assessment of human rights risks. One approach can be to require an evaluation of these risks for all investment decisions requiring Board approval.
- **Joint venture (JV) partners:** International O&G Companies will often have less choice than National O&G Companies (NOCs) regarding who they work with in joint ventures, since it is often a requirement to work with the NOC in the country where O&G resources are identified. NOCs may therefore have additional opportunities when selecting their JV partners to take account of their commitment and ability to manage human rights risks effectively. Relevant factors to consider in deciding to enter a JV can include:
 - The partner's own commitments regarding human rights – both internal commitments and any external initiatives to which it has made a commitment – and the extent to which these are consistent with internationally-recognised human rights;
 - Levels of accountability of the partner for its human rights performance – for instance to shareholders (including, where relevant, the government), or through public reporting;
 - The readiness of the partner to include provisions on human rights performance in the JV agreement (for instance references to particular standards, and/or provisions for joint monitoring);
 - The institution(s) providing financing to the partner, including any standards and accountability they may impose for human rights performance (eg the IFC Performance Standards; Equator Principles (in the case of private banks); or similar requirements of regional development banks);
 - The partner's readiness, where necessary, to collaborate in building its capacity to respect human rights.
- **Contractors and suppliers:** These actors may perform a wide range of roles, including baseline research, impact assessment, exploration, construction, energy services, materials supply, security, and the supply of food for staff, among others. O&G companies will want to ask themselves:
 - What the essential products and services are that they rely on contractors and suppliers for;
 - Whether there are known human rights risks associated with any of those products or services, for example, risks associated with the use of migrant or agency workers (discusses further below in this section) or with the disruption of access to the local community's water supply by construction contractors;
 - Whether there are other risks to human rights that their business partners pose, and how severe those risks are.

O&G companies may use a variety of means to assess risks arising from relationships with suppliers or contractors, including:

- Pre-qualification screening;
- Self-assessments by the supplier/contractor;
- Working with key suppliers/contractors to help them assess their own human rights risks;
- On-site assessments and audits.

As brand and retail companies have learned, if their assessments and audits of suppliers focus only on demanding compliance with codes, suppliers may just pay lip service to them. They may not understand their real relevance or be able to implement them properly. More successful approaches also

Example: Assessing Purchasers of an Asset in a High-risk Context

Because O&G concessions are often sold from company to company throughout the lifetime of an asset, decommissioning and post-closure of O&G operations can be significant and lengthy processes with long-term implications for surrounding communities.

One oil and gas company looking to sell an asset at the end of its operational life assessed the human rights records of a number of interested purchasers. It decided to sell to one of the lower bidders due to the region's potential for civil conflict and the purchaser's previous track record of subjecting its assets to rigorous social and environmental management systems. As well as protecting the rights of the surrounding communities, this was seen to be in the seller's financial and reputational interest, in order to protect their company name even beyond the end of their involvement with the asset.

review suppliers' ability to implement human rights requirements and consider whether and how to help build their capacity to do so.

- **Prioritising relationships for assessment:** Larger O&G companies often have a complex web of business relationships, including multiple tiers in their supply chains. It may therefore not be possible, within the resources available, to assess potential impacts across all first tier suppliers/contractors or across all tiers in the supply chain. In such circumstances, companies will need to prioritise which relationships to assess.

Traditionally O&G companies have prioritised due diligence with those contractors or suppliers who hold the biggest contracts or are most important to the business. However, under the Guiding Principles a company should prioritise those relationships where the **severity** and likelihood of potential human rights impacts is greatest. This prioritisation might focus on:

- Suppliers/contractors based in locations where there are known human rights risks, such as limits on the right to form and join a trade union or poor enforcement of labour laws;
- Suppliers/contractors with a track record of poor performance on human rights;
- Suppliers/contractors that provide key products or services that themselves pose risks to human rights (for example safety or health hazards);
- Local, smaller or new suppliers/contractors who may lack awareness of human rights issues or the capacity to address them.

- **Migrant and agency workers:** Agency workers are employed by a recruitment and employment agency and then placed with a third party "user enterprise" (such as an O&G company or a supplier) to perform work, typically under the user enterprise's supervision. The user enterprise pays fees to the agency, which pays wages to the workers. Some agency workers are also "migrant workers", meaning that they are engaged in work in a state of which they are not nationals.

Such workers can be important in enabling companies to cope with large fluctuations in demand of their products or services and there are established legal regimes in place that seek to protect such workers (see [Annex 1](#)). However, in some contexts, agency workers placed with user enterprises may have heightened vulnerability to negative human rights impacts. This vulnerability can occur where:

- There are lower legal protections for agency workers under national law;
- They lack awareness of their rights;
- They cannot join a trade union at the user enterprise, and lack equivalent representation and collective bargaining ability in their relationship with the agency. There may also be constraints on what collective bargaining through an agency-linked union will allow if wages have been pre-negotiated with the user enterprise.

Agency workers, including migrant workers in particular, may be exposed to the risk of bonded labour and other severe impacts where they are required to pay fees to secure a position, or their identity documents are withheld. Such risks can be particularly acute in contexts where national law is silent, unenforced or actively conflicts with internationally recognised human rights.

O&G companies will need to consider a range of factors relevant to potential impacts on agency and migrant workers that they rely on or who are working in their supply chain, including whether:

- The employment and recruitment agency will be able to pay workers a wage (from the fee paid by the company to the agency) that meets local “living wage” norms, is in line with any applicable collective bargaining agreements, and is at least the legal minimum wage (where that exists and does not discriminate between men and women);
- Workers will be provided with appropriate working conditions, including relevant health and safety equipment and training;
- Workers’ welfare will be appropriately addressed, including through access to effective grievance mechanisms.

For more on these issues, O&G companies will want to look at the parallel [Employment & Recruitment Agencies Sector Guide on implementing the UN Guiding Principles on Business and Human Rights](#).

- **Considering how purchasing practices may contribute to impacts:** It can be important for O&G companies to review whether their own requirements of their suppliers or contractors may contribute to human rights impacts. For example, if the procurement function demands delivery on time and at cost to the exclusion of other considerations, suppliers may feel unable to pay workers adequately; they may contract agency workers under conditions that impact their human rights; or they may cut corners on environmental standards, causing impacts on the right to health. Similarly, if contracts with private security providers do not provide for adequate pay or for training on human rights, where this is needed, the O&G company may be seen as contributing to any human rights impacts that result.

II

D

Drawing on Expertise

Key Points for Implementation

- ▶ Companies will need to draw on relevant expertise to help them ensure that their assessment processes are as well informed as possible.
- ▶ These sources of expertise may be internal to the company or external, and may include written documents and guidance or individuals with relevant knowledge and experience.

Possible Approaches

- **Engaging internal functions and departments:** The process of assessing impacts is an opportunity to engage a cross-section of individuals from different functions and departments in a conversation about possible impacts. This can build a shared understanding of how certain actions and decisions can lead to negative impacts. Doing so helps create buy-in to the need for preventative measures. It can also support the internal collaboration that will be needed to address any impacts that occur.

Resources: Matrix to Stimulate Internal Discussion of Potential Impacts

The Matrix in Part 2 maps some of the typical human rights impacts that can occur in the upstream O&G sector. This kind of matrix can provide a tool for internal company discussions of potential impacts. It reflects a range of typical (but not exhaustive) activities of O&G companies, and the groups of affected stakeholders that are usually relevant. Using the table as a model and expanding it as necessary, a company can work through its typical operations to map its own table that can help guide its next steps on what to do about the impacts identified.

There are different ways to generate this internal conversation:

- Where it is helpful to begin with human rights, the focus can be on where and how those rights might be impacted;
- In other circumstances – particularly where human rights language is unfamiliar or challenging within the company – it may be more helpful to start by discussing how each of the company's main activities could impact potentially affected stakeholders: whether direct employees and contract workers, workers in supply chains, communities or particular vulnerable or marginalised individuals or groups.
- **Engaging workers:** Legitimate trade unions or worker representatives can be an additional, valuable source of internal company expertise on potential human rights impacts. They may have insights into potential impacts not only on workers themselves (including those employed by local contractors and suppliers), but also on local communities, since workers often come from those communities.
- **Drawing on external expertise:** O&G companies can also draw on external expertise in assessing their potential human rights impacts. Possible sources include:
 - Expert advice, including from a home government, national human rights institution, NGO or academic institution, or public health workers;
 - Expert written sources, including reports from credible organisations, whether civil society, government, business associations or multi-stakeholder initiatives. These can provide insights into current and emerging human rights issues in particular operating contexts and examples of impacts that O&G companies have been involved with;
 - Local civil society actors, such as human rights defenders, trade unions, NGOs and others who can provide insights into potential impacts. Seeking their input can also increase transparency and may help dispel any concerns they have;
 - Any publicly disclosed SIAs/ESIAs/ESHIA in the same, or a similar, operating context that may indicate likely human rights risks.



Consulting Affected Stakeholders

Key Points for Implementation

- ▶ “Affected stakeholders” in the Guiding Principles are those individuals whose human rights may be impacted by the company's operations, products or services. They are a subset of “rights holders”, which includes all individuals. And they are distinct from those stakeholders in civil society, business or government who may have an interest in the company or be able to affect its operations, but will not themselves be impacted.
- ▶ Meaningful consultation with affected stakeholders helps O&G companies understand their views about how certain impacts could affect them.
- ▶ By demonstrating that it takes the concerns of affected stakeholders seriously, a company can help build mutual understanding. This may make it possible to work together to identify potential impacts and find sustainable ways to address them.

Possible Approaches

- **Mapping stakeholders:** Stakeholder consultation first requires a process to identify who a project's stakeholders are and any sub-groups within them, such as women, youth, workers with disabilities, contract workers etc. The IFC's [Good Practice Handbook on Stakeholder Engagement](#) highlights a range of considerations that can be important in mapping affected stakeholders. These include:

- Considering stakeholders affected not only at the project site, but by other aspects of the operation, including associated facilities, transport routes, areas subject to cumulative impacts, or unplanned but predictable developments;
- Identifying potential “cumulative impacts” on stakeholder groups that may not be immediately evident, by mapping out both the near-term and future facilities and considering the legacy of projects in the area;
- Avoiding defining affected stakeholders too narrowly, since communities lying just outside of the designated project impact area may “perceive” impacts or feel they have been arbitrarily excluded from project benefits;
- Assessing the significance of the project to each stakeholder group from their perspective, and vice versa – some groups may be impacted by the project much more severely than others;
- Considering from the earliest stages who are the most vulnerable or marginalised individuals or groups among those potentially impacted, and whether special engagement efforts will be needed to involve them;
- Paying attention when identifying representatives of stakeholder groups that they are indeed true advocates of the views of their constituents, and can be relied upon to faithfully communicate the results of engagement with the company back to their constituents.

- **Crafting an appropriate consultation processes with potentially affected stakeholders:** Consultation with stakeholders needs to be tailored to the local context where it takes place and the needs of the stakeholders being consulted. The IFC's guidance indicates that a good consultation process will ideally be:

- Targeted at those most likely to be affected by the project;
- Early enough to scope key issues and have an effect on the project decisions to which they relate;
- Informed, as a result of relevant information being disseminated in advance;
- Meaningful to those consulted because the content is presented in a readily understandable format and the techniques used are culturally appropriate;
- Two-way so that both sides have the opportunity to exchange views and information, to listen, and to have their issues addressed;
- Gender-inclusive through awareness that men and women often have differing views and needs;
- Localised to reflect appropriate timeframes, context, and local languages
- Documented to keep track of who has been consulted and the key issues raised;

Resources: Stakeholder Engagement

The guidance referenced here is the IFC's publication: [Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets](#).

Other sources of guidance on stakeholder engagement/consultation include:

- ▶ IPIECA, [Community Engagement](#)
- ▶ Luc Zandvliet and Mary B. Anderson, *Getting it Right: Making Corporate-Community Relations Work* (Greenleaf Publishing, 2009)
- ▶ UN Global Compact page on [Stakeholder Engagement](#) (contains a number of resources and tools)
- ▶ World Resources Institute, [Breaking Ground: Engaging Communities in Extractive and Infrastructure Projects](#)
- ▶ AccountAbility, UNEP, Stakeholder Researchers Associates, [From Words to Action: Stakeholder Engagement Manual Volume 1 and Volume 2](#) (Vol 2 is also available in Spanish, Italian and Japanese)

Example: Benefits of Community Consultation

One O&G company conducted exploration and gained a concession from a federal government without dialogue with the community. The community, in turn, strongly opposed the project and held an unofficial vote against it. The company lost access to the concession due to concerted and continuous community opposition, despite the national government's support for the project.

In contrast, another O&G company created dialogue with the community from the start of the exploration phase of a project. This allowed it to revise its project planning in ways that made the project more acceptable to the community. For example, it agreed not to build access roads and instead to use rivers and helicopters to deliver supplies.

- Reported back in a timely way to those consulted, with clarification of next steps;
- Ongoing, as required, during the life of the project.

- **The role of governments:** Governments have particular responsibilities with regard to decisions about O&G projects that affect communities, including the duty to protect the human rights of community members. In some countries, laws provide for community consultations by the government itself, prior to the approval of permits, licenses or certain project-related activities.

Yet O&G companies face increased human rights risks where the government has not conducted consultations, or has only done so inadequately. The IFC's guidance recommends that companies keep track of government-led consultations with stakeholders on issues related to their projects. It notes that where there are questions about this consultation process or unresolved stakeholder issues, it is in the company's interests to find out about them and, as far as possible, to address them.

Companies may be able to exercise some leverage by seeking to participate in, or at least observe, any government-led consultation process, so they can be confident that it is robust or seek to improve it where necessary. They may also find it helpful to reference IFC [Performance Standard 5](#) in identifying generally acceptable approaches to land acquisition and involuntary resettlement, and [Performance Standard 7](#) in processes involving indigenous peoples.

- **Ensuring consultation is meaningful in practice:** There is already extensive experience with stakeholder consultations within the O&G industry. As that experience shows, the following factors can be important in making the difference between good consultation processes on paper and meaningful consultation in practice:
 - **Having an overall engagement strategy:** this can be particularly important when different departments in the company define engagement differently. Communication efforts, public consultations, public relations and informal interactions that are assumed to “add up” to a positive result may not meet community expectations.
 - **Reflecting on the appropriate level of engagement:** not all stakeholders need to be consulted about all decisions and different levels of participation will be appropriate for different groups. If stakeholders' expectations regarding their level of involvement in decisions are not managed effectively, this can lead to frustration and resentment.
 - **Understanding the value of community consultation as a trust-building tool:** skilled practitioners in community relationships challenge the view that stakeholder expectations can be managed by not engaging, particularly at the exploration stage. Company experience shows the opposite is true: engagement demystifies rumours, clarifies the perspectives of the different groups involved, including the company's, and helps reduce differences in expectations.
 - **Approaching stakeholder engagement as an ongoing process:** if a company only engages with communities when there is a “need” (for instance, when there has been an accident), this can provide an incentive for stakeholders to create a complaint to get the company's attention. It can miss the opportunity to establish trust-based relationships.

- **Placing value on strong engagement skills:** experienced community relations practitioners stress the importance of showing that they can listen, of not defending the company “at all costs”, and of not trying to convince stakeholders that their opinion is “wrong.” Doing otherwise can risk undermining the credibility of the company.
- **Tracking and analysing information and commitments:** it is important to have systems for documenting the company’s engagements with communities, including any promises made, especially when staff turnover is high. This helps build internal memory and institutional learning. It can help avoid the frustration among affected stakeholders that arises when commitments are not met.

- **Including vulnerable or marginalised individuals:** Vulnerability can stem from an individual’s status or characteristics (eg. race, colour, sex, language, religion, national or social origin, property, disability birth, age or other status) or from their circumstances (eg. poverty or economic disadvantage, dependence on unique natural resources, illiteracy, ill health). Those vulnerabilities may be reinforced through norms, societal practices, or legal barriers. Vulnerable or marginalised individuals typically experience negative impacts more severely than others.

IFC **Performance Standard 1** sets out useful guidance on assessing and addressing vulnerability. These groups may require specific, and if necessary separate, consultation and mitigation measures to ensure that negative impacts do not fall disproportionately on them, and are appropriately avoided, mitigated or compensated. They should be able to benefit from project opportunities equally with others and this too may require differentiated approaches to benefit sharing. Disaggregating data with regard to how impacts are assessed and addressed will also help when tracking how well this is managed in practice.

A number of international human rights standards are specifically addressed to vulnerable or marginalised individuals or groups and give guidance on key measures of disadvantage and addressing these disadvantages (see **Annex 1** for the list of instruments and the Resources Box in this section).

- **Recognising that conducting stakeholder consultation is a skill:** Conducting consultations with communities requires specific skills. It also requires sensitivity to potential barriers (linguistic, gender, cultural) and to perceived power imbalances – both between the company and affected stakeholders, and among stakeholders themselves. Companies will want to ensure that the staff who lead on community consultation have the necessary skills and experience.

Seismologists and geologists often lead early exploration activities. They may have the first contact with local communities. But they often lack training in community engagement and may face incentives to make promises (for instance, regarding jobs or social investment projects) that they will not be responsible for meeting, and may fail to pass on to the project developers.

Allocating appropriate human resources and budget to stakeholder engagement at the exploration stage can save money, time and reputation later on, when trying to restore damaged relationships with communities. For the same reason, it is important for both exploration companies, and other companies that buy rights from them, to place a value on how well stakeholder engagement is conducted.

Resources: Vulnerable or Marginalised Groups

Some potentially vulnerable or marginalised groups are the subject of international human rights instruments that help provide clarity on how human rights apply to them. These are:

- ▶ **Racial/ethnic groups:** The Convention on the Elimination of All Forms of Racial Discrimination
- ▶ **Women:** The Convention on the Elimination of All Forms of Discrimination Against Women
- ▶ **Children:** The Convention on the Rights of the Child
- ▶ **Persons with disabilities:** The Convention on the Rights of Persons with Disabilities
- ▶ **Migrant workers:** The Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- ▶ **Indigenous peoples:** The Declaration on the Rights of Indigenous Peoples
- ▶ **Minorities:** The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

For the full text of these instruments, see: www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx

Relevant guidance for the O&G sector on addressing risks to certain vulnerable or marginalised groups includes:

- ▶ UNICEF, UN Global Compact, *Save the Children, Children’s Rights and Business Principles*
- ▶ UN Global Compact, *The Women’s Empowerment Principles*
- ▶ ILO, *Working Conditions of Contract Workers in the Oil and Gas Industry*

Resources: Films on Facilitated Dialogue Processes

Three short films have been produced by the Corporate Social Responsibility Initiative at Harvard Kennedy School to illustrate how company-community dialogue processes have been developed using third party facilitation, in situations of conflict or distrust around energy projects. The stories are told in the voices of those involved: communities, company, NGOs, government and the facilitators.

- ▶ Making Monkey Business
- ▶ The Only Government We See
- ▶ Putting Ourselves in Their Shoes (Spanish language, English subtitles)

Resources: indigenous peoples' rights

The UN Declaration on the Rights of Indigenous Peoples, which has been endorsed by a large majority of states, reflects that indigenous peoples have inherent rights "which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources". Additional resources regarding indigenous peoples that are relevant to the O&G industry include:

- ▶ ILO Convention 169: the Indigenous and Tribal Peoples Convention (ratified by 20 states, notably in Latin America)
- ▶ Report of the Special Rapporteur on the Rights of Indigenous Peoples (6 July 2012)
- ▶ IPIECA, Indigenous Peoples and the Oil and Gas Industry: Context, Issues and Emerging Good Practice
- ▶ International Council on Mining and Metals, Good Practice Guide: Indigenous Peoples and Mining
- ▶ IFC Performance Standard 7 on Indigenous Peoples, and the accompanying Guidance Note
- ▶ Inter-American Development Bank Operational Policy on Indigenous Peoples

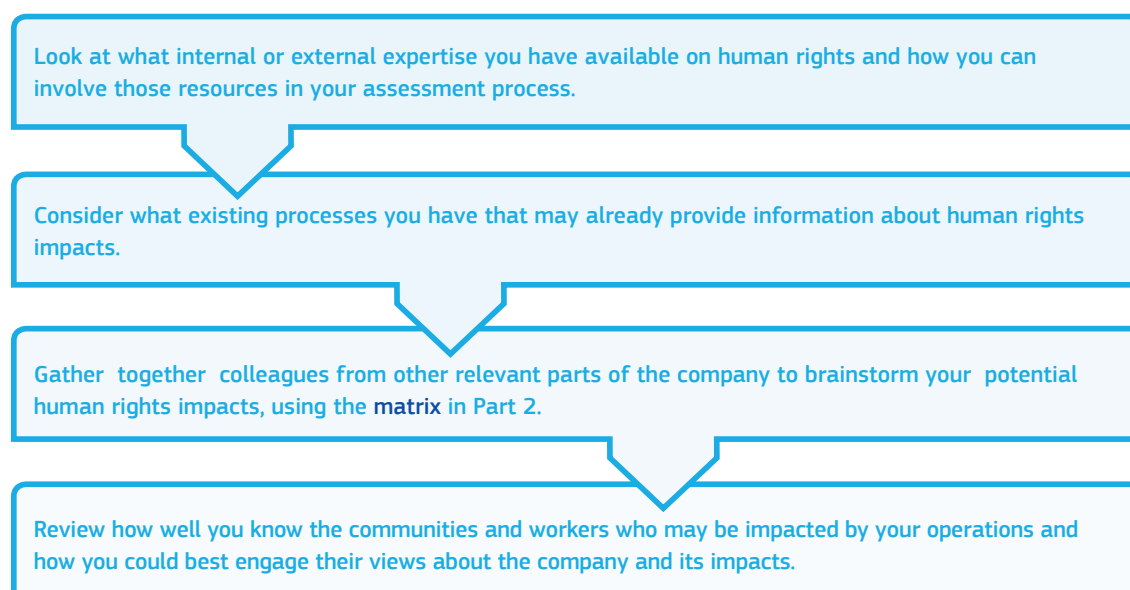
In complex situations where there are multiple communities, tensions between or within communities, or a history of distrust of the company or the O&G industry in general, it may be useful to work with neutral third party facilitators. Facilitators who are from or familiar with the local culture can play a number of roles. They may:

- Help avoid the reinforcement of existing local power structures if they are corrupt or discriminatory;
 - Help build the capacity of local communities to engage in the assessment process;
 - Help the company become a partner in discussions, rather than being seen as the controller or "patron";
 - Help the company and community resolve disputes and conflicts;
 - Help the company and community build a platform for continued consultation and engagement to address issues throughout the project life cycle.
- **Free, prior and informed consent:** Expectations about community consultation continue to evolve, not least as regards the process of obtaining "free, prior and informed consent" (FPIC). Some argue that the right to consent, rather than just consultation, applies to any community that legally or traditionally uses or occupies land. At the same time, many governments dispute that view of FPIC and some emphasise their own right of eminent domain – that is, to take land for a public purpose (such as economic development) subject to just compensation and in line with their human rights obligations. This complicates the issue for O&G companies seeking to do the right thing.
- At a minimum, the right to FPIC applies to indigenous peoples with regard to activities involving land, territory or other resources that they traditionally own, use or occupy. This includes cultural heritage sites, which are essential to their survival as distinct peoples.
- Consent is one part of a wider process of engagement with indigenous peoples, not the only issue. As the [UN Special Rapporteur on the Rights of Indigenous Peoples](#) has observed: "neither consultation nor consent is an end in itself, nor are consultation and consent stand-alone rights ... [They] constitute a special standard that safeguards and functions as a means for the exercise of indigenous peoples' substantive rights" – rights that may be affected by extractive operations. They are also not the only relevant safeguards: additional safeguards include impact assessments, mitigation measures, and benefit-sharing and compensation schemes.
- According to the work of the UN Special Rapporteur, to be effective, **consent** procedures should:
- Be based on equitable and agreed-upon terms that are proportionate to the impacts;
 - Include appropriate mitigation, compensation and benefit-sharing procedures; and
 - Set the terms of a sustainable relationship between the community and company based on genuine partnership; and effective **consultation** processes should:
 - Establish information-sharing mechanisms and build capacity on the community side to mitigate power imbalances and ensure that they are vehicles for dialogue;

- Take full account of indigenous decision-making processes;
- Ensure that all outcomes are rights-compatible; and
- Ideally enable indigenous peoples to set their own priorities and strategies for development.

Where to Start

For companies that are just starting to focus on assessing human rights risks and impacts, the following are some preliminary steps to consider:



Questions to Ask

The following questions correspond with sub-sections A, B, C, D and E above. They should help test the extent to which a company's assessment processes are consistent with the Guiding Principles:

II-A	Building a Systematic Approach to Assessment <ul style="list-style-type: none"> ▶ What triggers do we have to launch or renew assessments at all the appropriate stages in a project? ▶ When we assess risk, do we look at risks to people and their human rights, not just risk to the company? ▶ Do our assessment take account of the perspectives of potentially affected stakeholders themselves and not just what we think the key issues are? ▶ Do our assessments look at all indicators of potential human rights impacts, not just past or familiar impacts, or a narrow set of human rights?
II-B	Understanding your Operating Context <ul style="list-style-type: none"> ▶ How do we assess what the implications of our broader operating contexts are for respecting human rights? ▶ How do we consider risks arising from gaps in the regulatory framework or from conflicts between national laws and internationally recognised human rights?
II-C	Reviewing Business Relationships <ul style="list-style-type: none"> ▶ Do our assessment processes include potential impacts arising through our business relationships, such as joint venture partners, governments, suppliers and contractors? ▶ Are our assessments of potential impacts from relationships conducted early enough to manage risks effectively, including “legacy” human rights issues from mergers, acquisitions or inherited contracts?
II-D	Drawing on Expertise <ul style="list-style-type: none"> ▶ How have we engaged key internal departments/functions and trade unions or other worker representatives in our assessment processes, to benefit from existing expertise and build understanding of human rights impacts? ▶ What external resources exist that could inform our assessments, and how could we best draw on them to support and/or test our assessments?
II-E	Consulting Affected Stakeholders <ul style="list-style-type: none"> ▶ How do we know whether we have identified all stakeholder groups who could be affected by a project? How do we identify those who may be particularly vulnerable to impacts? ▶ Who is responsible for consulting affected stakeholders, when and how? Do they have the necessary skills, resources and support? ▶ Do we seek free, prior and informed consent at least when dealing with indigenous communities? If so, how do we assess that such consent has been achieved?



Integrating and Acting

What do the UN Guiding Principles Expect?

To address negative human rights impacts, businesses should:

- ▶ Integrate the findings from their impact assessments across relevant internal functions and processes;
- ▶ Act to prevent and mitigate the impacts identified; and
- ▶ Have the internal decision-making, budget allocation and oversight processes in place to enable effective responses.

Why is this Important?

- Through the process of “integration” a company can take the findings from its assessment of impacts, identify who in the company needs to be involved in addressing them, and work with them to decide on an effective response.
- It is through the actions it takes to prevent or mitigate impacts that the company actually reduces its impacts on people: this is central to achieving respect for human rights.

What are the Steps Involved?





Building a Systematic Approach to Integrating and Acting

Key Points for Implementation

- ▶ If a company has strong systems in place to respond to potential human rights impacts, it is more likely to manage these risks effectively and reduce its actual impacts on people.
- ▶ If these processes are weak, action is more likely to be ad hoc, to miss some risks altogether and to fail to contribute to sustainable improvements over time.

Possible Approaches

- **Site-level and corporate level action:** Action to address potential human rights impacts is typically best decided at the site level in order to ensure it is tailored to local needs and realities. In some instances, it may be valuable or even necessary to involve individuals from the corporate/head office (and/or regional) level in decisions, or to get their agreement, for example where the human rights impacts are particularly severe and require an immediate response.

The corporate/head office level may play an important role also in sharing experiences across sites of how to address certain kinds of impact. In this way, options that have been successful in one context can be considered in others. It may be useful periodically to bring together the staff who work on these issues at different sites to share their experiences directly. This can support the spreading of best practices. It may also point to common challenges that suggest a need for new or amended guidance from the corporate/head office level.

- **Integrating key staff into decisions on how to address impacts:** Individuals who are responsible for assessing human rights impacts – whether at the site or corporate/head office level – often have limited contact with the staff responsible for the activities or relationships that can contribute to impacts. Yet those closest to the impacts need to be involved in identifying and implementing solutions; otherwise they may not be sustainable. In smaller companies, day-to-day communication may be enough to achieve this integration. In larger companies, it can require a more systematised approach. This may include:
 - Developing structured cross-functional decision-making groups;
 - Including staff from relevant departments in discussions with external experts on specific challenges;
 - Having clear internal reporting requirements on the implementation of decisions;
 - And in the case of high-risk contexts or severe impacts:
 - > Involving relevant staff from across the business in discussions with affected stakeholders on how to address impacts;
 - > Involving senior management in decision-making and oversight.

III B Prioritising Impacts for Action

Key Points for Implementation

- ▶ In some instances, resource constraints will mean that a company needs to prioritise which impacts it will address first.
- ▶ Prioritisation should depend first and foremost on the severity of the impacts on human rights. An assessment of severity should also take into account the perspectives of those who may be impacted.

Possible Approaches

- **Focusing on the risk to human rights:** Traditional prioritisation or “heat mapping” of risks rates the severity (or “consequence”) of impacts in terms of the risk they pose to the company. For human rights due diligence, severity is about the risk posed to human rights.
- **Understanding severity:** In some cases, it will be clear which impacts are potentially **severe** based on their:
 - **Scale:** How grave the impact is - for instance impacts on the right to life or to the health and safety of individual workers;
 - **Scope:** How many people are or will be affected - for example impacts on the livelihoods of entire communities, or the freedom of association of an entire workforce;
 - **Irremediable nature:** Whether it will be difficult or impossible to restore the people impacted to a situation that is equivalent to their situation before the impact - for example where religious and cultural heritage of indigenous peoples has been destroyed.

In other cases, O&G companies may find it useful to engage with affected stakeholders or their representatives to understand fully how severe impacts might be in practice.

- **Mapping severity and likelihood to identify priorities:** The other relevant factor for prioritising action is the likelihood of an impact. The likelihood of an impact may be increased by:
 - (a) the local operating context(s) where the particular impacts may occur, as well as
 - (b) specific business relationships that may be involved.

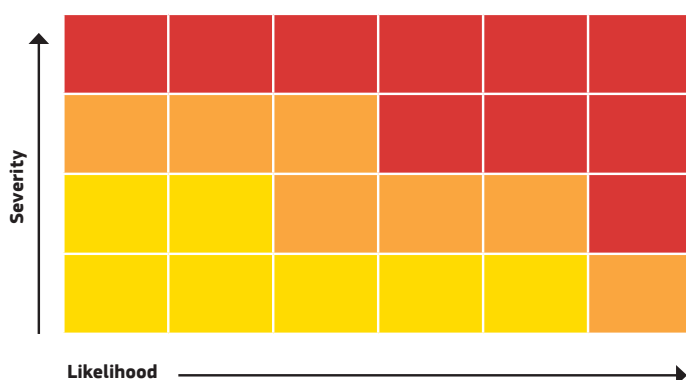


Figure 2: Human Rights Risk Map for Prioritising Action

In traditional risk prioritisation, a risk that is low severity but high likelihood would have a similar priority to a risk that is high severity but low likelihood. However, in the case of human rights risks, a “high severity-low likelihood” impact takes clear priority.

In addition, while it may seem simplest to prioritise action on those impacts where the company has greatest leverage, in the context of human rights, it is the severity of impacts that should set priorities; leverage becomes relevant only in then considering what can be done (see [Section III-D](#)).

Prioritisation is a relative concept. This means that once the most severe potential impacts have been prevented or mitigated, the next most severe impacts need to be dealt with, and so on through all the impacts identified. Of course, different individuals or functions/departments within the company may be able to address different risks in parallel.

- **Addressing different levels of risk:** Companies may still need to know which risks to address first *within* each level of severity, starting with those in the most severe category. The logical starting point will be with those impacts that are most likely. Companies may also wish to take account of where they are most able to achieve change. Where these judgements are particularly difficult it may be helpful to discuss or test proposed approaches with expert stakeholders.



Identifying Options to Prevent or Mitigate Potential Impacts

Example: Local Procurement

Where procurement laws or practices are weak, local procurement processes can suffer due to lack of transparency, corruption or nepotism. This can be a particular risk where companies are under pressure to meet local content targets. Online procurement is a way to reduce direct interactions with suppliers at critical points, thus avoiding corruption and enhancing transparency.

One oil and gas company developed an e-procurement system for use in an African country of operations. The system is specifically geared towards the needs of SMEs, so as to increase local participation in their supply chains. The system includes mapping of local SMEs to enhance outreach; a rating system to assess SME competency; public workshops to communicate uniformly to the contractor market; access to information technology; training and skills enhancement and access to finance.

Key Points for Implementation

To identify the best ways to address potential impacts, a company first needs to understand the nature of its involvement:

- ▶ Where the company is at risk of **causing** an impact, it should take the necessary steps to prevent the impact from occurring.
- ▶ Where the company is at risk of **contributing** to an impact, it should first take steps to avoid this contribution. Where it does not control those who may contribute to the impact, it should use its **leverage** with them to mitigate the remaining risk.
- ▶ Where a negative impact may be **directly linked to the company's operations, products or services through a business relationship**, even without a contribution by the company itself, it should use whatever leverage it has to mitigate the risk that the impact occurs.

Possible Approaches

- **Addressing impacts the company may cause or contribute to:** Structured assessment processes such as SIA/ESIA/ESHAs typically result in a series of actions that should be taken to address the impacts identified. These are often reflected in a formal action plan that sets out specific steps and timelines, and assigns accountability and budgets. O&G companies will find it helpful to address human rights impacts in the same way to ensure that they are integrated into company processes for implementation and accountability.

O&G companies may find themselves facing difficult decisions on how to respond to some human rights risks. For example:

- An action to reduce the risk of human rights impacts on some stakeholders may create risks for others. For example, relocating communities to a site that is closer to alternative jobs but further from water sources may mitigate risks to livelihoods and work but increase impacts on women who have to fetch water. One solution may be to make water sustainably available at the new site
- An action to reduce the risk to one human right may increase the perceived risk to another. For example, involving women or young people in consultation processes may be seen as a threat to local indigenous traditions and cultures. One approach can be to consult with both women and local male leaders on the design of projects that gradually raise women's awareness and voice.

Addressing such risks requires a full understanding of the issues and an ability to work with this complexity. It is not an option simply to assume that an increase in respect for one right cancels out reduced respect for another right. Instead, efforts must be made to address all the impacts, while recognising that perfect solutions may not exist.

In some cases there will be examples within the industry of how to manage these tensions successfully. Where examples are not available, or not appropriate to local circumstances, it can be particularly beneficial to involve local experts in discussions on how to respond. Depending on the issues, it may be possible to involve representatives of affected stakeholder groups, whether workers or communities, in seeking a collaborative solution that also reflects their ideas and preferences.

- **Addressing impacts that are linked to the company's operations, but without any contribution on its part:** Negative impacts can be directly linked to an O&G company's operations even when it has not caused or contributed to them. Another business or a government may impact human rights when providing goods, services or other operational needs to the O&G company. For example, if the staff of the company's security provider harass or sexually abuse local women, or if a contractor retains the passports of migrant workers and they are placed in a position of bonded labour, this kind of "direct linkage" to the O&G company occurs.

In this situation, the Guiding Principles make clear that the company should take reasonable steps to prevent or reduce the risk of these impacts recurring. The main means of doing so will lie in the company's leverage over those who caused the abuse. Approaches to creating and using leverage are discussed in [Section III-D](#) below.

- **Addressing impacts from the earliest stages:** O&G companies have traditionally paid less attention to dealing with potential human rights impacts at the exploration stage of projects than they do during later stages such as construction and production. They may be concerned about raising local community expectations about a potential project, or under pressure to reduce the costs of exploration. However, this can be a false economy. A lack of due diligence can lead to negative impacts that create a legacy of poor relationships with communities. The company – or any other company to which it sells its rights – then has to address these impacts at a later stage, when it will be considerably more difficult to do so.

Possible approaches to prevent and mitigate impacts at the exploration stage include:

- Working to ensure that company budgets and timelines for preventing or remediating any impacts include those that may arise during exploration;
- Undertaking joint efforts with companies on neighbouring exploration blocks to engage with affected communities. This could include not only jointly explaining the implications for communities if exploration is successful, but also instituting a shared grievance mechanism from an early stage;
- Addressing compensation needs and claims during exploration in a rigorous and prompt manner, and ensuring that issues relating to security are managed in line with the [Voluntary Principles on Security and Human Rights](#);
- Making clear to third-party exploration companies that the effectiveness of how impacts are prevented or mitigated will influence how projects are valued at the time of acquisition; and then working with internal teams dealing with M&A, negotiations and due diligence, to reflect this in company decisions;
- In the case of exploration companies, explaining and illustrating the value that their work to mitigate human rights impacts should represent to a purchasing company.

Resources: The Principles for Responsible Contracts

The [Principles for Responsible Contracts](#) were developed under the mandate of the former Special Representative of the UN Secretary-General for Business and Human Rights. They identify 10 Principles to help states and business investors integrate the management of human rights risks into investment project contract negotiations. The principles cover:

1. Project negotiations preparation and planning
2. Management of potential adverse human rights impacts
3. Project operating standards
4. Stabilisation clauses
5. "Additional goods or service provision"
6. Physical security for the project
7. Community engagement
8. Project monitoring and compliance
9. Grievance mechanisms for non-contractual harms to third parties
10. Transparency/Disclosure of contract terms



Creating and Using Leverage in Business Relationships

Key Points for Implementation

- ▶ The Guiding Principles define "leverage" as the ability of a company "to effect change in the wrongful practices of an entity that causes harm"; in short, its ability to influence the behaviour of others.
- ▶ Leverage does not determine whether a company has responsibility for an impact: responsibility results solely from the company's involvement with the impact through cause, contribution or "linkage".
- ▶ Leverage is relevant for identifying ways to address those impacts identified. Companies should use their leverage to try to change the behaviour of any business partners involved. If a company lacks leverage there may be ways to increase it.
- ▶ If it proves impossible over time to achieve change through their leverage, companies should consider ending the relationship in question, taking into account:
 - Credible assessments of any negative impacts from doing so;
 - That the more severe the abuse, the more quickly the business will need to see change before it decides whether to end the relationship.
- ▶ If a company stays in a business relationship with risks of severe impacts – for instance where it concludes no reasonable alternative exists – it will need to:
 - Be able to show how it is trying to mitigate the risks;
 - Be prepared to accept any consequences of the continued relationship (whether legal, reputational, financial).

Possible Approaches

The terms of contracts and other project-related agreements, such as Memoranda of Understanding (MOUs), play a critical role in defining leverage in a company's relationships. This is true across relationships with governments, joint venture partners, suppliers and contractors.

- **Leverage with governments:** International O&G Companies often have to negotiate agreements with host governments. The [Principles for Responsible Contracts](#), developed by the former UN Special Representative provide valuable guidance on steps to ensure these agreements enable respect for human rights. Many of the same steps could be applied to other agreements, such as the negotiation of MoUs with public security forces or the terms of land acquisition and resettlement processes.

Where governments are unwilling to include human rights provisions in agreements, companies need to look for other avenues to introduce these issues, such as through operating procedures, MOUs with security forces, capacity building of operating staff and through continued engagement with the government on human rights issues.

O&G companies may also find it helpful to include references to widely recognised standards in agreements with a government or joint venture partner, such as the IFC [Performance Standards](#), the [Voluntary Principles on Security and Human Rights](#), or the legal standards in core [ILO Conventions](#). These can provide clear and agreed reference points for the conduct of the project. O&G companies working in the same country may also be able to engage the government collectively in discussions on the human rights risks of natural resource exploitation.

National O&G Companies often have particular leverage with the government when they are operating in their home state. They may be able to use this to reduce human rights risks, for example by explaining the benefits of conducting land acquisition and stakeholder consultations in accordance with best practice.

Where an O&G company uses its leverage to lobby a government on policy or regulatory measures, it will want to ensure that this:

- Is consistent with the company's own responsibility to respect the human rights of workers and communities;
- Would not, in practice, undermine the state's duty to protect human rights.
- **Leverage regarding public security:** The [Voluntary Principles on Security and Human Rights](#) envisage a number of steps O&G and other companies can take to exercise leverage with regard to public security, including:
 - Encouraging host state governments to allow security arrangements to be made transparent and accessible to the public, subject to any overriding safety and security concerns;
 - Taking all appropriate and lawful measures, when providing equipment to public security, to mitigate any foreseeable human rights abuses and violations of international humanitarian law;
 - Using their influence to promote the following principles with public security:
 - a. Individuals credibly implicated in human rights abuses should not provide security services for companies;
 - b. Force should be used only when strictly necessary and to an extent proportional to the threat;
 - c. The rights of individuals should not be abused while exercising the right to freedom of association and peaceful assembly, the right to engage in collective bargaining, or other related rights of company employees as recognised by the [Universal Declaration of Human Rights](#) and the [ILO Declaration on Fundamental Principles and Rights at Work](#).
 - Holding structured meetings with public security on a regular basis to discuss security, human rights and related workplace safety issues;
 - Consulting regularly with other companies, host and home state governments, and civil society to discuss security and human rights;
 - Considering raising concerns with the host and home state governments collectively with other companies operating in the same region with the same concerns;
 - Promoting observance of applicable international law enforcement principles in their consultations with host state governments, particularly those reflected in the UN [Code of Conduct for Law Enforcement Officials](#) and the UN [Basic Principles on the Use of Force and Firearms](#);

Example: Stabilisation Clauses

Research was conducted under the mandate of the former Special Representative of the UN Secretary-General for Business and Human Rights into the ways in which so-called "stabilisation clauses" in Investor-State Agreements (sometimes called "Host Government Agreements") could either exempt investors from compliance with new laws passed by a host state government designed to promote environmental, social or human rights goals, or entitle investors to be compensated for the costs of complying with them.

One O&G company was criticised by civil society groups for the terms of the stabilisation clauses in its contracts with states through which a planned pipeline would pass. These clauses were seen as undermining the willingness and ability of the host states in question to fulfill their human rights duties regarding issues such as non-discrimination, the human rights of workers and the protection of the environment. The company responded by amending the contracts via an additional document signed by the company. This made clear that the company would not interpret or use the stabilisation clauses in such a way as to undercut the host states' ability to regulate human rights and improve human rights protection in line with internationally-recognised human rights.

They then made similar amendments to contracts underpinning another pipeline project in the same region.

Example: Collaborative Action

In one high-risk country, the government invited foreign companies to bid for the right to explore oil and gas blocks. Interested companies jointly asked the government to revise its bidding procedures to include minimum standards relating to transparency and the management of environmental and social impacts. The government agreed to postpone the bidding to review its procedures, and re-asserted its commitment to international standards of transparency.

Several factors assisted the companies in exercising leverage over the government, including:

- The government was demanding a production sharing contract and partnership with the state-owned NOC. However, concerns had been raised in the international media about corruption and human rights abuse linked to the NOC.
- The government was seeking to diversify its existing base of investors; and had itself committed to increasing transparency; and
- Many of the companies were subject to reporting requirements related to transparency and human rights impacts by their home governments.

- Supporting efforts by governments, civil society and multilateral institutions to provide human rights training and education for public security as well as their efforts to strengthen state institutions to ensure accountability and respect for human rights.

- **Leverage with private security providers:** The [Voluntary Principles on Security and Human Rights](#) propose that companies working with private security providers should seek to:

- Include specific standards, where appropriate, in the terms of their agreements with private security providers;
- Ensure that private security personnel are adequately trained to respect the rights of employees and the local community;
- Include in agreements requirements for the investigation of unlawful or abusive behaviour and appropriate disciplinary actions;
- Ensure that agreements permit termination of the relationship where there is credible evidence of unlawful or abusive behaviour by private security personnel.

- **Leverage in joint ventures (JVs):** Where an O&G company is entering into a joint venture, there are a range of ways in which it can generate leverage, such as:

- Seeking to enter into JVs with “like-minded organisations” where that is possible;
- Influencing how the JV is structured, for example by:
 - > Selecting a lead operator that is committed to respecting rights;
 - > Integrating respect for rights into the terms of the JV contract (including clauses defining standards to be followed and provisions for monitoring and reporting);
 - > Seeking financing from an institution that requires its clients to meet certain social and environmental standards, which therefore have to be integrated into the project management;
 - > Seeking majority ownership.

Where the company is a minority partner, it may seek also leverage through other routes such as:

- > Securing a Board position;
- > Seeking special voting provisions on issues that raise significant human rights risks (such as land acquisition, security or emergency situations);
- > Securing a senior management role with responsibility for social/human rights issues;
- > Seconding staff to other key functions (such as health and safety, or audit);
- > Seeking provisions in the JV contract for periodic assessments of the project, including its social, environmental and human rights performance, by an independent third party;
- > Integrating discussions on how to manage human rights impacts into key technical meetings.

- **Leverage with contractors/suppliers:** An O&G company's contractors and suppliers have their own responsibility to respect human rights throughout their operations. However, if they are unable or unwilling to meet that responsibility, any resulting human rights impacts may be directly linked to the O&G company's operations. Approaches to avoid this situation can include:
 - Pre-screening contractors and suppliers on the basis of their commitment and capacity to respect internationally-recognised human rights;
 - Identifying respect for human rights as a condition in tenders and contract renewals;
 - Inserting language into contracts that requires compliance with the company's policy commitment, with internationally-recognised human rights, or with other codes or principles that are aligned with them;
 - Addressing any particular risks from the behaviour of on-site contractors, including security providers, by including their staff in training wherever possible;
 - Committing to increased prices or sustained/increased future business in recognition of good human rights performance;
 - Engaging with suppliers about the extent to which the company's own purchasing practices may support or hinder them in meeting their responsibility to respect human rights, and addressing any negative incentives they may create;
 - Helping contractors develop their own knowledge and systems to ensure respect for human rights;
 - Providing feedback and mentoring when problems are initially identified, rather than simply "black-listing" the relevant business;
 - Making clear, if practices do not change, what the consequences may be, including a more public expression of concern or even termination of the relationship.
- **Leverage with local contractors/suppliers:** Host government agreements with International O&G Companies, their requirements of National O&G Companies, or those companies' own practices may require certain levels of "local content"– meaning contracts that must go to local suppliers or a percentage of the workforce that must be hired locally. This can be important in providing local jobs, growth and development opportunities. It may also bring increased human rights risks if local businesses lack the awareness or capacity to ensure their own operations respect human rights.

Developing and implementing an effective local content strategy requires intensive internal engagement and buy-in. It may be necessary to amend existing procurement strategies and systems. It will be important to work closely with suppliers, contractors and local communities more broadly.

- **Leverage through persuasion:** Company efforts to exercise leverage through persuasion will be important at all levels, for example between a site-level security manager and public security forces, and between senior management and the government. This can happen through both formal and informal communication channels.

It may be useful to seek out opportunities to explain and illustrate the business case for respecting human rights to partners, for instance in terms of the significant costs of increased conflict with local communities

Example: Leverage in Joint Ventures

One O&G company considering a joint venture to conduct exploration in a challenging context insisted on accompanying the proposed JV partner into the field. The company spent a day "shadowing" the potential partner's management and community relations team in the exploration block as they engaged with local indigenous communities. It was able to see for itself the potential partner's approach to community engagement and to show them the importance of this issue to its decision on entering the JV. It also wanted to demonstrate to the local communities its intention to enter into a relationship based on mutual respect.

The company decided to enter into the JV as a minority partner. It wrote into the contract a requirement that 100% of the shareholders vote on issues that posed heightened risks to human rights, specifically any decisions being taken on resettlement or agreements with the state for the provision of security. (The requirement for other issues was that 60% of shareholders vote.) The company then incorporated this approach into its internal guidance for contract negotiators and applied it to other joint ventures.

Example: Including Social Commitments in Agreements with Contractors

One oil and gas company has a process for ensuring that social commitments are embedded in contracts and to enhance contractor capacities. Bidders submit a preliminary Social Management Plan (including plans for community engagement, grievance resolution, resettlement, local hiring, impact mitigation, monitoring and reporting). After contracts are awarded, contractors are assisted in finalising the plan. Workshops and training are also offered. Contractors must have community liaison officers or social focal points. They must also ensure their contracts with their own sub-contractors include the same social requirements. Company social experts work with contractors to support them in meeting their commitments.

Resources: The Costs of Conflict

Evidence suggests that the costs for extractive companies of failing to address the concerns of communities regarding human rights and other impacts can be material to their bottom line. For more on the evidence, see Rachel Davis and Daniel Franks, [The Costs of Company-Community Conflict in the Extractive Industry](#).

Resources: Operating in conflict-affected areas

For more resources on operating in conflict-affected areas, see:

- [IHRB, From Red Flags to Green Flags: The corporate responsibility to respect human rights in high-risk countries](#)
- [International Alert, Conflict-Sensitive Business Practice: Guidance for Extractive Industries](#)
- [International Alert and Fafo, Red Flags: Liability Risks for Companies Operating in High-Risk Zones](#)

due to human rights impacts. In some cases it may be possible to form a joint steering committee with the host government to address specific issues, such as government implementation of the [Voluntary Principles on Security and Human Rights](#) or good practices in revenue transparency.



Acting in High-Risk Contexts

Key Points for Implementation

- ▶ The responsibilities of companies with regard to human rights do not increase in high-risk contexts, but the challenges of fully meeting those responsibilities often do.
- ▶ Home states have a particularly important role to play in supporting companies operating in situations of heightened risk to human rights, including by providing adequate assistance to their efforts to assess and address these heightened risks.
- ▶ Companies should pay particular attention to any risk of causing or contributing to gross human rights abuses, which may also have legal implications for the company.

Possible Approaches

- **Operating where governments systematically fail to protect human rights:** Under the Guiding Principles, companies are expected, wherever possible, to respect internationally recognised human rights as well as comply with national law. Where national law and international human rights conflict, companies should respect the principles of internationally recognised human rights to the greatest extent possible in the circumstances. They should also be prepared explain their efforts to do so.

Where national law appears to conflict with internationally-recognised human rights, an O&G company's assessment processes should identify this risk. The company should then actively explore the extent of the conflict, for example by:

- Seeking clarification from the government;
- Challenging the relevant provision where that is feasible;
- Learning from what peers have done.

As O&G companies consider how they might best honour the principles underlying internationally-recognised human rights, it will often be helpful to discuss the challenges with external experts, and where possible with affected stakeholders or their representatives, to gain their perspectives on any proposed approaches.

- **Preparing for dilemma situations:** The more an O&G company has prepared staff for dealing with dilemmas through training, scenarios, "lessons learned" exercises and similar approaches, the better prepared it will be in to respond to challenging situations. It might:

- Provide specific guidance on heightened risk situations, such as resettlement processes, compensation schemes, or engagement with indigenous peoples;
- Back this up by specialist support when a particular dilemma situation is triggered, for example by sending corporate-level experts to accompany field staff through the process;
- Give a cross-functional group of staff responsibility for identifying situations of heightened risk and developing appropriate strategies.
- **Operating in conflict-affected areas:** The Guiding Principles make clear that some of the worst human rights abuses involving companies happen in the context of conflict, latent conflict or fragile states. Governments are often least able or willing to meet their own duty to protect human rights in these situations, and may even be involved in human rights abuses.

Particular strategies will be needed to manage risks in these contexts. They might include:

- Paying increased attention to inclusive mapping of potentially affected stakeholders and conducting more extensive stakeholder engagement;
- Developing a close understanding of the conflict's history and dynamics, beyond the region around the project site;
- Assessing whether any company decisions or actions may exacerbate conflict;
- Using credible third parties to help assess human rights risk and monitor the company's performance;
- Ensuring the company's systems are able to capture and respond to unpredictable, rapidly-changing risk levels;
- Increasing senior-level engagement in the risk management process;
- Providing increased transparency regarding the company's efforts to address human rights risks, where this can be done without exacerbating the situation.

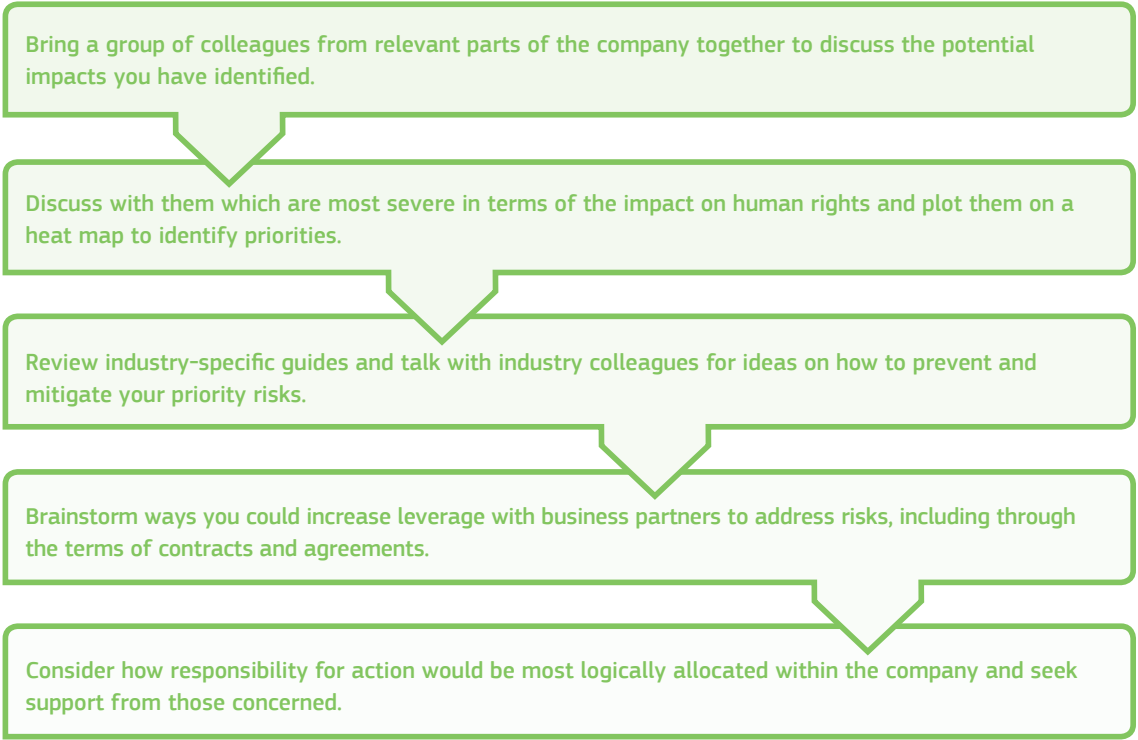
Example: Addressing Human Rights Issues as a Condition to Signing Government Agreements

Discussing legacy issues, especially those related to conflict, humanitarian crises or pandemics, can be sensitive for host governments in their dealings with O&G companies. Governments may fear implying that they accept certain responsibilities that could then be used against them. At the same time, O&G companies need to understand any risks that their exploration and production activities may aggravate an often complex set of pre-existing human rights issues.

Several O&G exploration companies entering a post-conflict zone secured an agreement from the government to have an independent third party clear land mines, as a pre-condition to starting operations. Another company sought an independent human rights risk assessment that included HIV-related issues, before signing a contract with the government. The assessment led the company to adopt a more stringent code of conduct with contractors. In both cases the companies were able to address the risks by demonstrating the benefits this would bring to the government as well.

Where to Start

For companies that are just starting to focus on integrating and acting, the following are some preliminary steps to consider:



Questions to Ask

The following questions correspond to sub-sections A, B, C, D and E above. They should help test the extent to which the company's processes to integrate and act on the results of its assessments are consistent with the Guiding Principles:

III-A	Building a Systematic Approach to Integrating and Acting <ul style="list-style-type: none"> ▶ How do we involve those staff whose work relates to our potential impacts in finding ways to address them? ▶ Are there ways in which we can help share learning across different operating sites about effective options for preventing and mitigating impacts?
III-B	Prioritising Impacts for Action <ul style="list-style-type: none"> ▶ Do our existing processes prioritise which human rights impacts we address first based on their severity? If not, how could we adjust them to do so? ▶ How do we take account of how the local operating context or specific business relationships may increase the severity or likelihood of a potential impact?
III-C	Identifying Options to Prevent or Mitigate Potential Impacts <ul style="list-style-type: none"> ▶ How do we address risks from the earliest stages of our involvement in a project? ▶ How do we identify the most appropriate options for addressing impacts we may cause or contribute to? ▶ How do we take account of impacts that may be linked to our operations, but without any contribution on our part, and identify ways to reduce these risks?
III-D	Creating and Using Leverage in Business Relationships <ul style="list-style-type: none"> ▶ What processes do we have for building leverage into our business relationships from the earliest stages? ▶ What guidance on human rights do we provide to staff who negotiate contracts with business partners (joint ventures, host governments, suppliers, contractors)? ▶ Is there more we could do to generate leverage in order to reduce our human rights risks? ▶ How can we learn from peers and stakeholders about the options that may exist?
III-E	Acting in High-Risk Contexts <ul style="list-style-type: none"> ▶ Do staff understand the need to try to honour the principles of internationally recognised human rights even where they appear to conflict with national law? How do we manage this in practice? ▶ What additional steps do we take in conflict-affected areas to address the increased risks of involvement with human rights impacts, including risks of exacerbating conflict? ▶ How do we prepare staff for handling dilemma situations and internalise any learning they offer?

Tracking Performance

What do the UN Guiding Principles Expect?

- ▶ Companies need to track their responses to actual and potential human rights impacts to evaluate how effectively they are being addressed.
- ▶ Tracking should be based on appropriate qualitative and quantitative indicators and draw on internal and external feedback, including from affected stakeholders.

Why is this Important?

- Tracking how well the company is managing its human rights risks is the only way the company can really know it is respecting human rights in practice.
- Tracking is a crucial dimension of continuous improvement – it helps the company identify trends and patterns; it highlights recurring problems that may require more systemic changes to policies or processes, as well as good practices that can be shared across the company.
- Tracking is also essential for the company to be able to communicate accurately to all its stakeholders about what it is doing to meet its responsibility to respect human rights.

What are the Steps Involved?

A Building a Systematic Approach to Tracking

Developing Indicators

B

Incorporating Stakeholder Perspectives

C

Tracking through Business Relationships

D

Key Points for Implementation

- ▶ Processes for tracking can be designed just for human rights, or can be integrated into the company's processes and systems for tracking other issues.
- ▶ Tracking processes should draw on relevant internal and external sources in order to build as accurate a picture as possible; they should include both quantitative and qualitative indicators.

Possible Approaches

- **Benefiting from the company's other tracking systems:** O&G companies may find it helpful either to learn from or build on any existing systems it has for tracking its performance in areas related to human rights. Examples include:
 - Health and safety;
 - Environmental management;
 - Ethics and compliance;
 - Reviews of security providers, including adherence to the [Voluntary Principles on Security and Human Rights](#);
 - Internal control audits;
 - Self-assessments at the business unit level;
 - Reviews by external third parties.

Some of these processes or systems will already track how the company manages certain human rights risks. Similarly, companies may be tracking human rights issues as part of their compliance with home or host state regulations, with the requirements of stock exchanges or project financiers, or with reporting standards they have chosen to follow. The company could map those issues being tracked against the company's leading human rights risks to see whether and where there are gaps they need to fill.

As in other areas of human rights due diligence, it is important to keep in mind the distinct features of human rights. For example, tracking processes should take full account of stakeholder perceptions of the company's human rights performance, and not just of "facts" as determined by the company. This requires particular attention to feedback from affected stakeholders (see [Section IV-C](#) below).

- **Tracking at site and corporate levels:** Much of the information for tracking performance will be at the site level. For larger companies, information may also come through engagement at the corporate/head office level with international NGOs, global or regional trade unions, or socially-responsible investors. Companies will want to ensure that this information is brought together and evaluated.

It will be particularly important for the corporate/head office level to be able to keep track of more severe human rights risks and impacts at different sites. Companies' experience in tracking safety incidents may provide a useful precedent, with scorecards and/or major incidents typically brought to the attention of top management or the Board.

- **Conducting root cause analysis:** Where a severe human rights impact has occurred, or lesser impacts occur repeatedly, O&G companies should consider a deeper analysis of the underlying or "root" causes of the incident. Initial impressions may suggest that the company's own actions or decisions had nothing to do with the impacts; but in some cases a deeper analysis might reveal that it did in fact play a role, and show how it could help prevent the same thing from recurring. Many O&G companies already have experience of applying root cause analysis to major health and safety or environmental incidents. They may be able to adopt and adapt these methodologies for human rights issues as well.

Example: Using Security Indicators to Improve Company Performance

One company has used extensive indicators focused on security and human rights to monitor, evaluate and improve the social performance of a specific high-risk project. These include yes/no, frequency and open-ended indicators to look at: human rights risk and impact assessments; legal, contractual and training measures; monitoring and oversight; equipment transfers; and actions taken in response to human rights incidents.

An assessment against these indicators identified opportunities to improve the company's management of private security contractors. It enabled a thorough understanding of existing community tensions and conflicts and the potential for the project's socioeconomic impacts to exacerbate such conflicts or ignite new ones. This resulted in a strategy to prevent security incidents, rather than just protect company assets.

- **Designing tracking systems to encourage company-wide engagement:** Tracking systems can be a tool that encourages other departments to engage actively in responding to impacts. For example:

- A tracking system may provide data that shows cause and effect between increased demands by procurement and code breaches by suppliers, or between certain activities of construction staff and complaints from communities. This evidence can help engage the relevant departments in addressing problems and avoiding their recurrence;
- A tracking system might require that a function or department be given responsibility for investigating an impact, create automatic deadlines for a response or update, and elevate the issue to senior management if deadlines are missed. This can help stimulate active engagement from those concerned.

Systematising tracking in this way can emphasise the relevance of human rights issues for the whole company. It can encourage staff to think preventatively and not just in terms of responding when issues arise.

- **Linking human rights performance data to staff performance assessments:** Good human rights performance data can help drive continuous improvement within an O&G company. This may be most effective where that data is factored into performance assessments for functions/departments as well as individual staff, across all those parts of the business that influence human rights risks. For example:

- The company might require a country-level manager to sign-off on an annual review that includes a site's human rights performance;
- If an investigation shows that the actions of certain staff contributed to a severe human rights impact, this could lead to an appropriate sanction, whether financial or non-financial;
- Where actions by staff help prevent a severe human rights impact, this could be the subject of a financial or non-financial reward, showing that the company values attention to human rights issues.

IV B

Developing Indicators

Key Points for Implementation

- ▶ Quantitative indicators offer precision and can often fit more easily with existing systems for tracking company performance.
- ▶ However, because respect for human rights is about impacts on people, qualitative indicators will also be important. This includes feedback from potentially affected stakeholders wherever possible.

Possible Approaches

- **Sources of inspiration for indicators:** Indicators need to make sense in the local contexts where O&G companies are operating. Useful sources can include:
 - Identifiable trends or patterns, such as repeat types of incidents. These might be at one site, suggesting local lessons, or across a number of sites, offering lessons for the company as a whole;
 - Feedback from local staff, who have “boots on the ground” or live in local communities and may see and hear things that management cannot;
 - Behavioural indicators that help predict future impacts. For example, if staff are disrespectful of local communities, this is often a leading indicator that human rights risks may not be identified or managed;
 - Feedback from affected stakeholders, including vulnerable or marginalised groups that can help the company understand how it is perceived;
 - The identification of differential impacts on women and men, or on people from different minorities, religions or castes.
- **Balancing quantitative and qualitative indicators:** Good quantitative indicators can be useful in conveying concisely how well a company is managing human rights risks. They may be particularly helpful in O&G companies, where so many staff have scientific/engineering backgrounds and may be most comfortable with numerical data. Just as O&G companies report safety incidents involving on-site employees and contractors and track the number of days since the last incident occurred, they could do the same for incidents affecting local communities.

However, qualitative indicators will often be essential in helping an O&G company interpret quantitative data on human rights performance. For example, a relatively low number of complaints raised through a company grievance mechanism may reflect a reduction in incidents, or a lack of trust in the mechanism. Feedback from potential users of the mechanism will be essential to understand which interpretation is correct.

- **Balancing outcome-focused and process-focused indicators:** Many indicators will look at incidents or impacts that have already occurred. These will certainly be relevant to tracking performance. However, process indicators are also important in interpreting data. For example, an indicator that shows community agreement to resettlement plans is better understood when reviewed against an indicator for stakeholder consultation processes. A community’s “agreement” will be understood differently – on the one hand where processes allow staff to sign agreements with self-identified leaders who claim to speak for communities; and on the other hand where processes require open, informed and inclusive discussions with communities, together with their leaders.
- **Indicators for training:** Many O&G companies place an emphasis on training staff in human rights compliance. It may therefore be valuable to develop measures that test the effectiveness of training, beyond simply tracking the number of staff trained. This might focus on assessing how well participants understand what they learned and how far they put the learning into practice in their work. This could be assessed, for example, using baseline surveys pre and post-training, and at a follow-up point some months later.

Resources: Developing indicators

To date there are no publicly-available indicators that fully reflect the UN Guiding Principles. However, recent sector-specific initiatives by the Global Reporting Initiative (“GRI”), and by IPIECA, the American Petroleum Institute (“API”) and the International Oil and Gas Producers Association (“OGP”), may help identify indicators that can be tested against the Guiding Principles and further expanded.

- ▶ Global Reporting Initiative, [G4 Sustainability Reporting Guidelines and Oil and Gas Sector Supplement, v3.1](#)
- ▶ IPIECA, API and OGP, [Oil and Gas Industry Guidance on Voluntary Sustainability Reporting](#).

Example: Empowering Communities to Evaluate Company Performance

One extractive company is using a “Community Scorecard” to achieve a more effective means of listening to and engaging with affected communities. At regular community forums, the company provides updates on its activities, followed by questions and answers with communities. The company then provides performance metrics, based on verifiable data, across five areas the community has rated as a priority: environmental performance, local hiring, safety, transparency and leaving a positive legacy for the community. During the sessions, communities rate the company’s performance across the five priority areas: ‘exceed expectations’, ‘meet expectations’, ‘below expectations’, or ‘need more information’. The Scorecard uses wireless remote push button technology that allows the company to capture feedback in real time and display it for attendees. They then discuss the feedback they are seeing, and the communities offer ideas on how the company can improve. The results are aggregated and shared publicly, including every six months in local newspapers.

The company holds enough forums to ensure a sample size that reflects the ideas and opinions of the broader communities. Community feedback indicates that members see the voting system as giving them ‘voice’, particularly for people who are normally quiet in public settings on public issues. The company sees these efforts as helping it become the project developer of choice, and adding value to its options for growth.

Example: Independent Advisory Groups

Independent advisory groups can play a useful role either in providing independent advice on human rights (and related social/environmental) issues across a company's operations, or on a more targeted basis in regard to certain high-risk projects.

One company established a high-level external panel in connection with the construction of a pipeline that had been the subject of stakeholder concern. The panel was appointed by the CEO to provide objective advice to the company on the economic, social and environmental impacts of the project and of its other activities in the relevant region. Its tasks included: reviewing the company's plans to manage the project's impacts both along the pipeline and at the regional level; examining the application of the company's policies regarding the project; critically appraising the project's impacts; and making recommendations for improvement. The panel was supported by technical experts who reported directly to it. It conducted annual visits to the affected countries and consulted directly with a wide range of stakeholders. It issued annual public reports with recommendations, to which the company responded publicly.

IV C

Incorporating Stakeholder Perspectives

Key Points for Implementation

- ▶ External perspectives on the company's performance can provide important verification of its own evaluation, and may identify indicators it would otherwise miss.
- ▶ The perspectives of potentially affected stakeholders are particularly important for understanding how well the company is managing the risks of impacting their rights.

Possible Approaches

- **Involving stakeholders:** There will always be subjective elements to evaluating how well a company is meeting its responsibility to respect human rights in practice. Involving stakeholders directly in tracking processes can test the company's assumptions on how well it is doing, and lend credibility to the conclusions reached.

O&G companies could consider a number of possible approaches, including:

- Working with trade unions locally or at the global level (potentially through a Global Framework Agreement), and with other civil society actors, to monitor workers' human rights and assess the effectiveness of existing auditing approaches;
 - Setting up structured joint fact-finding or monitoring programs with independent experts, civil society representatives, or panels of local community members (with training and support where needed);
 - For particularly large or complex projects, forming national or international advisory panels consisting of experts, trade union and civil society representatives to provide periodic, formal reviews of performance. These can also incorporate feedback from affected stakeholders;
 - Where there is a history of company-community or management-worker distrust, identifying an individual or organisation that all parties will trust to provide accurate assessments of the company's efforts to address its impacts.
- **The role of operational-level grievance mechanisms:** Local-level grievance mechanisms can provide an important channel for affected communities to express any concerns about impacts and how they are being addressed. Equivalent mechanisms for workers can play a similar role. Workers at the site level can be important sources of feedback regarding both impacts on their own human rights, and impacts on communities. As always, such mechanisms must not undermine the role of legitimate trade unions. (For more on grievance mechanisms, see [Section VI](#)).

The company's tracking processes or systems will benefit from integrating this information, while respecting confidentiality and taking steps to prevent retaliation.

Key Points for Implementation

- ▶ When a company's business partners see that it follows up on their human rights performance, this makes clear that the terms of their contracts or codes are not just "lip service" but an important part of how the company intends to do business.

Possible Approaches

- **The role of contracts:** Including monitoring requirements in contracts can be an effective way of tracking how business partners are managing the risks of human rights impacts. Joint venture JV agreements can incorporate provisions on monitoring and reporting to JV partners on certain topics, including human rights. Contracts with suppliers and contractors, including private security providers, can provide for auditing or assessments of their compliance with internationally-recognised human rights. Once the company has the monitoring information, it can use it to seek any necessary improvements with business partners.
- **Securing meaningful audit data about suppliers and contractors:** Systems for monitoring and auditing suppliers are common in many industries. They can provide useful and necessary "snap-shot" data about suppliers' performance. However they are also seen to have a number of limitations:
 - They often miss issues due to their brief nature;
 - They may fail to grasp the bigger picture or root cause of repeated human rights impacts;
 - Suppliers who wish to manipulate records often do so successfully;
 - Workers may exercise self-censorship in audit interviews, due to intimidation or fear;
 - These processes have a poor record in generating sustainable improvements across a range of human rights over time.

There has therefore been a move among consumer goods industries towards more "partnership-based" and collaborative approaches to their suppliers. These complement, and may in some instances even replace, audits. They often include:

- Supporting or analysing the root cause(s) of significant impacts. This can test the conclusions drawn from audits and find any underlying problems;
- Assessing not only suppliers' compliance with internationally-recognised human rights in terms of "outcomes" achieved, but also the quality of their forward-looking management systems to identify and address their own human rights risks;
- Sharing the buying company's own experience in managing human rights risks, including lessons for effective indicators and tracking systems;

Resources: Tracking Supplier/Contractor Performance

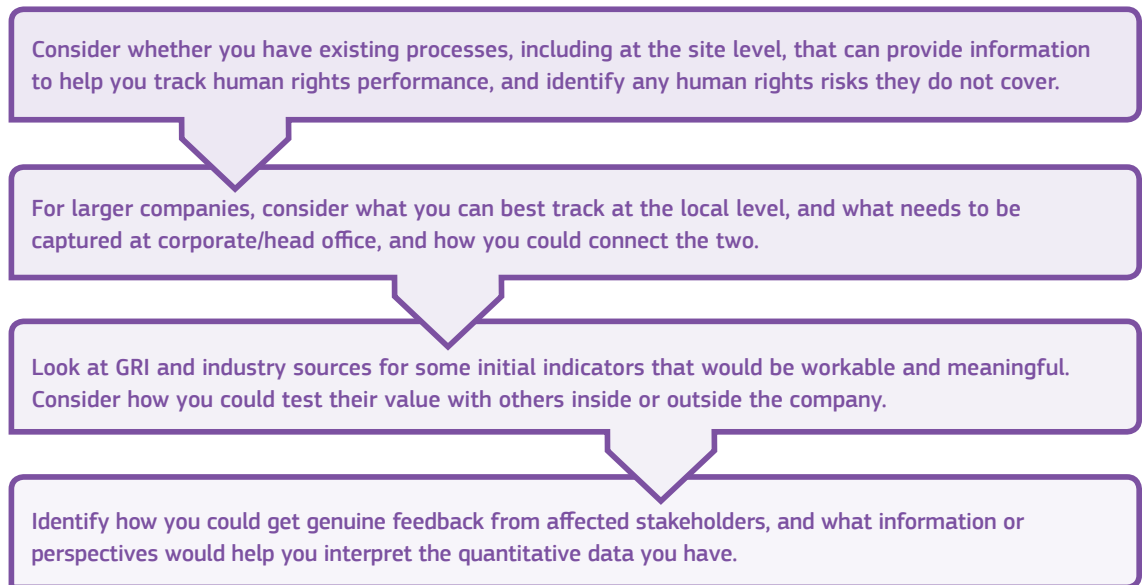
- ▶ The Fair Labor Association [Workplace Code of Conduct and Compliance Benchmarks](#), and the Ethical Trading Initiative [Base Code](#) have compliance benchmarks that may be helpful to O&G companies looking for indicators against which to assess their suppliers or contractors in relation to labour and environmental standards.
- ▶ The [Implementation Guidance Tools](#) on the Voluntary Principles provide suggestions for monitoring the performance of private and public security providers.

- Sharing data that helps suppliers see the business case for addressing human rights risks in their own operations.

O&G companies may benefit from these experiences as they develop or refine their own approaches to supply chain audits. Given the sheer number of suppliers that a large company may have, it may be most realistic and productive to focus these efforts on suppliers that have the greatest human rights risks, whether due to the nature of their products, services or operating context. Some O&G companies already adopt similar approaches in their monitoring of private security providers; these may also be applicable to relationships with public security.

Where to Start

For companies that are just starting to focus on tracking their human rights performance, the following are some preliminary steps to consider:



Questions to Ask

The following questions correspond to sub-sections A, B, C and D above. They should help test the extent to which the company's tracking processes are consistent with the Guiding Principles:

IV-A	Building a Systematic Approach to Tracking <ul style="list-style-type: none">▶ How do we ensure that our indicators of performance are adequate and complete and that we have a true picture of our performance on human rights over time?▶ When and how do we use root cause analysis to understand more about severe impacts and how to prevent their recurrence?▶ How do we integrate lessons we learn through tracking our performance into our policies and processes, as part of continuous improvement?
IV-B	Developing Indicators <ul style="list-style-type: none">▶ What sources do we look to for indicators that will help build a true picture of our performance?▶ How do we relate process-focused indicators to outcome-focused indicators, and qualitative indicators to quantitative indicators, to ensure we are interpreting data accurately?▶ Do our indicators capture our responses to impacts on potentially vulnerable or marginalised groups and, where possible, differential impacts on men and women?
IV-C	Incorporating Stakeholder Perspectives <ul style="list-style-type: none">▶ How do we draw external perspectives, such as those of directly affected stakeholders or civil society groups, into our evaluation and understanding of our human rights performance?▶ Where we have operational-level grievance mechanisms, how do we draw on the learning they offer as part of our wider efforts to track performance?
IV-D	Tracking through Business Relationships <ul style="list-style-type: none">▶ To what extent are we able to build provisions for tracking into contracts with business partners, including security providers, other contractors or suppliers, as well as joint venture partners?▶ How might we supplement our audits of those contractors or suppliers that pose greatest risks to human rights with initiatives to support improvements over time?

Communicating Performance

What do the UN Guiding Principles Expect?

- ▶ Companies need to be prepared to communicate externally in order to account for how they address their impacts, particularly when concerns are raised by, or on behalf of, affected stakeholders.
- ▶ Companies that may have severe human rights impacts should report formally on how they address them.

Why is this Important?

- It is by knowing and showing that they respect human rights in practice that O&G companies build trust in their performance, demonstrate their reliability as partners, and gain a sustainable “social license to operate”. More widely, it is part of being accountable for how they do business, not least to those who may be impacted.
- Increasingly, shareholders and civil society stakeholders expect companies to provide information on their human rights performance; companies and governments pay attention to these issues when deciding who to do business with; and regulators and stock exchanges look for meaningful non-financial reporting.

What are the Steps Involved?

A Building a Systematic Approach to Communicating

Deciding Who Communicates What, to Whom, and How

B

Considering and Improving Formal Reporting

C

Building a Systematic Approach to Communicating

Key Points for Implementation

- ▶ The purpose of communicating is to provide an appropriate level of transparency and accountability about how the company addresses its human rights impacts.
- ▶ To communicate effectively, a company needs to have the necessary information available – drawing on all the earlier phases of the due diligence process.

Possible Approaches

- **Adopting consistent approaches to communication:** Companies need to be prepared to respond to the concerns of affected stakeholders. It may be helpful for O&G companies to define some general criteria for deciding what to communicate to whom, when and how. This can help establish a predictable and consistent approach and ensure that communication with key groups does not get forgotten in the midst of handling a particular incident.

It can also be useful to have clear criteria for any decision not to communicate in response to an allegation of a human rights impact. This can be a legitimate choice, but there remains the risk that a lack of communication will strengthen stakeholder views that an allegation is correct.

- **Balancing transparency and confidentiality:** It will generally be easier for companies to build trust in their efforts to respect human rights if they can be open about problems and show that they take responsibility when things go wrong. If a company makes broad assumptions about the need for confidentiality or the legal risks of disclosure, it may miss opportunities to disclose information that can further reinforce that trust. It may therefore be useful to set the default assumption in favour of disclosure, with a justification needed to withhold information, rather than the reverse.

A number of developments illustrate the growing movement towards more disclosure, including:

- Increasing expectations with regard to revenue transparency, not least in the context of the [Extractive Industries Transparency Initiative](#);
- Provisions regarding transparency of O&G contracts under the IFC's revised [Policy on Environmental and Social Sustainability](#) and [Access to Information Policy](#);
- National laws on transparency;
- The [Principles for Responsible Contracts](#) developed under the mandate of the former UN Special Representative, which recommend disclosure of the terms of investment contracts and state that any exceptions require "compelling justifications" (see [Section III-D](#)).

There may nevertheless be legitimate reasons for the non-disclosure of information, notably:

- Potential risks to affected stakeholders or staff;
- The legitimate requirements of commercial confidentiality which may include, for example:
 - > Commercially-sensitive information during negotiations regarding a significant business transaction;
 - > The necessary protection of intellectual property;
 - > Information legally protected against disclosure to third parties;
 - > Sensitive investigations and internal discussions regarding alleged involvement in human rights impacts.

There is often particular interest from stakeholders in a company's assessments of its potential human rights impacts. Equally, companies may be concerned about communicating the results of these assessments. This may be due to risks to individuals identified in the assessments; sensitive views expressed about other companies, governments or organisations; concerns about unknown future legal implications; or a combination of all three.

Where a company judges it difficult to share information from these assessments, there may be other ways it can provide stakeholders with some assurance. For example, it might invite an independent third party to:

- Review the company's assessment processes and report publicly on them;
- Do their own public assessment of a project's impacts, to which the company can respond.

Key Points for Implementation

- ▶ Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholder and formal public reports.
- ▶ Communication needs to be appropriate to the company's impacts – in terms of its form, frequency, accessibility, and the adequacy of information provided.
- ▶ Formal reporting is necessary where risks of severe human rights impacts exist.

Possible Approaches

- **Communicating general or specific information:** The focus of communicating is on explaining the company's approaches to addressing human rights impacts. This can include both its on-going responses to existing issues and its efforts to improve prevention. Different types of information are likely to be appropriate to different audiences, for example:
 - Communicating with affected stakeholders about a particular local incident or risk and how the company is dealing with it. Timely and accurate information will be particularly important when an incident may have an immediate effect on local stakeholders. O&G companies typically have strict response procedures regarding on-site health and safety incidents, which may provide a useful precedent to follow;
 - Communicating with broader stakeholder groups, for example international NGOs or trade unions as well as shareholders, about the company's response to a significant human rights issue, such as threats to the life of trade unionists or a major oil spill;
 - Communicating with shareholders and the wider public about the company's general policies and processes to respect human rights, illustrated by examples, relevant statistics and other indicators.
- **Distinguishing between communication and consultation:** Communicating how a company addresses human rights risks can be a one-way exercise, for instance:
 - Providing an update on developments of interest to affected stakeholders, such as land acquisitions;
 - Providing periodic statistics on the company's performance on health and safety;
 - Providing feedback on the outcomes achieved through an operational-level grievance mechanism.

This kind of communication is distinct from consultations with potentially affected stakeholders for the purposes of assessing or addressing impacts. Meaningful consultation requires two-way dialogue, with the company listening and responding to the concerns of potentially affected stakeholders, rather than just conveying information (see [Section II-E](#) above). It is also distinct from broader stakeholder engagement, designed to build relationships and mutual understanding, without any particular agenda for discussion.

- **Deciding who communicates:** The objectives of traditional public relations are different from the objectives of communicating how the company handles human rights risks. Communicating on human rights is first and foremost about accountability. The experience of O&G companies shows that it is often best to empower those who engage daily with workers and communities to take a role in communicating the company's efforts to address impacts. Controlling this information centrally can be damaging to these relationships. It can also lead to inconsistent messages between community relations and public affairs staff, or between the local and corporate/head office levels. This may undermine confidence in what the company is saying and its motives for saying it.

- **Fitting form to purpose:** The form of an O&G company's communications should fit their purpose. For example:
 - If the purpose is to communicate with affected stakeholders, then an in-person meeting may be most appropriate;
 - If the purpose is to explain to shareholders and others how the company is addressing a specific risk, or human rights risks generally, then communication via an annual general meeting, website updates or electronic mailing lists may all be appropriate.
- **Communicating with potentially affected stakeholders:** Communicating with potentially affected stakeholders requires sensitivity to how they access and use information. Like stakeholder consultation, it is usually best done by staff at the site level who know the workers or communities in question. Important considerations include:
 - Language barriers, for example where indigenous populations are part of the audience;
 - Literacy barriers, where less educated populations may need information in non-written forms;
 - Cultural barriers, for example where women, ethnic groups or youth workers may be excluded from meetings;
 - Physical barriers, for example if community members are required to travel a long way to a meeting, at the expense of earning their livelihoods.

Social dialogue structures can provide an optimal means of communicating with the company's own workforce.



Considering and Improving Formal Reporting

Key Points for Implementation

- ▶ Formal reporting is likely to be appropriate for most O&G companies, given the human rights risks inherent in many of the industry's activities and in many of its operating contexts.

Possible Approaches

- **The case for formal reporting:** Formal reporting by O&G companies is usually led by the public affairs function or the function that leads on sustainability/corporate responsibility. It can provide a valuable opportunity to:
 - Engage other parts of the company in a review of its human rights performance;
 - Raise awareness of the need for clear data and analysis;
 - Present information in ways that gives both internal and external readers of the report a clear and meaningful picture.

In some countries O&G companies will be required to report on their non-financial performance either by law or by the terms of a stock exchange on which they are listed. The number of countries where this is the case is growing, and human rights are increasingly named as one of the areas that should be included in reports. Even where O&G companies are not required to report formally on their non-financial performance, doing so can carry benefits. In their publication [Oil and Gas Industry Guidance on Voluntary Sustainability Reporting](#), IPIECA, API and OGP set out a strong rationale for formal reporting, including:

Resources for formal reporting:

Resources for non-financial reporting for the O&G sector include:

- ▶ IPIECA, API and OGP: Oil and Gas Industry Guidance on Voluntary Sustainability Reporting
- ▶ IPIECA, Sustainability Reporting: Communicating Performance
- ▶ ARPEL: Communications and Reporting Manual
- ▶ US Securities & Exchange Commission, Final Rule Requiring Payment Disclosure by Resource Extraction Issuers

A number of companies use the Global Reporting Initiative (GRI) criteria. GRI released the G4 version of its Sustainability Reporting Guidelines in 2013, which:

- Recognise the importance of due diligence and identify links to the UN Guiding Principles;
- Encompass impacts arising throughout a company's value chain;
- Encourage a focus on the materiality of information being reported.

In addition, O&G companies will want to look at the GRI Oil and Gas Sector Supplement, v3.1

The GRI and IPIECA, API, OGP reporting frameworks are largely aligned, though there are some differences: see GRI G3.1 OGSS Content Index Cross-Referenced to IPIECA Guidance

- **“enhanced business value** as investor confidence grows in response to evidence that the company is managing important risks and positioning itself to take advantage of emerging opportunities;
- **improved operations** as employees develop a deeper understanding of a company's sustainability values, and performance indicators provide insight to support continuous improvement;
- **strengthened relationships** as local community leaders, civil society representatives, government officials and regulators, and other key stakeholders learn how the company responsibly manages sustainability issues; and
- **enhanced trust and credibility** as customers, suppliers and the wider society understand the company's brand, operations and products.”

- **The form of formal reporting:** Formal reporting on human rights performance can be part of either a self-standing annual Sustainability/Corporate Responsibility Report or of an integrated report on financial and non-financial performance. Including financial and operating information in a non-financial report helps provide important business context for what is said about human rights. Including robust human rights metrics in a financial report can help demonstrate that respecting rights is seen as integral to the bottom line. Forms of formal reporting are evolving from traditional annual reports to include online updates and formats that allow readers to extract information of most interest to them.

- **Materiality in formal human rights reporting:** In the context of formal public reporting, the concept of “materiality” is used to identify issues that are significant enough to require disclosure. In financial reporting, “materiality” has traditionally been defined in terms of information that may affect the decisions of a “reasonable investor”. Definitions of materiality in the context of non-financial reporting – including the Global Reporting Initiative's reporting standards – incorporate the perspective of other stakeholders as well by requiring the disclosure of information that would substantively influence their decisions.

The Guiding Principles do not offer a particular definition of materiality in the context of human rights reporting. What matters is that it should be informed by both the **severity** of impacts (actual or potential) and the perspective of stakeholders, including potentially affected stakeholders.

- **Improving formal reporting:** There has been growing recognition of the need for better company reporting of non-financial risks. As the IPIECA guidance states: “a report that tends to tell just ‘good news’ is unlikely to be seen as providing a credible and complete picture”. Stakeholders will welcome a more candid explanation that acknowledges challenges the company faces and clearly explains the processes through which it addresses them. This might include more detailed reporting on sites that are a particular focus of concern, or using case studies to discuss company-wide or repeated challenges. Institutional investors increasingly seek such information in order to be able to meet their own responsibility to respect human rights.

Reporting by O&G companies on human rights often focuses largely on social investments. This will be relevant information and these investments can make valuable contributions to societies. However, they often relate to the promotion or fulfilment of human rights. They may not provide information about how the company is respecting human rights in its own activities and through its business relationships. Useful information in this respect might include:

- A description of the company's key policies and processes for addressing human rights risks;
- Information on the company's different types of business relationships, and examples of how it reduces any risks that these relationships lead to human rights impacts;
- A description of its grievance mechanisms and/or other remediation processes, and statistics or examples of the outcomes they have achieved;
- Information on those risks the company has identified as its leading human rights risks and specific information on policies or processes for addressing them;
- Information on severe impacts with which the company has been involved, how they have been addressed and any lessons learned;
- Information on other issues identified as important by key stakeholders, whether affected stakeholders or broader civil society stakeholders and investors.

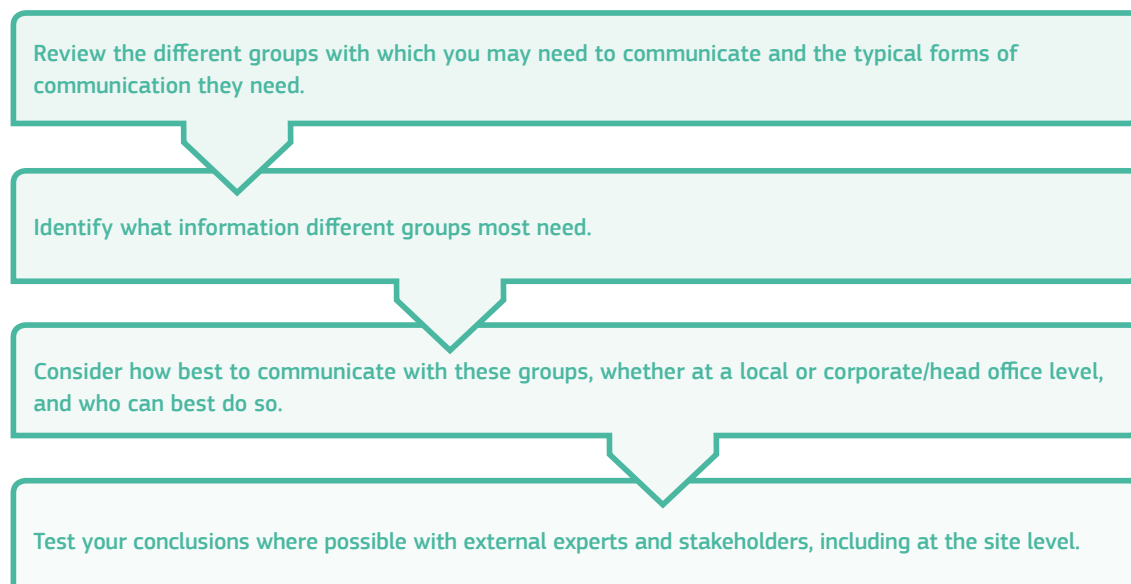
It will take time for any O&G company to implement the Guiding Principles. It can be most helpful to readers for formal reporting to indicate both what has been achieved and any plans to improve or introduce new processes. An ability to compare the company's reporting over time can also be useful. At the same time, reporting frameworks may need to evolve in response to new developments and approaches. Reporting against targets can help demonstrate a commitment to continuous improvement in respecting rights, while recognising that it can be a long-term process.

The IPIECA guidance, which is widely used by O&G companies that report formally on their performance, recommends:

- Setting the context by explaining the company's high-level vision and strategy, as well as its governance and relevant management systems (providing an opportunity to demonstrate top-level commitment);
- Incorporating data from appropriate indicators into a narrative;
- Paying attention to the consistency of reporting boundaries across operations and relationships, explaining the quality of information contained in the report, and separating upstream from downstream activity reporting;
- Seeking to incorporate stakeholder input to the development of the report at relevant stages from pre-production to post-publication.

Where to Start

For companies that are just starting to focus on communicating their human rights performance, the following are some preliminary steps to consider:



Questions to Ask

The following questions correspond to sub-sections A, B and C above. They should help test the extent to which the company's communication processes are consistent with the Guiding Principles:

V-A	Building a Systematic Approach to Communicating <ul style="list-style-type: none"> ▶ How do we ensure a consistent approach to our communications with stakeholders – both affected stakeholders and others? ▶ How do we decide where the boundaries of transparency and confidentiality should lie and whether we can increase the amount and types of information we share? ▶ Where confidentiality is necessary, what other means do we have of providing stakeholders with assurance about our processes and performance?
V-B	Deciding Who Communicates What, to Whom and How <ul style="list-style-type: none"> ▶ How do we identify the appropriate ways to communicate with different stakeholder groups, and what factors do we take account of in doing so? ▶ How do we make sure that those who lead on communication with stakeholders have the right skill sets for doing so with the different groups concerned? ▶ Do we test our approaches to communication with external stakeholders to ensure they are effective and appropriate? If not, how might we do so?
V-C	Considering and Improving Formal Reporting <ul style="list-style-type: none"> ▶ What reasons might there be for considering some level of formal reporting on our human rights performance, in particular on our processes for addressing human rights risks? ▶ If we report formally, how do we decide what information to include? Are there additional kinds of information that might be relevant and useful? ▶ How can we build consistency and comparability in the information we report on over time?

Remediation and Operational-Level Grievance Mechanisms

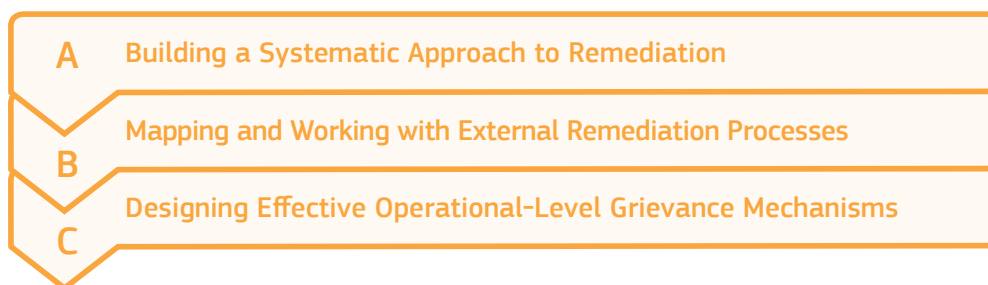
What do the UN Guiding Principles Expect?

- ▶ Where a company identifies that it has caused or contributed to negative human rights impacts, it should provide for or cooperate in their remediation through legitimate processes.
- ▶ Companies should establish or participate in effective operational-level grievance mechanisms for stakeholders who may be negatively impacted by their activities, in order that grievances may be addressed early and remediated directly.

Why is this Important?

- Unless a company actively engages in the remediation of impacts it has caused or contributed to, it cannot fully meet its responsibility to respect human rights.
- Negative impacts may occur despite a company's best efforts, given the complexity of operations and business relationships involved.
- Companies need to be prepared for this situation so they can respond quickly and effectively. Strong remediation processes can help prevent impacts from increasing or conflicts from resulting.

What are the Steps Involved?



Example: Using Grievance Mechanisms to Embed Shared Responsibility for Respecting Human Rights

Some O&G companies have tailored their existing databases to track how grievances are advanced through the system and build in a certain “automaticity”.

At one company, once a grievance is registered, the department responsible for the subject of the complaint is identified and an individual is listed as responsible for investigating the issues. If they have not responded by a set deadline, the system automatically sends a notification to their senior management. This creates incentives for all departments not only to keep to the timelines, but also to understand that the management takes the handling of grievances seriously. It avoids grievances being pigeon-holed as something that the external relations department has to resolve, and makes them the responsibility of the department whose activities allegedly lie at the source of the grievance. As with leading O&G companies’ approach to health and safety issues, this helps make respect for human rights part of everyone’s responsibility.

VI A

Building a Systematic Approach to Remediation

Key Points for Implementation

- ▶ Having systems in place to enable remedy shows that the company is able to restore respect for human rights quickly and effectively, should impacts occur.
- ▶ One of the most systematic ways for a company to provide for the remediation of impacts is through an operational-level grievance mechanism.

Possible Approaches

- **Defining “remediation” and “remedy”:** Remediation is the process of providing a remedy for a harm. Remedy can take a variety of different forms, including apologies, restitution, rehabilitation, financial and 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. While some forms of remedy are more likely in a judicial mechanism, many are possible through non-judicial processes as well.

Companies should try to understand how those who have been impacted view different remedial options and which they consider to be most effective in their own circumstances. An O&G company will generally find it helpful to discuss this directly with complainants and explore available options whenever this is possible. It can be important to ensure a complainant has her own sources of advice, to ensure she feels informed in reaching a view on remedy.

Where no agreement can be found on an acceptable remedy, it will usually be most appropriate for a legitimate, independent mechanism to reach a final decision. This may be through the courts or an administrative proceeding or some other, mutually-agreed process.

- **The extent and limits of a company’s responsibility to remediate:** When a company has caused or contributed to a harm, it has a responsibility to cease its contribution and provide or contribute to a remedy. This can be through judicial processes or through non-judicial processes that are generally considered to be “legitimate”: including, for example, providing a fair and independent process, being accountable, and producing outcomes that are consistent with human rights. Remedy may also be provided through an “operational-level grievance mechanism” provided by the company (see [Section VI-C](#) below).

O&G companies do not have to remediate:

- (a) Impacts they have neither caused nor contributed to: it is the responsibility of those who have contributed to the impacts to provide for or cooperate in their remediation. However, where the impacts are nevertheless linked to the O&G company’s operations, it has a responsibility to use its leverage to prevent or mitigate the risk of the impacts continuing or recurring (see [Section III-D](#) above).

- (b) Impacts they are alleged to have caused or contributed to, where the company does not agree with that allegation. However, the company may need to investigate the issue to be sure of its position and should avoid obstructing legitimate processes to investigate and adjudicate the issue, through the courts or administrative proceedings.

This said, companies will want to pay careful attention to whether they might in some way have contributed to impacts by others in their value chain. This could include:

- Hiring security providers without due diligence that would have revealed they were likely to use inappropriate force;
 - Pressuring a supplier to deliver a product under terms that incentivised excessive working hours or unpaid overtime;
 - Engaging a contractor without requiring adequate environmental protections, creating risk to human health.
- **The rationale for a systematic approach to remediation:** Much of an O&G company's efforts regarding human rights will focus on preventing negative impacts from happening. But even with the best policies and processes in place, things can go wrong, for instance because:
 - An individual makes a mistake;
 - Unforeseen issues arise for which the company is not prepared;
 - A business partner, supplier, contractor or a government abuses human rights in connection with some aspect of the company's operations;
 - Stakeholder expectations change and previously agreed approaches are challenged.

Past or current impacts may come to a company's attention through its ongoing assessment processes as part of its human rights due diligence (see [Section II](#)). They may also become apparent through other channels, such as:

- Stakeholder engagement processes;
- Observations of staff on the ground;
- Feedback from other groups or organisations working with affected stakeholders (eg NGOs, trade unions);
- Academic researchers;
- Media reports.

O&G companies need to have clear processes in place to respond, often rapidly, to situations where human rights impacts occur or are alleged to have occurred. Otherwise, they may find themselves taking unconsidered, untested approaches to often delicate situations. This may result in affected stakeholders receiving inadequate remedy; impacts being created or increased; and relationships with those impacted being severely damaged.

Remedies may be provided through various processes, including through agreed procedures for land compensation and community resettlement; through negotiations with unions or other legitimate worker representatives; or through action plans to address problems found through audits or review processes. Remedies may also be provided through operational-level grievance mechanisms.

- **The role of operational-level grievance mechanisms:** An operational-level grievance mechanism is a formalised means for affected stakeholders to raise concerns about any impact they believe a company has had on them, in order to seek remedy. The mechanism should help to identify problems early, before they escalate, and provide solutions that include remedy to anyone impacted.

In the case of employees and other workers represented by trade unions, industrial relations processes involving management and those unions are themselves a form of operational-level grievance mechanism.

An effective grievance mechanism can support the company's due diligence process and help embed respect for human rights across the company, particularly by:

- Promoting internal discussions about impacts and how to address them – the process of designing the mechanism may already contribute to these discussions;
 - Helping identify impacts and understand them from the perspective of affected stakeholders – this can directly contribute to the company's impact assessment process;
 - Providing feedback on the perceived effectiveness of company responses to impacts – this can help the company track its performance;
 - Demonstrating that the company takes the concerns of affected stakeholders seriously – this can help build trust and reinforce relationships with affected stakeholders;
 - Providing accountability for human rights impacts – this is critical to embedding the company's commitment to respect human rights;
 - Improving the quality of information available to management about impacts, grievances and community relationships – this can help secure management support for the mechanism;
 - Illustrating where there may be weaknesses in company policies, procedures or practices – this can contribute to continuous improvement.
- **Site and corporate roles:** For O&G companies, the focus will be first and foremost on the development of mechanisms at the site level that can provide local solutions to local impacts. However, for larger companies with multiple sites, staff at the corporate/head office level may have an initial role in developing a policy, guidance or general templates or criteria to help sites design effective mechanisms. This should leave room for them to design mechanisms that are appropriate to their own context.

Whatever the exact form of mechanisms at site, it can be helpful to feed data about complaints and their outcomes back to the corporate/head office level in order to support tracking and learning not only at site level, but also across the company as a whole. As always, companies should respect confidentiality and take steps to prevent retaliation against complainants.

VI B Mapping and Working with External Remediation Processes

Key Points for Implementation

- ▶ Remediation processes provided by the state or third-party institutions can provide alternative channels for affected stakeholders to raise complaints. Complainants should be free to choose which available channels they wish to use.
- ▶ Existing remediation processes may also help shape an operational-level grievance mechanism. They may:
 - Illustrate local communities' preferred approaches to resolving grievances and defining remedy, which can inform the design of the operational-level mechanism;
 - Offer a formal point of recourse if an operational-level mechanism cannot achieve an agreed outcome.

Possible Approaches

- **Mapping the landscape of grievance mechanisms:** Operational-level grievance mechanisms are just one channel for addressing complaints that a company has caused or contributed to negative impacts on people. In most societies there are a range of other mechanisms available. These most typically include administrative and judicial mechanisms provided by the state. Additional mechanisms may be available where:

- The project is financed by an international financial institution with its own complaints system;
- The host state, or the home state of one of the JV partners, has a [National Contact Point](#) that deals with alleged breaches of the [OECD Guidelines for Multinational Enterprises](#);
- There is a [National Human Rights Institution](#) that can handle complaints regarding alleged company impacts on human rights.

Where trade unions are not legitimate or do not or cannot represent the whole workforce, other channels may be available, for example through local labour offices or nationally-recognised labour dispute resolution organisations.

Local communities, including indigenous communities, may have their own traditional ways of resolving grievances. An understanding of these can be particularly important to understanding how “remedy” is viewed in the local culture.

An O&G company will find it helpful to understand this landscape of grievance mechanisms at each of the sites where it operates. This includes understanding not only what exists, but how effective it is seen to be in practice. For example, if courts are generally viewed as corrupt or heavily overloaded, or if administrative mechanisms are physically remote from the site or take a narrow view of the complaints they will accept, this will affect the range of options for addressing complaints that arise.

Mapping the landscape of grievance mechanisms, and understanding cultural views of “remedy” also helps a company understand how an operational-level grievance mechanism might be positioned to add value and avoid undermining existing state-based processes.

- **Interacting with state-based and other external grievance mechanisms:** Complainants may choose to seek remedy for an alleged impact through the court system or an administrative proceeding, rather than approaching the company directly. A company has the right to contest allegations it believes are unfounded or inaccurate. In contexts where the courts are seen as weak or even corrupt, it may be helpful for the company to try to demonstrate it is not trying to influence the due legal process while defending its position.

In some situations, O&G companies may find it useful to build recourse to state-based grievance mechanisms into their own processes for handling grievances. For example a company might agree with local communities that if no remedy to a complaint can be agreed, both parties will ask a mechanism such as a [National Human Rights Institution](#) or a state agency for environmental protection to reach a decision on it.

In some cases, an O&G company may need to refer a complaint to the state authorities, in particular where it raises criminal issues or involves state authorities or agents, for example when protests have resulted in excessive use of force by public security. However, care should be taken in how these complaints are reported, particularly where the rule of law is weak or corruption is strong, to ensure that complainants are not exposed to retaliation.

The [Voluntary Principles on Security and Human Rights](#) in particular propose that:

- Companies should record and report any credible allegations of human rights abuses by public security in their areas of operation to appropriate host state government authorities;

Example: Linking an Operational-level Grievance Mechanism with a State-based Mechanism

One extractive company has set up a system that provides recourse first at the operational level and then to the National Human Rights Institution, which is empowered to adjudicate complaints. The operational-level processes include:

- ▶ Open, transparent and representative company-community bodies, to discuss and resolve issues, including individual cases of compensation;
- ▶ A dynamic and culturally appropriate grievance mechanism (for example, having female personnel deal with women’s complaints), with feedback and verification of outcomes;
- ▶ Wherever possible, personal involvement of senior managers with the community member(s) concerned.

If an unresolved issue remains, company personnel assist the complainant(s) to engage the National Human Rights Institution (NHRI) if they so wish. The company also keeps the NHRI informed of issues surrounding the company’s operations, independent of any complaint or specific media allegations. In practice, the NHRI has only had to handle a few of cases over several years.

- Where appropriate, companies should urge investigation and that action be taken to prevent any recurrence;
- Companies should actively monitor the status of investigations and press for their proper resolution;
- Every effort should be made to ensure that information used as the basis for allegations of human rights abuses is credible and based on reliable evidence;
- The security and safety of sources should be protected;
- Additional or more accurate information that may alter previous allegations should be made available as appropriate to concerned parties.

These factors may be a helpful guide in other situations where an O&G company judges it necessary and appropriate to refer complaints to state authorities or another third party mechanism.

- **Supplier/contractor-level grievance mechanisms:** It can be productive for O&G companies to encourage and even assist their contractors, as well as local and remote suppliers, to develop their own grievance mechanisms for workers. This can help reduce the risks of human rights impacts in connection with the company's operations. Wherever possible, these mechanisms should involve legitimate trade unions or worker representatives. O&G companies may still want to consider providing a "fall-back channel" for workers of suppliers or contractors, in case issues are not adequately addressed (see [Section VI-C](#) below).

Supplier/contractor-level grievance mechanisms can be an important source of information about human rights impacts linked to an O&G company's operations. Where an O&G company requires its suppliers and contractors to establish their own mechanisms, it might also request periodic reporting on the substance and outcomes of complaints. This can be most useful with those suppliers or contractors whose human rights risks are particularly high.

VI C Designing Effective Operational-Level Grievance Mechanisms

Key Points for Implementation

- ▶ The Guiding Principles state that operational-level grievance mechanisms should be: legitimate, accessible, predictable, equitable, transparent, rights-compatible, based on dialogue and engagement, and a source of continuous learning.
- ▶ While these criteria mostly relate to the quality of the processes they offer, they include an important requirement that outcomes should be consistent with internationally-recognised human rights.
- ▶ Operational-level grievance mechanisms should not preclude access to judicial or other state-based processes, or undermine the role of legitimate trade unions. They should always take steps to prevent retaliation against complainants.

Possible Approaches

- **One or multiple mechanisms:** At both the site and – for larger companies – the corporate/head office level, an O&G company may have separate grievance mechanisms for workers and for external stakeholders. Alternatively, they may have a combined mechanism or access point that can receive complaints from employees, contracted workers, community members, as well as suppliers/contractors and their staff. Complaints may then be allocated for handling through different processes.

Whatever approach is adopted, grievance mechanisms need to fit an O&G company's local operating context. It is therefore best to design them close to the level where they will operate and with input from the groups for whom they are intended. This will help ensure that their design takes account of:

- Local cultures and traditions for settling grievances;
 - Accessibility to stakeholders, including those who are physically remote, illiterate, have disabilities, or are otherwise vulnerable or marginalised, such as contract workers with more limited legal rights than employees, rural or indigenous communities, children or youth workers;
 - Local views and preferences regarding transparency and confidentiality in grievance processes;
 - Other local mechanisms that offer alternative or complementary channels for remedy.
- **Building internal support for an operational-level grievance mechanism:** It can be challenging to build internal understanding that complaints raised through an operational-level grievance mechanism are not a threat to staff nor necessarily a sign that the company is failing at community relations or in its relationships with other affected stakeholders. It may be helpful to underline to staff the opportunities mechanisms present for:
 - Receiving useful feedback on how the company is perceived;
 - Continuous improvement where complaints show there are weaknesses in company policies, processes or practices;
 - Demonstrating that the company cares about the concerns of affected stakeholders and is committed to addressing them.

Where an O&G company is designing a new site-level mechanism, it can be useful to make this a collaborative exercise. Involving people from key functions and departments across the company – including those whose actions may lead to complaints – can build support for the mechanism. Building in time for this internal engagement, as well as for engagement with affected stakeholders, can be important to the longer-term success of the mechanism.

Where an actual complaint arises, it is often appropriate to involve the department whose actions are the subject of the complaint in its investigation, while ensuring that the overall process remains independent. Where it is possible to involve them also in identifying solutions, and “owning” their implementation, this may help contribute to future prevention. At other times, it may not be appropriate for those departments to be involved, for example where serious personal allegations are involved, or where it may otherwise compromise a credible investigation of the complaint. They should nevertheless benefit from lessons learned, in order to prevent repetition.

- **Defining the scope of a mechanism:** It can be counterproductive to limit a grievance mechanism to complaints that name human rights issues or claim particular laws or standards have been breached. This risks missing impacts that may not raise human rights issues immediately, but could escalate over time into severe impacts. There are frequent examples of communities that find their concerns about noise and dust or employment opportunities, are continually ignored and finally feel compelled to engage in a protest to get the company to pay attention. In situations of latent conflict or poorly-trained public security this could lead to incidents of

Example: Making a Mechanism Accessible

There is a distinction between a mechanism being publicised and being known. For example, one company took extensive steps to publicise how to access its grievance mechanism in a particular project, for example via community liaison officers, flyers, billboard advertisements and community librarians trained to receive complaints. Despite these efforts, interviews in communities showed a lack of awareness of the mechanism. The company then focused on ensuring that publicity was targeted in part at those moments when grievances were most likely to arise and that the information got to individuals when they were most likely to be looking for it. The company realised the importance of hearing from a mechanism's intended user groups about what kind of access points they are most likely to use, and recognising that these may vary between indigenous and non-indigenous communities, men and women, children, permanent and migrant workers and so on.

Resources: Designing Operational-Level Grievance Mechanisms

For more about the UN Guiding Principles' effectiveness criteria, see:

- ▶ UN SRSG, Addendum to the UN Guiding Principles, *Piloting Principles for Effective Company/Stakeholder Grievance Mechanisms: A report of lessons learned* (undertaken by the CSR Initiative, Harvard Kennedy School)
- ▶ CSR Initiative, Harvard Kennedy School, *Rights-Compatible Grievance Mechanisms*
- ▶ CSR Europe, *Company Mechanisms for Addressing Human Rights Complaints (draft version for consultation)*

For O&G-specific information, see:

- ▶ IFC, *Good Practice Note: Addressing Grievances from Project-Affected Communities*
- ▶ IIED, *Dispute or Dialogue? Community Perspectives on Company-led Grievance Mechanisms*
- ▶ IPIECA, *Operational level grievance mechanisms: Good practice survey*

For general information about non-judicial dispute resolution, see [ACCESS Facility](#)

violence and harm to health or life. A grievance mechanism should therefore be able to pick up a full range of concerns early enough to avoid their escalation and address underlying issues.

A mechanism should be able to exclude clearly vexatious complaints. However, it is risky to assume a complaint is vexatious without close attention and investigation. In some cases complaints that appear vexatious may in fact reflect legitimate issues that the complainant was afraid or unable to raise directly.

Vulnerable or marginalised individuals may be particularly disempowered from raising complaints. It may be possible to identify specific ways in which they can raise concerns without increasing their vulnerability, including through third parties speaking on their behalf. Wherever possible, it will be beneficial also to seek ways to gain their views directly.

- **Escalation of complaints:** An effective mechanism requires triggers for complaints to be escalated within the company, for example:

- Where deadlines for responding to a complainant have not been met;
- Where complaints raise potentially severe human rights impacts;
- Where a complaint indicates possible criminal conduct;
- Where a complaint implicates other companies or representatives of the state.

In the latter two instances, it can be important to report the matter to the relevant authorities, taking into account the issues highlighted in [Section VI-B](#) above.

- **Designing an effective grievance mechanism.** A poorly designed mechanism is often counterproductive – it can raise expectations among stakeholders without delivering on them, even increasing the sense of grievance. It may also distort the company's assessments of how well it is managing human rights risk. Relevant experience of O&G companies seeking to build effective grievance mechanisms includes:

- Where trust in the company or the mechanism is low, it can be particularly beneficial to involve affected stakeholder groups in the design, review and even joint oversight of the mechanism. This can help ensure that the stakeholders for whom the mechanism is intended are willing to use it;
- There is value in enabling a range of access points to the mechanism, for example, mail, email, secure phone line, secure website, or via community relations officers, and line managers, including for off-shore workers;
- Local community members, including workers, can be good sources of information to others in their communities about the mechanism;
- Verbal and other non-written forms of communication may be important in some rural and indigenous communities, for example using dance, theatre or cartoons to describe the steps in a grievance handling process;
- Some companies are working to build the capacity of potential users, for example through information sessions for contractor staff, or training in conflict resolution for – or even with – local communities;
- It is important to identify whether complainants come from vulnerable or marginalised groups and take this into account during the handling of their complaint and in identifying appropriate remedies;

- Standardised procedures can contribute to a more rigorous and more manageable process, including by ensuring complaints are acknowledged, providing indicative timeframes and updates, and reporting externally on the mechanism;
 - Capturing learning from the mechanism is particularly beneficial, for example through a log on the company's intranet of anonymised "difficult issues" with possible responses;
 - Where both parties agree to involve a neutral third party facilitator, this can help them arrive at sustainable solutions, particularly where issues are complex or multiple groups are involved;
 - Where mechanisms provide for follow-up and monitoring of implementation this can reinforce confidence among stakeholders and support a company's efforts to track its human rights performance;
 - Communicating about outcomes from a mechanism in an appropriate form (eg, anonymised, aggregated data or case studies) can demonstrate the value of using it. At the same time, the processes for arriving at agreed outcomes may sometimes require confidential discussions between the company and complainants, and/or protection of the identity of a complainant;
 - It is important to ensure the grievance mechanism does not substitute for stakeholder engagement, as this would signal that the company only wants to hear from stakeholders when they have a problem. Conversely, it is risky to assume that stakeholder engagement covers the role performed by a grievance mechanism, since it generally reaches groups but can miss the perspective of aggrieved individuals.
- **Grievances related to business relationships:** Communities around O&G operations and pipelines may assume that all those working on the site are working directly for the main operating company. Where this is the case, the operating company may wish to consider receiving complaints involving contractors through its own mechanism. It can then use its leverage with the contractor to seek solutions, for example, by:
 - Raising the issue with the contractor concerned, requesting them to address it directly and confirming the outcome;
 - Supporting the contractor in its efforts to address the issue, helping build its capacity to do so where this is weak;
 - Checking that there are protections in place to prevent complainants from retaliation in each of these cases;
 - Helping the contractor develop or improve its own grievance mechanism.

This approach may be useful not just for community complaints, but also for complaints from contractors' own workers.

Where to Start

For companies that are just starting to focus on processes to remediate human rights impacts or to develop operational-level grievance mechanisms, the following are some preliminary steps to consider:



Questions to Ask

The following questions correspond to sub-sections A, B and C above. They should help test the extent to which the company’s remediation processes, including operational-level grievance mechanisms, are consistent with the Guiding Principles:

<div>VI-A</div>	<div>Building a Systematic Approach to Remediation</div> <ul style="list-style-type: none"> ▶ How do we build support across the company for operational-level grievance mechanisms and the respective roles of the corporate and site levels in their development and review? ▶ What guidance do we provide to sites regarding the design of effective grievance mechanisms? ▶ How do we track complaints and their outcomes to identify ways we can improve our policies and processes to prevent human rights impacts? ▶ How do we identify whether outcomes from remediation processes provide real ‘remedy’, in the eyes of the affected individuals and in line with internationally recognised human rights?
<div>VI-B</div>	<div>Mapping and Working with External Remediation Mechanisms</div> <ul style="list-style-type: none"> ▶ What is our understanding of the landscape of grievance mechanisms, both judicial and non-udicial, at the site level? How do we ensure that our understanding is as complete as possible? ▶ How do we ensure we engage constructively and appropriately with state-based grievance mechanisms, within our own rights to defend ourselves against allegations we consider inaccurate? ▶ What procedures do we have to deal with complaints involving criminal issues or state authorities and agents (including public security)? ▶ Do we require that our suppliers or contractors have their own grievance mechanisms, and how do they relate to our own role in addressing complaints?
<div>VI-C</div>	<div>Designing Effective Operational-Level Grievance Mechanisms</div> <ul style="list-style-type: none"> ▶ How do sites involve internal and any external stakeholders in the design or review of their grievance mechanisms and ensure they are culturally appropriate and accessible to all affected stakeholder groups? ▶ How do sites test the effectiveness of their grievance mechanisms, including from the perspective of those for whom they are intended? ▶ If grievances are not resolved through an operational-level mechanism, is it clear to all what the alternative channels are?

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Annexes

Annex 1: Key Resources

The resources below provide further information and approaches to addressing the issues covered in the Guide. The inclusion of guidance and tools in this Annex should not be taken to imply that they are necessarily fully consistent with the UN Guiding Principles

Overarching Resources

International and Regional Human Rights Standards and Instruments

Instruments Setting Out Internationally-Recognised Human Rights

- ▶ UN, International Bill of Human Rights, comprised of:
 - The Universal Declaration on Human Rights: www.ohchr.org/EN/UDHR/Pages/UDHRIndex.aspx
 - To The International Covenant on Economic, Social and Cultural Rights: www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx
 - The International Covenant on Civil and Political Rights: www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx
- ▶ ILO, 1998 Declaration on Fundamental Principles and Rights at Work: www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453911:NO

International Labour Organisation (ILO) Standards

In addition to the Declaration on Fundamental Principles and Rights at Work above, these include:

- ▶ C029 – Forced Labour Convention, 1930 (No.29)
- ▶ C087 – Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- ▶ C097 – Migration for Employment Convention (Revised), 1949 (No. 97) and Recommendation No. 86
- ▶ C098 – Right to Organise and Collective Bargaining Convention, 1949 (No.98)
- ▶ C100 – Equal Remuneration Convention, 1951 (No.100)
- ▶ C105 – Abolition of Forced Labour Convention, 1957 (No.105)
- ▶ C111 – Discrimination (Employment and Occupation) Convention, 1958 (No.111)
- ▶ C138 – Minimum Age Convention, 1973 (No.138)
- ▶ C143 – Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and Recommendation No. 151
- ▶ C182 – Worst Forms of Child Labour Convention, 1999 (No.182)

All are available at: www.ilo.org/dyn/normlex/en/f?p=1000:12000:0::NO::

Key International Human Rights Instruments Applying to Potentially Vulnerable or Marginalised Groups

- ▶ The Convention on the Elimination of All Forms of Racial Discrimination
- ▶ The Convention on the Elimination of All Forms of Discrimination Against Women
- ▶ The Convention on the Rights of the Child
- ▶ The Convention on the Rights of Persons with Disabilities
- ▶ The Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

All are available at: www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx

- ▶ The Declaration on the Rights of Indigenous Peoples: www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx
- ▶ The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/076/55/IMG/N9307655.pdf?OpenElement>

Regional Human Rights Standards

- ▶ African Charter on Human and Peoples' Rights: www.achpr.org/instruments/
- ▶ American Convention on Human Rights: www.cidh.oas.org/basicos/english/basic3.american%20convention.htm
- ▶ ASEAN Human Rights Declaration: www.asean.org/news/asean-statement-communiqués/item/asean-human-rights-declaration
- ▶ European Convention on Human Rights: www.echr.coe.int/ECHR/EN/Header/Basic+Texts/The+Convention+and+additional+protocols/The+European+Convention+on+Human+Rights/

Key Resources on Business and Human Rights

UN Guiding Principles and Implementation

- ▶ United Nations (UN):
 - Protect, Respect and Remedy" Framework: www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf
 - Guiding Principles on Business and Human Rights: www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
 - Office of the High Commissioner for Human Rights (OHCHR), Interpretive Guide to the Corporate Responsibility to Respect Human Rights: www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf
 - Principles for Responsible Contracting: www.ohchr.org/Documents/Issues/Business/A.HRC.17.31.Add.3.pdf
 - Working Group on Business and Human Rights: www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx
- ▶ European Commission, "Introductory guide to human rights for smaller businesses": http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/index_en.htm

Information Resources on Business and Human Rights

- ▶ Business and Human Rights Resource Centre: <http://business-humanrights.org>
- ▶ International Labour Organisation (ILO):
 - Help Desk for business on international labour standards: www.ilo.org/business
 - Normlex, for information on ILO standards, comments of the supervisory bodies and specific country profiles: www.ilo.org/normlex
- ▶ OHCHR, List of Business and Human Rights Tools: www.ohchr.org/EN/Issues/Business/Pages/Tools.aspx

Other Relevant International and Regional Standards and Instruments

Relevant European Standards and Processes

- ▶ Council of Europe Convention No 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data: <http://conventions.coe.int/Treaty/en/Treaties/Html/108.htm>
- ▶ European Commission:
 - Sectoral Social Dialogue for Agency Work: <http://ec.europa.eu/social/main.jsp?catId=480&langId=en&intPagId=75>
 - Exchange Platform for organisations promoting or implementing Diversity Charters: http://ec.europa.eu/justice/discrimination/diversity/diversity-charters/index_en.htm
- ▶ European Union (EU):
 - Charter of Fundamental Rights: www.europarl.europa.eu/charter/pdf/text_en.pdf
 - Employment Equality Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:NOT>
 - Posted Workers Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0071:EN:HTML>
 - Racial Equality Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:NOT>
 - Temporary Agency Work Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:327:0009:0014:EN:PDF>

Other Relevant International Standards

- ▶ International Finance Corporation (IFC) Performance Standards, especially Performance Standard 2: www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_pps
- ▶ ISO 26000 Guidance on Social Responsibility: www.iso.org/iso/home/standards/iso26000.htm
- ▶ OECD Guidelines for Multinational Enterprises: www.oecd.org/daf/inv/mne/2011update.htm

Resources Relevant to O&G Companies

- ▶ The Extractive Industries Transparency Initiative (EITI)
- ▶ Equitable Origin
- ▶ The global oil and gas industry organisation for environmental and social issues, IPIECA
- ▶ The Natural Resources Charter
- ▶ The Voluntary Principles for Security and Human Rights

Resources for Each Specific Section of the Guide

I. Developing a Policy Commitment

- ▶ BLIHR, OHCHR, UN GC, the 'Policies' section in "A guide for integrating human rights into business management": www.integrating-humanrights.org/policies_home
- ▶ IPIECA:
 - "Local content strategy: a guidance document for the oil and gas industry": www.ipieca.org/sites/default/files/publications/Local_Content.pdf
 - "Human Rights Training Toolkit for the Oil and Gas Industry – 3rd edition"
 - "Human Rights: Promoting a culture of respect and good practice"
- ▶ Monash University et al, "Human Rights Translated: A Business Reference Guide": www2.ohchr.org/english/issues/globalization/business/docs/Human_Rights_Translated_web.pdf
- ▶ UNGC, "How to develop a human rights policy: A guide for business": www.ohchr.org/Documents/Publications/DevelopHumanRightsPolicy_en.pdf
- ▶ OHCHR, UN Global Compact, "Human Rights and Business Learning Tool": <http://human-rights-and-business-learning-tool.unglobalcompact.org/>

II. Assessing Human Rights Impacts

- ▶ Aim for Human Rights, "Guide to Corporate Human Rights Impact Assessment Tools": www.humanrightsimpact.org/fileadmin/hria_resources/Business_centre/HRB_Booklet_2009.pdf
- ▶ Danish Institute for Human Rights, "Compliance Assessment and Risk Framework": www.humanrightsbusiness.org/compliance+assessment
- ▶ Esteves, A.M., Franks, D. & Vanclay, F. 2012 "Social impact assessment: The state of the art", *Impact Assessment & Project Appraisal* 30(1).
- ▶ International Association for Impact Assessment, *International Principles for Social Impact Assessment*, Special Publication Series No 2: www.etcinc.com/Resources/Social_Impact_Assessment_Pr.pdf
- ▶ IFC, "Human Rights Impact Assessment Management": www1.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Guide+to+Human+Rights+Impact+Assessment+and+Management
- ▶ IPIECA:
 - "A guide to social impact assessment in the oil and gas industry"
 - "Health Impact Assessments"
 - "Health Risk Assessment"
 - "Health Performance Indicators"
 - All available at: www.ipieca.org

- ▶ UNICEF, UN Global Compact, Save the Children, *Children's Rights and Business Principles*: www.unicef.org/csr/12.htm
- ▶ UN Global Compact:
 - *The Women's Empowerment Principles*: www.unglobalcompact.org/Issues/human_rights/equality_means_business.html
 - "Business Guide for Conflict Impact Assessment & Risk Management": www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/BusinessGuide.pdf
- ▶ Vancly, F. & Esteves, A.M. (eds), *New Directions in Social Impact Assessment: Conceptual and Methodological Advances*, Cheltenham (2011 UK): Edward Elgar.

Migrant and Agency Workers:

- ▶ End Human Trafficking Now: www.endhumantraffickingnow.com
- ▶ EU, Temporary Agency Work Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:327:0009:0014:EN:PDF>
- ▶ Fair Labor Association, Code of Conduct, "Employment Practices": www.fairlabor.org/sites/default/files/fla_complete_code_and_benchmarks.pdf
- ▶ Global Business Coalition Against Trafficking: www.gbcat.org
- ▶ ILO:
 - "Combating forced labour: A handbook for employers and business": www.ilo.org/sapfl/Informationresources/ILOPublications/WCMS_101171/lang--en/index.htm
 - Convention No 97 (and Recommendation No 86): www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312242:NO and Convention No 143 (and Recommendation No 151) relevant to migrant workers: www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312288:NO
 - Convention No 181 and Recommendation No 188 on employment and recruitment agencies: www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::55:P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C181,/Document
 - ILO Convention No 189 on domestic workers
 - "Working Conditions of Contract Workers in the Oil and Gas Industries": www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_161194.pdf
- ▶ Institute for Human Rights & Business, The Dhaka Principles for Migration with Dignity: www.dhaka-principles.org/
- ▶ UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families: www2.ohchr.org/english/law/cmw.htm
- ▶ UN Global Initiative to Fight Human Trafficking: www.ungift.org
- ▶ Verité, "Fair Hiring Toolkit": www.verite.org/helpwanted/toolkit

Country Risk Analysis:

- ▶ Amnesty International, Country Reports: www.amnestyusa.org/our-work/countries
- ▶ Danish Institute for Human Rights, Country Risk Assessment Portal (forthcoming): www.humanrightsbusiness.org/country+portal
- ▶ Freedom House, Freedom in the World Country Reports: www.freedomhouse.org/report/freedom-world/freedom-world-2012
- ▶ Human Rights Resource Centre, "ASEAN baseline Rule of Law report": http://hrrca.org/system/files/Rule_of_Law_for_Human_Rights_in_the_ASEAN_Region.pdf
- ▶ Human Rights Watch, World Reports: www.hrw.org/publications
- ▶ ILO, Country information: www.ilo.org/normlex
- ▶ Transparency International, Corruptions Perception Index: www.transparency.org/research/cpi/overview
- ▶ UN Development Programme, Human Development Index: <http://hdr.undp.org/en/statistics/hdi/>
- ▶ US State Department, Annual Human Rights Reports: www.state.gov/j/drl/rls/hrrpt/
- ▶ World Bank, Worldwide Governance Indicators: http://info.worldbank.org/governance/wgi/sc_country.asp

III. Integrating & Acting

- ▶ Arpel, “Human Rights Manual: Corporate Social Responsibility Management System”: www.arpel.org/estudios-proyectos/
- ▶ Global Compact Network, Netherlands “How to do business with respect for human rights; A guidance tool for companies”: www.gcnetherlands.nl/report_business_human_rights.htm
- ▶ ICMM, “Integrating Human Rights into Corporate Risk Management Systems”: www.icmm.com/page/75929/human-rights-in-the-mining-and-metals-industry-integrating-human-rights-due-diligence-into-corporate-risk-management-processes
- ▶ IHRB and GBI, “State of Play: The Corporate Responsibility to Respect in Business Relationships”: www.ihrb.org/publications/reports/state-of-play.html
- ▶ IPIECA, “Human rights due diligence process: a practical guide to implementation for oil and gas companies”: www.ipieca.org/publication/human-rights-due-diligence-process-practical-guide-implementation-oil-and-gas-companies
- ▶ UN, “Principles for Responsible Contracting”: www.ohchr.org/Documents/Issues/Business/A.HRC.17.31.Add.3.pdf

Stakeholder Engagement:

- ▶ AccountAbility, UNEP, Stakeholder Researchers Canada, “Stakeholder Engagement Manual, Volume 1”: www.accountability.org/images/content/2/0/207.pdf and “Stakeholder Engagement Manual, Volume 2”: www.accountability.org/about-us/publications/the-stakeholder.html
- ▶ ICMM, “Community Development Toolkit”: www.icmm.com/community-development-toolkit
- ▶ IFC:
 - “Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets”: www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_stakeholderengagement__wci__1319577185063
 - “Stakeholder Engagement: A good practice handbook for companies doing business in emerging markets”: www1.ifc.org/wps/wcm/connect/938f1a0048855805beacfe6a6515bb18/IFC_StakeholderEngagement.pdf?MOD=AJPERES
- ▶ IPIECA, “Community Engagement” page: www.ipieca.org/topic/social-responsibility/community-engagement
- ▶ UN Global Compact page on “Stakeholder Engagement” (contains a number of resources and tools): www.unglobalcompact.org/Issues/human_rights/Tools_and_Guidance_Materials.html#stakeholder
- ▶ World Resources Institute, “Breaking Ground: Engaging Communities in Extractive and Infrastructure Projects”: www.wri.org/publication/breaking-ground-engaging-communities
- ▶ Luc Zandvliet and Mary B. Anderson, Getting it Right: Making Corporate-Community Relations Work (Greenleaf Publishing, 2009)

Guidance on Operating in High-risk and Conflict Areas

- ▶ CDA Collaborative Learning Projects and IHRB, “Community Perspectives on the Business Responsibility to Respect Human Rights in High-Risk Countries”: www.cdainc.com/cdawww/pdf/other/community_perspectives_report_cep_final_Pdf_1.pdf
- ▶ Corporate Engagement Project et al, “Preventing Conflict In Exploration: a Toolkit for Explorers and Developers”: www.cdainc.com/cdawww/project_profile.php?pid=CEP&pname=CorporateEngagementProgram
- ▶ Danish Institute of Human Rights, “Decision Map: Doing Business in High-Risk Human Rights Environments”: www.humanrightsbusiness.org/files/
- ▶ Davis and Franks, “The Costs of Company-Community Conflict in the Extractive Industry”: www.shiftproject.org/publication/costs-conflict-local-communities-extractive-industry
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- ▶ International Alert and Fafo, “Red Flags: Liability Risks for Companies Operating in High-Risk Zones”: www.redflags.info

- ▶ International Committee of the Red Cross (ICRC), “Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law”: www.icrc.org/eng/resources/documents/publication/p0882.htm
- ▶ *International Code of Conduct for Private Security Service Providers*: <http://www.icoc-psp.org/>
- ▶ IPIECA, “Guide to operating in areas of conflict for the oil and gas industry”: www.ipieca.org/sites/default/files/publications/conflict_guide_0.pdf
- ▶ OECD,
 - “OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones”: www.oecd.org/daf/inv/mne/weakgovernancezones-riskawarenesstoolformultinationalenterprises-oecd.htm
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- ▶ UN Global Compact:
 - “Business Guide for Conflict Impact Assessment & Risk Management”: www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/BusinessGuide.pdf
 - Human Rights and Business Dilemmas Forum: <http://human-rights.unglobalcompact.org>
- ▶ UN Global Compact, PRI, “Guidance on Responsible business in conflict-affected and high-risk areas: a resource for companies and investors”: www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/Guidance_RB.pdf
- ▶ UN SRSG, “Business and Human Rights in Conflict-Affected Regions: Challenges and Options Towards State Responses”, (May 2011, A/HRC/17/32): www.business-humanrights.org/media/documents/ruggie/report-business-human-rights-in-conflict-affected-regions-27-may-2011.pdf
- ▶ The Voluntary Principles on Security and Human Rights
- ▶ The Voluntary Principles on Security and Human Rights Implementation Guidance Tools
- ▶ [Video] *Making Monkey Business*: <http://shiftproject.org/video/making-monkey-business-building-company-community-dialogue-philippines>
- ▶ [Video] *The Only Government We See*: www.shiftproject.org/video/only-government-we-see-building-company-community-dialogue-nigeria
- ▶ [Video] *Putting Ourselves in Their Shoes* (Spanish language, English subtitles): <http://shiftproject.org/video/putting-ourselves-their-shoes-dialogue-table-tintaya>

Indigenous Peoples’ Rights and Free, Prior and Informed Consent (FPIC):

- ▶ Foley Hoag, “Implementing a Corporate FPIC Policy: Benefits and Challenges”: www.foleyhoag.com/NewsCenter/Publications/eBooks/Implementing_Informed_Consent_Policy.aspx
- ▶ ICM, “Good Practice Guide: Indigenous Peoples and Mining”: www.icmm.com/library/indigenouspeoplesguide
- ▶ ILO:
 - C169 – *Indigenous and Tribal Peoples Convention, 1989 (No. 169)* (ratified by 20 states, notably in Latin America): www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312314:NO
 - “Handbook for ILO Tripartite Constituents –Understanding the Indigenous and Tribal Peoples Convention, 1989 (C. 169)”: www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/indigenous-and-tribal-peoples/WCMS_205225/lang--en/index.htm
 - ILO, Committee on Freedom of Association: www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/lang--en/index.htm
 - “Indigenous and Tribal Peoples’ Rights in Practice”: www.ilo.org/indigenous/Resources/Guidelinesandmanuals/WCMS_106474/lang--en/index.htm
- ▶ IFC, Performance Standard 7 on Indigenous Peoples: www1.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7_English_2012.pdf?MOD=AJPERES and the accompanying Guidance Note: www1.ifc.org/wps/wcm/connect/50eed180498009f9a89bfa336b93d75f/Updated_GN7-2012.pdf?MOD=AJPERES
- ▶ Inter-American Development Bank, “Operational Policy on Indigenous Peoples”: <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35773490>
- ▶ International Institute for Environment and Development (IIED), “FPIC and the Extractive Industries: A Guide to Applying the Spirit of Free, Prior and Informed Consent in Industrial Projects”: <http://pubs.iied.org/pdfs/16529IIED.pdf>

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- ▶ Oxfam America, “Community Consent Index: Oil, Gas and Mining Company Positions on FPIC”: www.oxfamamerica.org/publications/community-consent-index
- ▶ The Report of the Special Rapporteur on the Rights of Indigenous Peoples, (6 July 2012, UN Doc No A/HRC/21/47): www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-47_en.pdf
- ▶ *The UN Declaration on the Rights of Indigenous Peoples*: www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
- ▶ UN Global Compact, “Exposure Draft of Guide for Business on Indigenous Peoples’ Rights”: www.unglobalcompact.org/Issues/human_rights/indigenous_peoples_rights.html

IV. Tracking

- ▶ Ethical Trading Initiative, Base Code: www.ethicaltrade.org/eti-base-code
- ▶ Fair Labor Association, Workplace Code of Conduct and Compliance Benchmarks: www.fairlabor.org/sites/default/files/fla_complete_code_and_benchmarks.pdf
- ▶ Global Reporting Initiative:
 - G4 Guidelines: www.globalreporting.org/reporting/g4/Pages/default.aspx
 - “Sustainability Reporting Guidelines and Oil and Gas Sector Supplement, v3.1”: www.globalreporting.org/resourcelibrary/OGSS-G3.1-Complete.pdf
- ▶ International Alert, “Voluntary Principles on Security and Human Rights: Performance Indicators”: http://psm.du.edu/media/documents/reports_and_stats/ngo_reports/international_alert_voluntary_principles.pdf
- ▶ IPIECA, API and OGP, “Oil and Gas Industry Guidance on Voluntary Sustainability Reporting”: www.ipieca.org/publication/oil-and-gas-industry-guidance-voluntary-sustainability-reporting-2010-update

V. Communicating

- ▶ ARPEL, “Communications and Reporting Manual”: www.arpel.org/library/publications/publication/file/717/download/
- ▶ Global Reporting Initiative:
 - G4 Guidelines: www.globalreporting.org/reporting/g4/Pages/default.aspx
 - “Sustainability Reporting Guidelines and Oil and Gas Sector Supplement. v3.1”: www.globalreporting.org/resourcelibrary/OGSS-G3.1-Complete.pdf
 - “GRI G3.1 OGSS Content Index Cross-Referenced to IPIECA Guidance”: www.globalreporting.org/resourcelibrary/OGSS-to-IPIECA-Mapping.pdf
- ▶ IFC:
 - “Access to Information Policy”: www1.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/ifc+projects+database/projects/access+to+information+policy
 - “Policy on Environmental and Social Sustainability”: www1.ifc.org/wps/wcm/connect/7540778049a792dcb87efaa8c6a8312a/SP_English_2012.pdf?MOD=AJPERES
- ▶ IPIECA, API and OGP, “Oil and Gas Industry Guidance on Voluntary Sustainability Reporting”: www.ipieca.org/publication/oil-and-gas-industry-guidance-voluntary-sustainability-reporting-2010-update
- ▶ IPIECA, “Sustainability Reporting: Communicating Performance”: www.ipieca.org/publication/sustainability-reporting-communicating-performance/
- ▶ US Securities & Exchange Commission, “Final Rule Requiring Payment Disclosure by Resource Extraction Issuers” www.sec.gov/news/press/2012/2012-164.htm

VI. Remedy and Operational-Level Grievance Mechanisms

Reports

- ▶ CSR Europe, “Company mechanisms for addressing human rights complaints” (draft): www.csreurope.org/data/files/Publications/Company_Mechanisms_for_Addressing_Human_Rights_Complaints_CSR_Europe_Draft_report.pdf

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- ▶ IFC, MIGA, Compliance Advisor Ombudsman: www.cao-ombudsman.org/
- ▶ International Federation for Human Rights (FIDH), “Corporate Accountability for Human Rights Abuses”: www.fidh.org/IMG/pdf/guide_entreprises_uk-intro.pdf
- ▶ International Institute for Environment and Development (IIED), “Dispute or Dialogue? Community Perspectives on Company-led Grievance Mechanisms”: <http://pubs.iied.org/pdfs/16529IIED.pdf>
- ▶ IPIECA, “Operational level grievance mechanisms: Good practice survey”: www.ipieca.org/publication/operational-level-grievance-mechanisms-good-practice-survey
- ▶ UN, “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”: www.unhcr.org/refworld/docid/4721cb942.html
- ▶ UN SRSG, Addendum to the UN Guiding Principles, “Piloting principles for effective company/stakeholder grievance mechanisms: A report of lessons learned” (May 2011, A/HRC/17/31/Add.1), (undertaken by the CSR Initiative, Harvard Kennedy School): www.ohchr.org/Documents/Issues/Business/A-HRC-17-31-Add1.pdf

Institutions/Organisations

- ▶ ACCESS Facility: www.accessfacility.org/
- ▶ National Human Rights Institutions: <http://nhri.ohchr.org/EN/Pages/default.aspx>
- ▶ OECD National Contact Points: www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises/nationalcontactpointsfortheoecdguidelinesformultinationalenterprises.htm

Annex 2: Key Concepts

Note: Many of the below key concepts have been drawn from the UN OHCHR [Interpretive Guide to the Corporate Responsibility to Respect Human Rights](#).

Actual human rights impact

An “actual human rights impact” is a negative impact that has already occurred or is occurring.

Assessing human rights impacts

The first of the four stages of Human Rights Due Diligence, undertaken in order to identify and assess any negative impacts on human rights with which a company may be involved. This includes both actual impacts (past or current) and potential impacts (those possible in the future), and impacts that occur through the company's own activities and through its business relationships.

Business relationships

Business relationships refer to those relationships a business enterprise has 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. They include indirect business relationships in its value chain, beyond the first tier, and minority as well as majority shareholding positions in joint ventures.

Complicity

Complicity has both legal and non-legal meanings. As a legal matter, most national legislations prohibit complicity in the commission of a crime, and a number allow for the 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, companies 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.

The human rights due diligence process should uncover risks of non-legal (or perceived) as well as legal complicity and generate appropriate responses.

Communicating human rights performance

In the context of the corporate responsibility to respect, communicating is the set of processes through which companies are able to account externally for how they address their actual and potential human rights impacts. This is particularly important when concerns are raised by or on behalf of affected stakeholders. Communication needs to be appropriate to the company's impacts in terms of its form, frequency, accessibility, and the adequacy of information provided. Where companies have severe human rights risks or impacts they should publicly report formally on how they address them.

Corporate responsibility to respect human rights

The corporate responsibility to respect human rights means that companies should avoid infringing on the rights of others and should address negative impacts with which they may be involved.

Effectiveness criteria for non-judicial grievance mechanisms

The Guiding Principles set out eight “effectiveness criteria” for non-judicial grievance mechanisms. They should be: legitimate, accessible, predictable, equitable, transparent, rights-compatible, based on dialogue and engagement, and a source of continuous learning. While these criteria mostly relate to the quality of processes, they include an important requirement that outcomes should be in line with internationally-recognised human rights. (See further Guiding Principle 31)

Embedding

Embedding can be thought of as the macro-level process of ensuring that the company's responsibility to respect human rights is driven across the organisation, into its business values and culture. It requires that all personnel

are aware of the enterprise's human rights policy commitment, understand its implications for how they conduct their work, are trained, empowered and incentivised to act in ways that support the commitment, and regard it as intrinsic to the core values of the workplace. Embedding is one continual process, generally driven from the top of the company. (See further "Human rights policy commitment" and "Integration")

Gross human rights abuses

There is no uniform definition of gross human rights abuses in international law, but the following practices would generally be included: genocide, slavery and slavery-like practices, summary or arbitrary executions, torture, enforced disappearances, and arbitrary and prolonged detention. Other kinds of human rights abuses, including of economic, social and cultural rights, can also count as gross abuses if they are grave and systematic, for example abuses taking place on a large scale or targeted at particular population groups.

Host state

The term "host state" is used to define the state where the O&G company's activities take place. In the case of either a National Oil Company (NOC) or an International Oil Company (IOC), this may also be the company's home state: that is, the state where it has its corporate headquarters.

Human rights due diligence

Human rights due diligence is an ongoing risk management process that a reasonable and prudent company needs to follow in order to identify, prevent, mitigate and account for how it addresses its negative human rights impacts. It includes four key steps: assessing actual and potential human rights impacts, integrating and acting on the findings, tracking responses, and communicating how impacts are addressed.

Human rights policy commitment

A statement approved at the highest levels of the business that shows it is committed to respecting human rights and is communicated internally and externally. (See further "Embedding" and "Integration")

Human rights risks

A company's human rights risks are any risks that its operations may lead to one or more negative human rights impacts. They therefore relate to its potential human rights impacts. In traditional risk assessment, risk takes account of both the consequences of an event (its "severity") and its probability. In the context of human rights risk, severity is the predominant factor. Probability may be relevant in helping prioritise the order in which potential impacts are addressed in some circumstances (see "severe human rights impact" below). Importantly, a company's human rights risks are the risks that its operations pose to human rights. This is separate from any risks that involvement in human rights impacts may pose to the enterprise, although the two are increasingly related.

Integration

Integration can be thought of as the micro-level process of taking the findings about a particular potential impact, identifying who in the enterprise needs to be involved in addressing it and securing effective action to prevent or mitigate the impacts. If the macro-level process of "embedding" the corporate responsibility to respect human rights in the company's culture has been effective, the company is more likely to be successful in its efforts at integrating and acting on individual impacts. (See further "Embedding" and "Human rights policy commitment")

Internationally recognised human rights

The Guiding Principles define these as the rights in the [International Bill of Human Rights](#) (meaning the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) and the principles concerning fundamental rights set out in the International Labour Organisation's [Declaration on Fundamental Principles and Rights at Work](#).

Investment agreement

Broadly defined, an investment agreement is an agreement signed between a foreign investors and a host state for an investment project giving rights to a licensee to explore for and/or produce natural resources. Also known as "Host Government Agreements", they range in form from Production Sharing Agreements (PSAs), Licenses, and Concession Agreements.

Leading human rights risks

The leading human rights for a company are those that stand out as being most at risk. This will typically vary according to its sector and operating context. The Guiding Principles make clear that companies should not focus exclusively on the leading human rights issues and ignore others that might arise. But the leading human rights risks will logically be the ones on which it concentrates its primary efforts. (Also referred to as the most “salient” human rights risks in the [Interpretive Guide to the Corporate Responsibility to Respect Human Rights](#))

Legitimate Trade Unions

Organisations that exist to represent workers and are controlled by their members.

Leverage

Leverage is an advantage that gives power to influence. In the context of the Guiding Principles, it refers to the ability of a company to effect change in the wrongful practices of another party that is causing or contributing to a negative human rights impact.

Mitigation

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

Negative human rights impact

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

Potential human rights impact

A “potential human rights impact” is a negative impact that may occur but has not yet done so.

Prevention

The prevention of negative a human rights impact refers to actions taken to ensure such impact does not occur.

Operational-level grievance mechanism

An operational-level grievance mechanism (OLGM) is a formalised means for affected stakeholders to raise concerns about any impact they believe a company has had on them in order to receive remedy. Companies should establish or participate in effective OLGs for stakeholders who may be negatively impacted by their activities, in order that grievances may be addressed early and remediated directly. Such mechanisms should not preclude access to judicial or other state-based processes, or undermine the role of legitimate trade unions. The mechanism should help to identify problems early, before they escalate, and provide solutions that offer remedy to anyone impacted. (See further “Effectiveness criteria for non-judicial grievance mechanisms”)

Remediation/remedy

Remediation and remedy refer to both the processes of providing remedy for an negative human rights impact and the substantive outcomes that can counteract, or make good, the negative impact. These outcomes may take a range of forms, such as 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.

Severe human rights impact

The commentary to the Guiding Principles defines a severe human rights impact with reference to its scale, scope and irremediable character. This means that its gravity and the number of individuals that are or will be affected (for instance, from the delayed effects of environmental harm) will both be relevant considerations. “Irremediability” is the third relevant factor, used here to mean any limits on the ability to restore those affected to a situation at least the same as, or equivalent to, their situation before the impact. For these purposes, financial compensation is relevant only to the extent that it can provide for such restoration.

Stakeholder/affected stakeholder

A stakeholder refers to any individual who may affect or be affected by an organisation’s activities. An affected stakeholder refers here specifically to an individual whose human rights has been affected by a company’s operations, products or services. A potentially affected stakeholder is an individual whose human rights may be affected by the company’s operations, products or services

Stakeholder engagement/consultation

Stakeholder engagement or consultation refers here to an ongoing process of interaction and dialogue between a company and its potentially affected stakeholders that enables the company to hear, understand and respond to their interests and concerns, including through collaborative approaches.

State duty to protect

The state duty to protect requires that states take appropriate steps to prevent, investigate, punish and redress any human rights abuse by companies within their territory and/or jurisdiction through effective policies, legislation, regulations and adjudication.

Tracking human rights performance

Tracking is the process by which a company monitors and evaluates whether it has responded effectively to human rights risks and impacts.

Upstream

Upstream oil and gas activities in this Guide refers to activities throughout the project lifecycle of identifying and extracting oil and gas reserves: from project pre-feasibility, through feasibility, development (including construction), implementation (including production), to decommissioning and post-closure. It excludes the refinement of oil and gas, its distribution, sale, or conversion into different commercial and consumer products.

Value chain

A business enterprise's value chain encompasses the activities that convert input into output by adding value. It includes entities with which it has a direct or indirect business relationship and which either (a) supply products or services that contribute to the enterprise's own products or services, or (b) receive products or services from the enterprise.

Vulnerability or marginalisation/Vulnerable or marginalised individuals or groups

Vulnerability can stem from an individual's status or characteristics (race, color, sex, language, religion national or social origin, property, disability birth, age or other status) or from their circumstances (poverty or economic disadvantage, dependence on unique natural resources, illiterate, ill health). Those vulnerabilities may be reinforced through norms, societal practices, or legal barriers. Vulnerable or marginalised individuals typically experience negative impacts more severely than others. These individuals, or the groups they are part of, may require specific, and if necessary separate, consultation and mitigation measures to ensure that negative impacts do not fall disproportionately on them, and are appropriately avoided, mitigated or compensated.

