

DRAFT VERSION FOR PUBLIC CONSULTATION
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**Guidance for the Oil and Gas Sector
on Implementing the UN Guiding Principles
on Business and Human Rights**

European Commission Human Rights Sector Guidance Project

Invitation to Comment on Oil and Gas Draft Sector Guidance:

- The Project Team would welcome comments from all interested stakeholders on this draft. In making comments, **please be as specific as possible**, including identifying the relevant section or example being discussed. Please also **continue to monitor the website** for further updates.
- Please send comments to sectorguidance@ihrb.org by the **closing date of Friday 1 February 2012** with a **subject line of “O&G Draft Feedback”**.
- Unless expressly requested otherwise, **submission of written feedback will be posted** as received on the Project’s web portal (<http://www.ihrb.org/project/eu-sector-guidance/draft-guidance-consultation.html>) with each commentator’s submitted name and organisational affiliation.

Guidance Aim: It is the European Commission’s intention to produce **practical, useful guidance for businesses** on implementing the UN Guiding Principles, which is not intended to be legally binding. While the Guidance takes particular account of the situation and experiences of EU business, it aims to be as **globally relevant** as possible.

Methodology: The draft’s development has been informed by the views of a wide range of stakeholders, including representatives from business, civil society, trade union, and government, as well as other experts. At the end of the process the project team will have conducted extensive research and interviews with a diverse range of stakeholders (75+ interviews per sector) and two multistakeholder expert roundtable convenings. Following the comment period, final versions of the sector guidance documents will be revised, completed and submitted to the European Commission in **April 2013**.

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A. Introduction

Put simply, people have a right to be treated with dignity. Human rights are inherent in all human beings and everyone is entitled to enjoy them without discrimination. States have the legal obligation to respect, protect and fulfill the human rights set out in the international human rights conventions they ratify. However, the actions of business, like those of other non-state actors, can affect the enjoyment of human rights by their employees, customers, workers in their supply chain, or communities around their operations, either positively or negatively. Experience shows that business can have an adverse impact,¹ directly or indirectly, on virtually the entire spectrum of human rights, as illustrated in the UN publication “[Human Rights Translated](#)”.² Where businesses do not pay sufficient attention to this risk and how to reduce it, they can and do infringe human rights.

In June 2011, the UN Human Rights Council unanimously endorsed the [UN Guiding Principles on Business and Human Rights](#) (“Guiding Principles”), establishing the first authoritative global reference point on the respective roles of business and governments in helping ensure that companies respect human rights in their own operations and through their business relationships. They spell out the implications of the three pillars of the earlier [UN “Protect, Respect and Remedy” Framework](#) on business and human rights (“UN Framework”), which are:

- The **state duty to protect** against human rights abuses by third parties, including businesses, through appropriate policies, regulation and adjudication;
- The **corporate responsibility to respect** human rights, meaning that businesses need to avoid infringing on the human rights of others and address adverse impacts with which they may be 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.

The Guiding Principles and UN Framework were developed by the [Special Representative of the UN Secretary-General for Business and Human Rights](#), Harvard Professor John Ruggie, over the six years of his mandate. 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. The Guiding Principles are now being taken forwards in the UN context by an expert [Working Group](#).

In October 2011, the European Commission adopted a new [Communication on Corporate Social Responsibility](#) that defined corporate social responsibility as “the responsibility of enterprises for their impacts on society”. The Oil and Gas sector is one of three sectors chosen by the Commission for the development of sector-specific guidance on the corporate responsibility to respect human rights under the Guiding Principles.

While the Guidance takes particular account of the situation and experiences of EU business, it aims to be as **globally relevant** as possible – informed by research and the views of a wide range of stakeholders, including expert representatives from business, trade unions,

¹ The term “adverse impact”, in line with the definition used in the UN Guiding Principles, is used to mean an action that removes or reduces the ability of an individual to enjoy his or her human rights.

² Castan Centre for Human Rights Law, International Business Leaders Forum and Office of the UN High Commissioner for Human Rights, *Human Rights Translated: A Business Reference Guide*, 2008.

NGOs and government – in order to contribute to a consistent approach to the implementation of the Guiding Principles. The Guidance is for companies and therefore focused on the **corporate responsibility to respect** (including responsibilities in relation to access to remedy). However, it seeks wherever possible to take into account the various implications of the state's role in enabling, supporting and incentivising business' efforts to meet their responsibility to respect as part of the state duty to protect. Nothing in this Guidance is intended to detract from the **interconnected nature** of the three pillars of the UN Framework.

1. Purpose of Guidance for the Oil and Gas Sector

Responsible Oil and Gas (“O&G”) companies are increasingly seeking to know and show that they respect human rights throughout their activities and business relationships by adopting **appropriate policies and processes** in line with the Guiding Principles. This Guidance is intended to support those efforts and encourage other companies in the O&G sector to engage more deeply with their responsibility to respect.

Like the UN Guiding Principles, this Guidance is capable of application to O&G companies of all sizes, with varying types of ownership and structure. However, it focuses mainly on **upstream** activities and actors in the sector, including the activities of international oil companies, national oil companies, joint ventures, oil service companies, exploration companies, suppliers and contractors. As the Guiding Principles recognise, “**no one size fits all**” when it comes to implementing the responsibility to respect. No company starts from a “blank slate”, and implementation will have to take account of corporate culture, which may include issues related to resistance to change and the challenge of competing priorities.

The focus of the Guidance is on ensuring that O&G companies **respect human rights**. This in no way implies that such companies can have only negative impacts on human rights – it is well recognised that the O&G sector plays an important role in **supporting** development through the provision of energy and the generation of significant revenues that can contribute to poverty reduction (if well managed) and the realisation of many human rights. The European upstream O&G sector makes a significant contribution to the region's GDP; globally, ancillary and downstream industries like petroleum products, petrochemicals, plastics, and artificial fibers lead to significant job creation. However, respecting rights is the **baseline expectation** of all companies under the corporate responsibility to respect and accordingly the prevention, mitigation and remediation of adverse human rights impacts in the sector is the focus of this Guidance.

2. Sector-Specific Context

The O&G sector encompasses companies that are engaged in the exploration, extraction, transmission, refining, and distribution of oil and gas, involving both upstream (pre-exploration, exploration, production, decommissioning) as well as downstream (transmission, refining, distribution, consumption) operations. Activities may be on or off-shore. In contrast to some other sectors, O&G operations are characterised by **long-term investments** (often 40–50 year), underpinned by contracts negotiated during the initial exploration phase (often carried out by smaller exploration companies). Although historically the majority of companies operating in the sector were **international O&G companies** (IOCs), more recently the number of **national O&G companies** (NOCs) has significantly exceeded the number of private enterprises. Of these NOCs, some operate only

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within their home state but others have multinational characteristics and operate in multiple countries (International NOCs).

The majority of operations are undertaken by **joint venture partnerships** between a number of IOCs or between IOCs and NOCs. They often enter into joint bidding agreements to bid for the management of a certain asset and, if successful, typically broker a joint operating agreement to share the operational and financial burdens and risks. In forming the joint venture, one partner will be designated as the operating partner (often the one with the most significant financial investment). When operating outside their home states, IOCs are usually required to contract with the relevant NOC; the NOC may then act as the operator with the IOC providing technical or other expertise and/or financial support. The sector is characterised by a significant number of **contractor relationships** for O&G field services and other activities, as well as supply chain relationships, both internationally and in-country. O&G activity is usually self-financed through the stock market, particularly at the early, high-risk exploration phases.

The extent to which O&G companies are involved with adverse human rights impacts will be heavily influenced by both their operating context, the practices of their business partners, and the effectiveness of the processes that they already have in place to prevent and address such impacts. Operating locations for the sector are determined by where resources exist – which can be in areas of **weak governance**, including remote or conflict-affected areas, raising additional challenges for the companies involved. 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. Issues of **host state governance** with particular implications for companies' efforts to meet their responsibility to respect include: the extent to which the terms of investment agreements address human rights; the degree of adherence to the rule of law; the extent of corruption and level of commitment to revenue transparency by the government; the nature and extent of regulation of public security forces; and existing approaches to key regulatory issues that affect the sector's impacts such as labour rights, environmental protection and land title and usage.

In this regard, there are some relevant differences between **EU states** and some other countries that host O&G operations, which can have a bearing on the likelihood, scope and scale of adverse human rights impacts. While most licensing and regulation of exploration, production, transmission and distribution of O&G resources rests with EU Member States, the EU itself plays a key policy and regulatory role in areas with particular cross-border effects, including competition, procurement, the internal energy market, security of supply, transmission, taxation, health and safety (for offshore platforms), and more recently, transparency. However, **wherever governments perform poorly**, or provide poor protection of human rights, it heightens the risk of human rights abuses occurring and becomes proportionately more challenging for O&G companies to meet their own responsibility to respect human rights.

An increasing number of companies in the sector are well aware of the challenges they face on human rights. Several large companies have come together with governments and civil society groups to launch **multi-stakeholder initiatives** aimed at preventing adverse 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 Industry Transparency Initiative](#). The global oil and gas industry organisation for environmental and social issues, [IPIECA](#), has also undertaken a variety of work to develop tools and support good practice with regard to respect for human rights.

B. Key Concepts in the Guiding Principles

A key resource in understanding the Guiding Principles is the [Interpretive Guide](#) developed by the UN with the approval of Professor Ruggie.³ Box A sets out four central concepts within the Guiding Principles, further elaborated in the Interpretive Guide, that are particularly important in implementing the responsibility to respect, and which underpin much of the following Guidance.

Box A: Key Concepts in the Guiding Principles

a) Internationally recognised human rights

Under the Guiding Principles, the responsibility of businesses to respect human rights encompasses **all internationally recognised human rights** – understood, at a minimum, as those expressed in the [International Bill of Human Rights](#) (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](#). The commentary to Guiding Principle 12 makes clear that businesses may need to consider **additional international standards**, for example, where they may impact upon individuals belonging to groups at heightened risk of vulnerability or marginalisation. This can include women, children, indigenous peoples, ethnic and other minorities, people with disabilities, and migrant workers (see [Annex A](#)).

b) Severity

The Guiding Principles are focused on “human rights risk” – meaning risk to **affected stakeholders** (ie those whose human rights may be or have been affected by a company’s operations, products or services), including the heightened risk posed to the rights of potentially **vulnerable or marginalised groups**. Because the focus is on risk to people, not risk to the company, **severity** of the impact becomes the dominant factor in determining the appropriate scale and complexity of the processes a company needs to have in place to know and show that it is respecting rights. Severity is determined by the **scale** (gravity of the impact), **scope** (the number of people affected) and **irremediability** of an impact (meaning any limitations on the ability to restore those affected to a position the same as, or equivalent to, the one they were in before the impact occurred). Any assessment of severity thus needs to take full account of the perspective of potentially affected stakeholders.

c) Own activities and business relationships

The responsibility to respect encompasses adverse human rights impacts that a company is involved with through its own **activities** or as a result of its **business relationships** with third parties. This includes impacts that it **causes** or **contributes to**, as well as those that are **directly linked to its operations, products or services by a business relationship**, even where it has neither caused nor contributed to the impact itself. Relevant business relationships include those that are direct and those at one or more steps removed that

³ Office of the UN High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, 2011.

entail significant risk to human rights. When identifying how best to address impacts that involve its business relationships, the company's **leverage** will be a significant factor. Leverage refers to the ability of the company to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact. Using leverage may involve working with the entity most directly responsible for the impact and/or with others who can help (peers, local civil society actors, government). However, **impact, not leverage, determines the scope of a company's responsibility**; leverage only becomes relevant in determining what constitutes an appropriate response.

d) Meaningful stakeholder consultation

Respecting rights is about people, so the nature of the **relationships** between a company and those on whom it may have an impact are highly relevant. **Stakeholder engagement and consultation** is a cross-cutting theme within the Guiding Principles. It involves an ongoing process of interaction and dialogue between a company and potentially affected stakeholders that enables the company to **hear, understand and respond** to their interests and concerns, including through collaborative approaches.⁴ It is particularly relevant to assessing impacts, tracking and communicating about responses, as well as in the remediation of impacts. The Guiding Principles recognise that not all companies will be able to meaningfully consult directly with affected stakeholders, but that where this is not possible, **other avenues** should be sought to understand their likely perspectives and human rights concerns. For companies with **significant human rights risks** – whether due to the nature of their operations or their operating context – direct stakeholder engagement will be particularly important.

Engagement with stakeholders is distinct from **expert input** – both are important, but they should never be confused. It may be both reasonable and necessary for a company to engage external experts in carrying out aspects of human rights due diligence, but this should not undermine the process of embedding respect for rights in the company's core operations. Companies should consider carefully before “delegating” engagement with potentially affected stakeholders entirely to external experts. However, where there is a history of distrust, or where cultural considerations are at play, involving **neutral, local third parties** who can help support and assist such engagement may be helpful.

C. Implementing the Responsibility to Respect: Policy Commitment and Embedding Respect

1. What the Guiding Principles Require

- A policy commitment is a statement approved at the **highest levels** of the business that demonstrates the business' commitment to meet its responsibility to respect human rights and **communicates** this internally and externally.
- The statement should **trigger internal implementation** through appropriate operational policies and procedures that are necessary to meet the commitment in practice and are essential for **embedding** respect for human rights throughout the business, including in its values.

⁴ Ibid, Key Concepts.

2. Key Considerations

The overarching policy commitment may be expressed as a **general commitment** to respect all internationally recognised human rights, or it may also identify the human rights most salient to the company's operations, without making them its exclusive focus. The commitment may be stand-alone or integrated into an appropriate existing high-level policy. Because a company's **general risk profile** may change – with changes in operating contexts, product/service areas or new business relationships – if **salient risks** are reflected in the policy it will be important to review the policy periodically to determine whether it is adequately capturing any changes in the company's risk profile.

In developing the policy, a company will want to use **relevant sources** of expertise, both internal and external. For O&G companies, which can have significant human rights risks, it will be important to **engage with external stakeholders** who can reflect the likely concerns and priorities of potentially affected populations, so that the policy is informed by their perspectives, and is as credible as possible in the eyes of key stakeholder groups.

In order to **embed** the policy commitment, it needs to be **clearly communicated internally as well as externally**, to workers, business partners and other relevant state or non-state entities that may be directly linked to an O&G company's operations, products or services. The implications of the policy commitment need to be **reflected in relevant internal operational policies and procedures**. And its implementation needs to be adequately supported and resourced – including through senior management attention, the allocation of appropriate accountability, developing incentives and other performance metrics, and training.

3. Possible Approaches

a) What kinds of human rights issues might be included in a policy commitment?

Salient human rights issues **typically highlighted** by O&G companies in their policy commitments include: safety in the workplace, freedom of association and collective bargaining, the elimination of child and forced labour, diversity and equality within the workforce, security, the rights of local communities (including relating to health, education, livelihoods, food and water), the rights of indigenous peoples (including, in addition, those relating to land use, cultural heritage and self-determination) and impacts related to emerging activities like shale gas production (such as on the right to water and sanitation).

Relevant international standards that may be referenced include the [Voluntary Principles on Security and Human Rights](#) and the [IFC Performance Standards](#). O&G companies that have recently developed policy commitments are increasingly referring to the UN Guiding Principles, making a general commitment to follow them or, in some cases, explaining how they will be embedded throughout the business, for example, through due diligence processes, contracting or grievance mechanisms.⁵

⁵ See Standard Life Investments, [Business and Human Rights](#), December 2011.

b) What is the role of expertise and engagement in the policy development process?

Engaging **internal** experts and stakeholders within and across different functions in the **policy development process** can be critically important. It can help ensure that the content and relevance of the policy commitment are broadly understood and accepted, that it fits with existing policies, and that it leads to the internal alignment necessary to embed it throughout the business. Some possible approaches are included in Box 1.

Box 1: Developing a Policy Commitment

Possible approaches include:

- Conducting a **“bottom-up” policy development process** by gathering information on human rights issues at the field level (for instance through pilot impact assessments or field surveys) and then analysing the information across operations to understand key human rights risks for the business as a whole;
- Relying on a **more high-level process**, drawing on advice and sources from within the industry, including experts and the experience of peer companies;
- **Mapping existing internal policies** that have human rights aspects (see below under section c) and identifying any gaps, as well as what the company wishes to include in an overarching policy statement.

Consulting with **external stakeholders** – including affected stakeholders – in the policy development process will be particularly important for O&G companies as a sector that can have significant impacts. Companies will want to look for appropriate locations from among their operating contexts to test their proposed approach, and key local communities, or their representatives, who can be engaged constructively on a high-level statement. They may also consider establishing stakeholder reference groups including representatives from national human rights institutions, NGOs, trade unions, and other experts.

In terms of additional external sources of information and expertise, relevant approaches for O&G companies include: benchmarking their own policies against those of their leading peers, using guidance from industry associations or multi-stakeholder initiatives, and reviewing compilations of broader information about perceptions of the industry’s impacts on human rights.⁶

c) How does “hard wiring” affect the embedding process?

Key Point: If an O&G company’s overarching policy commitment is at odds with existing internal policies and practices (“hard wiring”) or with the assumptions and attitudes of staff (“soft wiring”), it will not be effectively **embedded**. Ensuring alignment in both of these dimensions has a number of aspects to it.

On the **hard wiring** side, as noted above, an increasing number of O&G companies are developing **stand-alone** human rights policies; others have **integrated** respect for human rights into their Code of Conduct, Business Principles or similar, and/or into other policies, most often in the areas of sustainability/social performance, health and safety, legal/compliance, environment, community relations, security, human resources, and

⁶ Such as the [Business and Human Rights Resource Centre](#).

procurement/contracting. Whatever approach is chosen, it will be important to integrate it also into the core policies and processes covering **exploration and production**, since many of the impacts that can flow from an O&G's company's own operations stem from these activities, as well as into **risk and project approval** processes.

A human rights policy commitment is both distinct from and likely to be closely related to various **existing internal policies and associated management systems** although these may not be expressed in human rights language (see Box 2). Companies need to check whether existing policies are aligned with the policy commitment by taking appropriate account of human rights implications. For example, does the company's health and safety policy apply equally to temporary workers?

Another important aspect of hard wiring is **how the human rights function is organised**:

- Hosting the function within a single department is likely to increase accountability but may lead to challenges in creating the broad ownership required across the business.
- Cross-functional working groups can send the clear signal that human rights is the responsibility of the entire business enterprise, but potentially at the expense of clear leadership and accountability.

As has been the case with the issue of security, **cross-functional coordination** is critical to effectively embedding respect for human rights and creating such a team can help drive the embedding process at the corporate level. Similar structures can play an essential role in implementation at **site level**. Such teams can include security, community relations, health and safety, human resources, legal, environment, procurement, social performance and public affairs/communications. Again, it will be critical to involve not only support functions but also **exploration and production** in these structures.

Equally important as where the function is located are the questions of **what role** the function will play and **how it will engage** and operate with different parts of the business – will it be focused on providing **oversight and accountability** and serving as an early warning system, or will it act more as a **knowledge centre, coach and resource** for other departments and those at the site level with responsibility for implementation?

d) How does “soft wiring” affect the embedding process?

Awareness-raising and training are central to effective soft wiring – for general staff, staff within key support functions (such as procurement or security), technical specialists (like exploration geologists) and senior management. It can help ensure that those on the technical side understand the relevance of human rights to their work, as well as encourage those on the non-technical side to effectively “translate” their work for technical colleagues. Approaches include: training on the policy commitment and its implementation, through e-learning combined with in-person components; establishing focal points to support staff in answering questions and dilemmas; developing “communities of practice” across functions and geographic locations; providing interactive seminars on specific issues such as security, local content, or operating in high risk contexts; and preparing briefing reports on emerging issues. Given that particular risks can arise from the behaviour of suppliers and contractors, not least those on-site, O&G companies should seek to include their staff in training on these issues – a practice already familiar in the case of security providers.

Commitment by senior leadership within the company is essential to both the hard and soft wiring aspects of embedding respect. Approaches include:

- establishing/investing a **Board or senior management-level committee** with the responsibility to oversee human rights issues (such as a Social Responsibility, Ethics, or Sustainability Committee/Council);
- **demonstrating** senior management commitment through consistent and repeated internal and external communications;
- establishing **accountability mechanisms**, such as locating ultimate responsibility for human rights with the CEO or requiring country level managers to sign-off on reporting that includes human rights issues; and
- including **appropriate performance incentives** tied to human rights in the metrics for staff across all functions and levels, not just the “human rights” function.

Box 2: Choosing your “Language”

Language can be a sensitive issue, for example where there is internal resistance to what may be perceived as a new “non-core” issue, or where there are cultural considerations that make the use of human rights terminology challenging, including with external stakeholders. In choosing their terminology, it will be helpful to carefully consider whether there is a **compelling reason** for avoiding human rights terminology in the short-term or in a particular situation. If so, those with lead responsibility, and any others who routinely engage with affected stakeholders, will need to retain **an understanding of human rights standards and their implications** – particularly the need to focus on the perspective of affected stakeholders in understanding impacts– and bring that lens to other processes.

e) What are the implications of the policy commitment for business relationships?

A policy commitment is critical to **communicating the company’s expectations externally** and should enable an O&G company to better leverage respect for human rights in its relationships, should this be required, by making clear that these expectations are not simply “negotiable extras”. Many of an O&G company’s human rights risks – and corresponding scope for their mitigation – are established in the **terms of its contracts** with business partners and in host government agreements and MoUs. It is therefore critical to provide clear guidance to those with **responsibility for negotiating and concluding agreements** on the implications of the policy commitment (see further [below](#)).

Key Point: It is essential to have human rights on the table at the **earliest stages** of business relationships to avoid arriving in a situation where impacts occur and the company lacks leverage to address them, due to weak contractual provisions it might otherwise have improved. To ensure that the economics of a transaction take full account of the need to address human rights risks, those with responsibility for negotiating agreements will need to consider, **who** has responsibility for addressing them, **what** resources will be required, and **where** those resources will come from.

When it comes to contracts with **suppliers and contractors** (including security providers), supplier/contractor-specific Codes of Conduct are an important tool. Other approaches include: contractual language requiring compliance with company codes or principles that refer to human rights, referring to international standards that incorporate human rights, or referring to the terms of relevant multi-stakeholder initiatives. It is important that the

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company avoid relying on contractual clauses without some evidence that the business partner has the capacity and will to comply with them. It will also be important to clarify that the company expects its suppliers and contractors to “pass on” these requirements to their own supply chains, and to seek evidence that they do so wherever possible.

4. Questions to Ask

The following questions should help test the extent to which the company’s policy commitment, and its efforts to embed it across the organisation, are aligned with the Guiding Principles:

- Is our policy commitment broad enough to deal with changes in operating context, (like entry into high-risk environments) or in relevant technology or methods of production?
- Have we engaged closely with key departments internally, including exploration and production, in its development?
- Has the policy been approved at the most senior levels of the company and is senior leadership commitment to it clearly communicated internally as well as publicly?
- Have we considered both the hard wiring and soft wiring aspects of embedding the policy internally?
- Have we tested the proposed policy with potentially affected stakeholders, focusing on key locations or communities?
- How do the communities that we may impact upon access information and have we found appropriate means to communicate our commitment to them (taking into account language, age, gender and other relevant considerations)?
- Is the commitment sufficiently clear in identifying whether and how it applies to business partners, including joint venture partners, contractors, and suppliers?
- Have we discussed the implications of the policy commitment with key business partners in an appropriate manner? Does the initial communication need to be supported by contractual requirements and/or operational policies or procedures in the context of the relationship?

D. Implementing the Responsibility to Respect: Human Rights Due Diligence

Box B: Human Rights Due Diligence

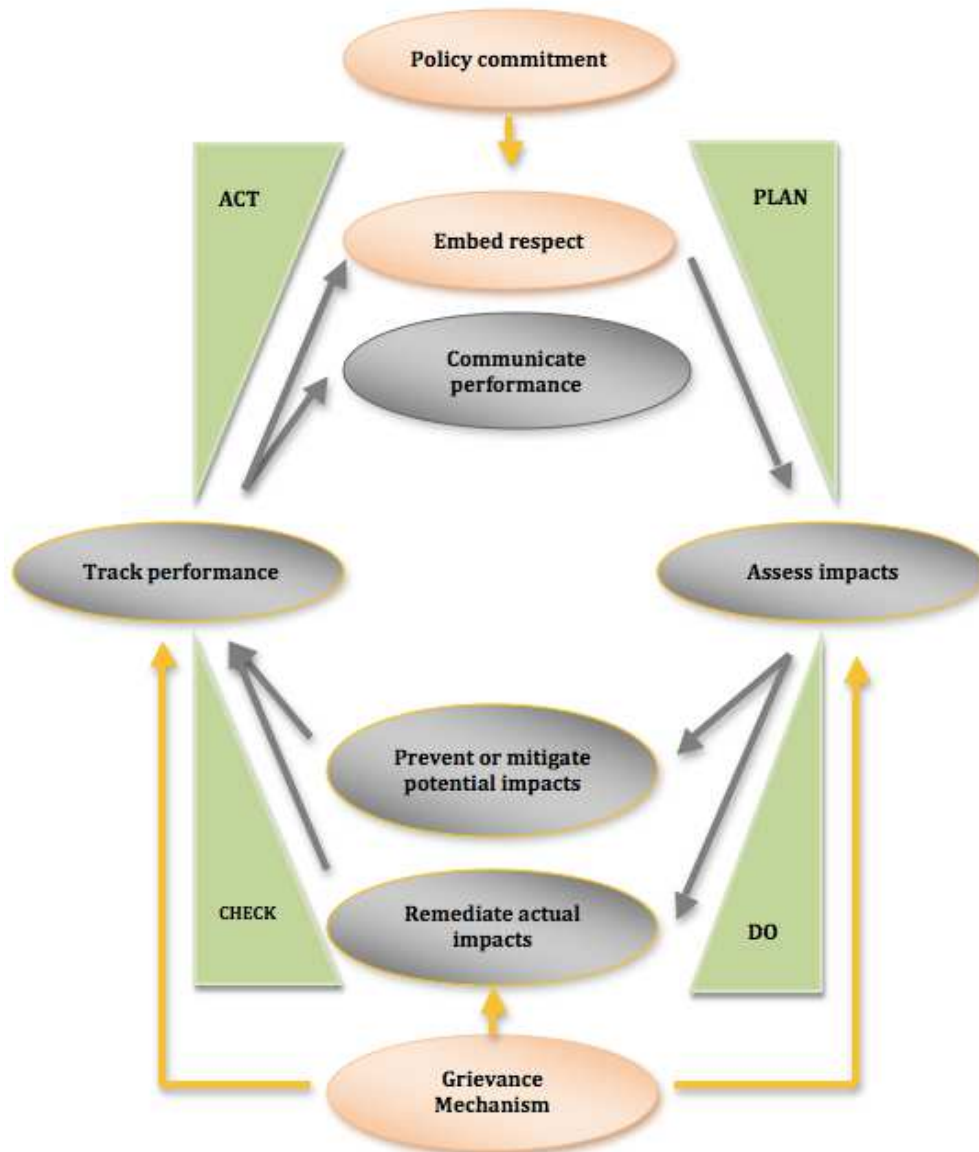
As the Guiding Principles make clear, the scale and complexity of **human rights due diligence processes** will vary according to the size of the company, as well as its operational context, ownership and structure. However, some overarching themes will be relevant to implementation by all companies:

1. It is through human rights due diligence that a business identifies the **information** it needs to understand its specific human rights risks at a certain point in time and in a particular context, and the **corresponding actions** it needs to take to identify, prevent, mitigate and account for them. Taken together with a policy commitment and the remediation of actual impacts that a business causes or contributes to, human rights due diligence provides businesses with the framework they need to **know and show** that they are respecting rights.

2. Human rights due diligence is concerned with **on-going processes**, not one-off events (‘a’ report or ‘an’ impact assessment), in order to help a company understand how its risks can change over time and manage them effectively.

3. The Guiding Principles do not prescribe whether human rights due diligence processes should be **stand-alone or integrated** into existing systems – both have benefits and both have potential risks. For many companies, there will be existing due diligence systems (such as environmental, health and safety) that can be drawn or built on in relation to human rights due diligence. For many companies, “**Plan-Do-Check-Act**” frameworks, or equivalent, will also be relevant. There is significant (though not perfect) correlation between implementation of the corporate responsibility to respect as elaborated in the Guiding Principles and the components of a “PDCA” approach, as illustrated in Figure 1.

Figure 1: Human Rights Due Diligence and “PDCA” Framework



I. Human Rights Due Diligence: Assessing Impacts

1. What the Guiding Principles Require

- Businesses should identify and assess any **actual or potential** adverse human rights impacts with which they may be involved through their own activities or as a result of their business relationships.⁷
- Businesses should not assume that only the most obvious stakeholder groups may be affected by their activities; their assessment processes should consider impacts both **inside and outside** the “fence” or “walls” of their operations.
- **Human rights risks to people** should be the focus, as distinct from risks to the business itself (although the two are increasingly related).

2. Key Considerations

According to the Guiding Principles, the assessment process typically includes:

- **assessing** the human rights context prior to a proposed business activity;
- **identifying** who may be affected;
- **cataloguing** the relevant human rights standards and issues; and
- **projecting** how the proposed activity and associated business relationships could have adverse human rights impacts on those identified.

To take into account changing circumstances, businesses will need to **assess potential impacts on an ongoing basis**, including at key moments such as at the start of a new activity (like drilling, or construction of a work camp) or new business relationship, prior to major decisions or changes in the operation (such as a policy change), or in response to or in anticipation of changes in the operating environment (such as rising social tensions). Other important **sources**, in addition to the company’s own assessment processes, include information from any operational-level grievance mechanism, news or expert reports, and issues raised by NGOs or trade unions.

Assessing impacts should involve **meaningful consultation with affected stakeholders**, as appropriate to the size of the business and the nature and context of its operations. Companies should pay particular attention to impacts on groups that may be vulnerable or marginalised, and wherever possible to differential impacts on men and women.

3. Possible Approaches

a) How does human rights impact assessment relate to other, existing impact assessment processes?

Oil and gas companies have a long history of employing a **variety of impact assessment processes** throughout the project lifecycle (from business development, through exploration and production, to decommissioning/divestment). These may form part of or feed into other relevant processes, including: community relations procedures, health management procedures, political risk, security and conflict risk assessments, specialised assessments where operations impact on indigenous peoples, legal due diligence, reviews of

⁷ Actual impacts are a matter primarily for remediation, though they may also be an important indicator of potential impacts.

the results of employee surveys, audits and whistle-blower/incident reporting systems, internal controls, and scoping and local capabilities reviews and infrastructure analyses for new capital projects.

Social impact assessments (SIAs) and related processes (eg, ESIA and ESHIA), including those required by regulatory processes or lenders, will typically overlap with human rights impact assessment processes. Overlap will be greatest where the relevant processes are themselves **robust on paper and in practice** – but there is as yet no universally agreed definition or standard procedure to define robustness in the SIA context.⁸

- On the one hand, it is risky to try to draw a clear distinction between SIAs and similar processes and processes for assessing human rights impacts, as this will tend to miss the reality that many human rights risks have their roots in social and environmental impacts. Rather, it can be more helpful to consider these impacts as existing on a **continuum**.
- On the other hand, it is important for a company to be able to determine when an issue starts to raise **human rights implications** – for instance, when impacts on water start to have implications for the right to access to clean water, or when impacts on individuals' movements may prevent access to cultural heritage sites.

This, and other **key aspects of what makes assessing human rights impacts unique**, are described in Box 3.

Box 3: The 'Who, What, How and Where' of Assessing Human Rights Impacts

Assessing human rights impacts requires attention to:

- **Who?** A focus on the rights and perspectives of potentially affected stakeholders;
- **What?** Internationally recognised human rights as the standard for assessment;
- **How?** Through meaningful consultation, relationship-building, and prioritisation according to severity of impact in the assessment process and in consequent action;
- **Where?** Extending to business relationships (based on linkage not leverage), including legacy issues and contextual factors not under the company's legal control.

Who?

A focus on the **rights and perspectives of those stakeholders who may be affected** is important to a full understanding of a company's impacts. The loss of one field to a farmer may be addressed easily through financial or in-kind compensation or 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 she had a stake in the land while compensation goes to the men.

What?

Any process of assessing human rights impacts need to take as its framework [internationally recognised human rights](#) standards, including [relevant standards](#) applying to potentially vulnerable groups. This can have implications for the **comprehensiveness** of any assessment process, rather than the scope being defined by too-narrow terms of reference set by a staff member sitting in one department with a limited or restricted view

⁸ 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, May 2003.

of what may be relevant. It will also be important to look at **individuals and their situations** rather than using households or communities as the level of analysis.

How?

The assessment process needs to be informed by an understanding of the perspective of those who may be affected by an O&G company's operations through **meaningful consultation with potentially affected stakeholders**. This means not taking a transactional approach or "just getting it done", and it can have important implications for who carries out the assessment process. By demonstrating that it takes their concerns seriously, a company can build trust and make it easier to find sustainable ways to address identified impacts. This requires **sensitivity to potential barriers** (linguistic, gender, cultural) and to **perceived power imbalances** between the company and affected stakeholders, and among stakeholders themselves. For example, working with appropriate third party neutrals can help **build the capacity** of local communities to engage in the assessment process and avoid the reinforcement of existing power structures if they are corrupt or discriminatory.

Where?

Human rights due diligence requires O&G companies to consider what impacts may arise as a result of any of their **business relationships**. So 'legacy' impacts (those they inherit through mergers or acquisitions) and 'contextual' issues arising from business relationships (particularly those with governments), which may be seen as 'out of scope' in standard SIA practice, are clearly **in scope** when it comes to assessing potential human rights impacts. What companies then do to address those potential impacts – and how they prioritise mitigation approaches – is the next step in the due diligence process and is discussed further [below](#).

The Guiding Principles do not express a preference between **stand-alone and integrated processes** for assessing human rights impacts – what matters is that what is unique about human rights is preserved (see Box 4). Whatever approach O&G companies choose, it will be helpful to clearly **communicate** to stakeholders in broad terms what their standard processes for assessing human rights impacts typically consist of, including who is consulted and when such assessments occur. Some O&G companies include a periodically updated description on the relevant section of their website.

Box 4: Reviewing How "Fit for Purpose" Existing Assessment Processes Are

Key questions to consider when reviewing the appropriateness of existing processes for capturing information related to the company's human rights impacts include:

- Taken together, do they leave any human rights risk areas **uncovered**?
- Do they consider **risk to human rights**, not just risk to the company?
- Do they identify **predictive behaviours** associated with typical activities or actions that are likely to lead to human rights impacts?
- Do they consider **contextual risk** arising from gaps in the regulatory framework (eg, related to recognition of informal land title) or from conflicts between national and international standards?
- Do they capture the risk that certain activities will heighten stakeholders' **vulnerability** to adverse human rights impacts?
- Are they informed by **meaningful consultation** with potentially affected

stakeholders or their representatives?

- Does someone within the company have a **holistic view** of how human rights risks are captured and addressed?

b) What is the relevance of internal and external engagement to the impact assessment process?

The process of assessing impacts is an opportunity to [engage a cross-section of individuals](#) from different functions within the business in a conversation about possible impacts. The purpose of this is to build understanding of how certain actions and decisions by different departments can lead to adverse impacts, which can help create buy-in to the need to take preventative measures. It can also support the internal collaboration that will be necessary if or when certain impacts occur.

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, it may be more helpful to start by discussing **how each of the main activities associated with the company's operations could impact any of its key stakeholder groups**, including workers, affected communities, contractor/supply chain workers, end-users or consumers, and members of potentially vulnerable groups. This may be more helpful, for example, where understanding of, or openness to the language of human rights across the company is low.

[Annex B](#) takes this latter approach to impact assessment. It maps some of the **typical human rights impacts that can occur in the upstream O&G sector**. It is intended to be **illustrative and by no means exhaustive**. Nor will all impacts be applicable in all contexts. In the impact assessment process, it is important to focus on potential impacts and not be limited by those that have occurred in the past or are deemed most likely. Prioritisation occurs at a later stage, and depends on more than likelihood alone (see [below](#)).

Beyond the internal engagement process, other expert input and engagement will also be important for an O&G company in assessing its potential human rights impacts, including:

- **External expert sources** (in civil society, government, business associations or multi-stakeholder initiatives) can provide insights into current and emerging human rights issues in particular operating contexts;
- Going beyond management to **engage workers**, trade unions and worker representatives can help identify issues of potential concern that might not be apparent to departmental leaders, such as issues relating to contractors;⁹
- Early engagement with **local civil society actors**, such as human rights defenders, trade unions, NGOs and others can provide insights into potential impacts, as well as defuse suspicion and concerns over a perceived lack of transparency.

As noted above, **meaningful consultation with affected stakeholders** plays a central role in the assessment process. There is extensive guidance that already exists on what robust stakeholder engagement should entail (see [Annex D](#) for some examples) and expectations continue to evolve, not least as regards the process of obtaining free, prior and informed consent (addressed in Box 5). Yet some companies report that they still struggle with this in

⁹ See, eg, ILO, [Working Conditions of Contract Workers in the Oil and Gas Industries](#), 2010.

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practice; Box 6 below offers some factors that can help achieve meaningful consultation and engagement.

Box 5: Emerging Expectations regarding Free, Prior and Informed Consultation and/or Consent in Activities affecting Land

The commentary to Guiding Principle 12 highlights the need to consider additional international human rights standards (ie, beyond the authoritative minimum list contained in the International Bill of Human Rights and the ILO Declaration on Fundamental Rights and Principles at Work) where a business may have adverse impacts on certain groups, and specifically identifies indigenous peoples in this regard. As the Interpretive Guide notes, this requires attention to their rights as articulated in the [UN Declaration on the Rights of Indigenous Peoples](#) and the various international instruments in which it is grounded.

These human rights standards, when considered with other international guidance,¹⁰ and developing practice in the extractive sector,¹¹ suggest an emerging set of expectations in situations where O&G companies are carrying out activities on or near indigenous peoples' land or territories. (Situations involving government-led processes are discussed [below](#).)

The nature and application of the right to **free, prior and informed consent** ("FPIC") remains contested. At a minimum, it applies to indigenous peoples with regard to activities that may impact upon their rights to land, territory or other resources that they traditionally own, use or occupy, including cultural heritage sites, which are essential to their survival as distinct peoples. While attention has focused on FPIC, 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" that may be implicated in extractive operations.¹² They are also not the only relevant safeguards: **additional safeguards** include impact assessments, mitigation measures, and benefit-sharing and compensation schemes.

According to the Special Rapporteur's work, 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.

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.

¹⁰ See, eg: [IFC Performance Standard 7](#); [Roundtable on Sustainable Biofuels](#).

¹¹ See, eg: Oxfam America, "[Community Consent Index: Oil, Gas and Mining Company Positions on FPIC](#)", 2012; Foley Hoag, "[Implementing a Corporate FPIC Policy: Benefits and Challenges](#)", 2010.

¹² [Report of the Special Rapporteur on the Rights of Indigenous Peoples](#), 6 July 2012, UN Doc No A/HRC/21/47, para 49. See generally paras 47-71.

Many stakeholders contend that FPIC applies to any community that legally or traditionally uses or occupies land. Governments also underline legal rights of eminent domain. Regardless, it is **widely accepted** that in all circumstances communities whose lands and/or livelihoods are impacted by O&G operations should, at a minimum, be engaged in meaningful free, prior and informed consultation, without prejudice to internationally-recognised additional rights for indigenous communities.

Box 6: Key Issues in Stakeholder Engagement in the Extractives Sector

As noted above, there is extensive experience in the O&G sector – and in the extractives sector more broadly – with external stakeholder engagement. Some of the issues that are reported as being particularly challenging include:

- **Moving beyond rudimentary stakeholder analysis:** companies may only have details of those stakeholders with whom they are directly in touch. Analysis of the power relations between, and within, key stakeholder groups can increase the rigour of a company’s approach.
- **The need for an overall engagement strategy:** this can be particularly important when different departments define engagement differently. Communication efforts, public consultations, public relations and informal interactions that are assumed to “add up” to a positive result may fall short of 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 that can affect their lives are not managed effectively, this can lead to frustration and resentment.
- **Understanding the value of community consultation as a trust-building tool:** community relations practitioners have sought to dispel the view that stakeholder expectations can be managed by *not* engaging. Company experience shows the opposite is true: engagement demystifies rumours, clarifies the parties’ perspectives and allows for greater alignment of expectations.
- **Approaching stakeholder engagement as an ongoing process:** if engagement takes place only when there is a “need” (typically around a negative event), this can provide an incentive for stakeholders to create a complaint to get the company’s attention, and can miss the opportunity to establish trust-based relationships.
- **The value of 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 as well as its ability to conduct meaningful stakeholder engagement.
- **Seeing external stakeholder engagement as the responsibility of the community relations department alone:** community concerns can often relate to impacts over which the community relations department itself has little control. It is critical that broader internal stakeholders are involved in efforts to prevent and mitigate impacts to avoid their recurrence (see [below](#)).
- **The importance of tracking and analysis of information and commitments:** systems for documenting engagement efforts and promises made to communities, especially when staff turnover is high, will be important in building internal memory and institutional learning, and can help avoid external stakeholder frustration.

c) Extending impact assessment to key business relationships

O&G companies typically have a wide range of business relationships, ranging from those for services, products and management related to core business operations (exploration, production, transmission) to ancillary products and services (such as temporary worker housing, field IT services or transportation).¹³

- If an O&G company is involved in an **acquisition** of a project, licence or company, its due diligence process should include human rights risks,¹⁴ for example, by providing that all investment decisions requiring Board approval undergo a mandatory evaluation that includes human rights.
- In assessing the risk of adverse impacts arising through **relationships with governments**, O&G companies will need to be alert to legacy issues – for example, where the company is granted access to land which the host government acquired by evicting or resettling people in a manner that adversely impacted on their human rights, or where security will be provided in whole or part by public security forces.

When it comes to assessing risk arising from supply chain and contractor relationships, traditionally companies have **prioritised relationships for due diligence** based primarily on those partners with which they have the greatest financial engagement or leverage. Under the Guiding Principles by contrast, a company should prioritise due diligence on those relationships where the **severity and likelihood** of potential impacts is greatest, as indicated by:

- (a) relevant **country context(s) in which business partners are located**, and
- (b) **key products or services** the company obtains that may pose particular risks to human rights.

Country analysis is already in use in the sector, with reliable resources to assist in this process (see [Annex D](#)). O&G companies will also 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 inputs (such as the risks associated with the use of migrant or temporary labour or 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.

In assessing risk arising from relationships with **suppliers or contractors**, O&G companies may use a variety of means, including pre-qualification screening, self-assessments by the supplier/contractor, on-site assessments and audits. In line with **the learning in other sectors** that have been dealing with supply chain risks for some time, experience shows that the focus of assessments and audits should be not just on their compliance with national law and international standards, but also on reviewing their capacity to implement those standards.

¹³ See Institute for Human Rights and Business and Global Business Initiative, *The State of Play of the Corporate Responsibility to Respect Human Rights in Business Relationships*, forthcoming.

¹⁴ If a company acquires a business that it identifies has been involved with human rights abuses, it acquires the responsibilities of that business to prevent or mitigate their continuation or recurrence and, where appropriate, remediate them: note 3 above, p 38.

Key Point: The Importance of Getting Stakeholder Engagement Right Early

Seismologists and geologists often lead early exploration activities. They may be involved in initial contact with local communities but frequently **lack any training in community engagement**; they may make promises that are not then kept (such as around jobs or the treatment of cultural heritage sites), undermining later community relations efforts. Allocating appropriate **human resources and budget** at the exploration stage to stakeholder engagement can help realise the considerable savings inherent in prevention, as opposed to the costs of getting it wrong.

d) How do situations of heightened human rights risk affect impact assessment processes?

O&G companies often operate in areas where **national law is silent** regarding international human rights standards, is **unenforced, or actively conflicts** with them. They may also operate in areas where **conflict** (ranging from physical confrontation to armed violence) is present or latent. When companies enter, or have business relationships with entities in, areas of heightened risk the responsibility to respect does not change nor do the elements of human rights due diligence; rather, they become heightened in that **greater attention, effort and resources** are likely to be required at every step of the process.¹⁵ **Stand-alone human rights impact assessments** may be appropriate in such situations.¹⁶ In conflict-affected areas, companies will need to be sensitive to the need for discussions about real or perceived abuses with local as well as neighbouring communities.

When operating in high-risk contexts abroad, a company should seek to consult with its **home state embassy** on the ground, and potentially with appropriate government representatives back in the capital, to alert them to the challenges it faces. The company should be able to seek information on the operating environment, relevant legal obligations or policy advisories, and any other support or guidance that the state may be able to offer with regard to human rights risk. Where relevant, specialised state agencies (such as the [OECD National Contact Point](#) in the company's home state, or the [National Human Rights Institution](#) in the host state) may also be potential sources of advice. In such heightened risk situations, meaningful stakeholder consultation becomes an imperative. Possible actions to mitigate risk in such contexts are discussed [below](#).

4. Questions to Ask

The following questions should help test the extent to which the company's processes to assess human rights impacts are aligned with the Guiding Principles:

- Are our existing SIA/ESIA/ESHIA or other assessment processes or methodologies adequately attuned to what is unique about human rights impact assessment?
- Do our assessment processes incorporate information from sources other than formal "impact assessments", including any operational-level grievance mechanisms?
- Are our assessment processes appropriately responsive to situations of heightened risk?

¹⁵ Institute for Human Rights and Business, [From Red Flags to Green Flags](#), 2011.

¹⁶ See [IFC Performance Standard 1](#), footnote 12.

- Do they capture potential adverse impacts arising through our social investment projects and activities?
- If the relevant assessment process is led by one department, how are other functions engaged in the process so that they can contribute to it?
- How could we strengthen our stakeholder engagement processes to better contribute to the impact assessment process?
- Do our assessment processes capture potential impacts arising through our key business relationships – with joint venture partners, with governments, with suppliers and contractors?

II. Human Rights Due Diligence: Integrating and Acting

1. What the Guiding Principles Require

To address adverse human rights impacts, businesses should:

- **integrate** the findings from their impact assessments across relevant internal functions and processes,
- take **appropriate action** to prevent and mitigate the impacts identified, and
- have the internal decision-making, budget allocation and oversight processes in place to enable effective responses.

2. Key Considerations

The larger a business, the more likely it is that those who are responsible for assessing its human rights impacts sit apart from those staff **conducting the activities or managing the relationships** that may generate those impacts – yet these latter staff need to be closely integrated into the process of identifying and implementing solutions. In smaller companies, day-to-day communication may be sufficient for effective integration; in larger companies, it requires a more **systematised approach**, including structured **cross-functional collaboration**, clear internal reporting requirements, and regular interactions with external experts. In situations of **heightened risk**, the involvement of senior management and direct engagement with those affected (where feasible) will also be important.

Appropriate action will look quite different depending on the nature of the company's involvement with the impacts identified in the assessment process:

- Where the business **causes or may cause** an impact, it should take the necessary steps to cease or prevent the impact, and remediate where needed.
- Where the business **contributes or may contribute** to an impact (by encouraging, facilitating or otherwise incentivising it), it should similarly take action to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. It should also remediate where needed.
- Where the impact is **directly linked to its operations, products or services** through a **business relationship**, it should seek to prevent or mitigate the risk that the impact continues or recurs taking into account factors including: its leverage, the severity of the abuse, how crucial the relationship is, and any adverse consequences of terminating it. Remediation is not required though many companies choose to engage in it.

Leverage refers to **the ability of a company to effect change in the wrongful practices of third parties**. Where the impact is directly linked to its operations, products or services, but without contribution on its part, the business must seek to mitigate the risk of the impact continuing or recurring by **maximising and using** its leverage. If these efforts, given reasonable time, are still unsuccessful, it should consider **terminating** the relationship, taking into account credible assessments of adverse impacts from doing so.

Where the relationship is “**crucial**” (meaning that it provides a product or service that is essential to the business and for which no reasonable alternative exists), ending it raises particular challenges. Here [severity](#) will be important: the more severe the abuse, the more quickly the business will need to see change before it takes a decision on whether to end the relationship. If it stays in the relationship, it will need to be able to **demonstrate its ongoing efforts** to mitigate the abuse and be prepared to accept any consequences (legal, reputational, financial) of the continuing connection.¹⁷

Where it is necessary for a business to **prioritise identified impacts for action**, the process should be driven by the [severity](#) of the impacts involved, taking full account of the perspective of potentially affected stakeholders.

3. Possible Approaches

a) What does integration and action look like where a company risks causing or contributing to an adverse impact?

Where an O&G company risks causing or contributing to an adverse impact through its own activities, it will need to take steps to prevent, or where that is not possible to mitigate the risk of, the impact occurring. Findings from impact assessment processes are typically translated by O&G companies into **appropriate management plans** (see further [below](#)). Some potential impacts pose particular challenges in terms of prevention and mitigation – especially those that may arise **during the exploration phase**, discussed further in Box 7.

Box 7: Preventing and Mitigating Exploration-related Impacts

O&G companies have traditionally paid less attention to the prevention, mitigation and remediation of impacts at the exploration stage than during later stages such as construction and production. This may in part be due to a desire **not to raise local community expectations** that a project will ensue, and in part to **reduce the costs** of exploration itself. However, this can constitute a false economy if the lack of due diligence results in adverse impacts that the company then has to address, and leave a legacy of poor relationships.

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

- Joint efforts by companies on neighbouring exploration blocks to **engage** with affected communities, including by explaining the full range of potential impacts and instituting a shared grievance mechanism right from the earliest possible stage;
- Where exploration is conducted by third parties, make clear that the effectiveness of how impacts are prevented or mitigated will **hold consequences** for how projects are valued, and ensure that this is reflected in actual practices;

¹⁷ See note 3 above, pp 48-51.

- Addressing **compensation issues** in a rigorous and prompt manner, and ensuring that other relevant issues (such as the use of public and private security) are managed in line with international standards; and
- Working to ensure that the full social and environmental impacts of exploration are factored into the **budget** for preventative measures and any necessary remediation.

In considering the risk of contributing to adverse impacts, it will be important for O&G companies to look, as one important example, at their own **purchasing practices**. If the procurement function strongly incentivises delivery on time and at cost, to the exclusion of other considerations, suppliers are unlikely to pay adequate attention to human rights issues (like excessive or unpaid overtime, or contracting temporary workers at a price that does not permit the employment agency to pay them statutory wages) and the company risks directly contributing to such harms. Similar considerations apply when considering an O&G company's approach to **security providers**. Where a company takes all reasonable measures to prevent such adverse impacts in its supply chain but they nonetheless occur, it needs to address the situation as one of direct linkage.

b) What is the relevance of internal and external engagement to the process of developing prevention and mitigation measures?

In the development and implementation of appropriate management plans, it will be essential for O&G companies to engage the internal functions necessary to address the issue (ie, those whose actions or decisions may generate the relevant impacts) through [cross-functional collaboration](#). Engaging with external stakeholders can assist understanding of the severity of impacts and in the development of appropriate prevention and mitigation measures, and will be particularly important in situations of **heightened risk** (see [below](#)).

c) How should a company prioritise identified impacts for action?

Where it is necessary to prioritise impacts for action, a company should do so according to the **severity and likelihood** of the impacts, taking full account of the perspective of affected stakeholders. This is distinct from the traditional risk or "heat mapping" approach that determines severity (or "consequence") in terms of the risk posed to the company.

In some cases, it will be clear which impacts are potentially [severe](#) based on their **scale, scope or irremediable nature**, such as those involving impacts on the right to life or health of individual workers, or those that fundamentally affect the livelihoods of entire local communities. In other cases, O&G companies will need to engage with affected stakeholders to understand the potential impact fully.

Assessing likelihood means considering the extent to which the risk of an impact occurring is increased by:

- (a) the **country and local operating context(s)** where the particular impacts have occurred or may occur, as well as
- (b) **specific business relationships** that may be involved.

Prioritisation is a relative concept. This means that once the most severe potential impacts have been prevented or mitigated (starting with the most likely), the next tier of impacts need to be dealt with, and so on through all the impacts identified.

d) How can leverage be generated and used in business relationships?

As discussed above, leverage is not relevant to determining the scope of a business' responsibility but is a critical concept when it comes to taking appropriate action.

As already noted, the **terms of contracts** play a critical role in creating and defining leverage in a company's relationships, ranging from those with governments to joint venture partners to suppliers and contractors. In negotiating **investment agreements with host state governments**, the [Principles for Responsible Contracting](#) (reproduced in [Annex C](#)) developed by the former UN Special Representative provide essential guidance. Similar considerations will also be relevant in **agreements on specific issues** that can have impacts on human rights, such as the negotiation of MoUs with public security forces or the terms of land acquisition and resettlement processes.

Governments typically have the primary duty to conduct **consultations over land acquisition**; however, O&G companies are increasingly being expected to conduct equivalent consultations where the government has not done so, or supplement them with additional measures where the government-led process does not meet international standards, particularly where indigenous peoples are involved.¹⁸ In terms of exercising leverage, it can be advisable for companies to seek to participate in any government-led acquisition process to be confident that it is robust and to seek to improve it where it is lacking.

Where an O&G company is **entering into a joint venture**, there is a range of ways in which it can generate leverage, some of which are highlighted in Box 8 below.

Box 8: Integrating Human Rights Considerations into Joint Venture Arrangements

Options available to O&G companies who are entering into JVs include:

- **Choosing partners:** companies may prefer to enter into JVs with "like-minded organisations" where that is possible;
- **Structuring the JV:** 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 on monitoring and reporting to JV partners), or seeking majority ownership.
- Where the company is a **minority partner**, options include seeking leverage through other routes such as: a Board position, a senior management role with responsibility for social/human rights issues, seconding staff to other key functions (such as health and safety, or audit), and integrating discussion of the management of human rights impacts into key technical meetings;
- **Building relationships:** seeking to exercise the "leverage of reason" will always be important through formal and informal communication channels at all levels (for example between the local security manager and local/regional public security forces), including in relation to the business case regarding the significant costs of getting it wrong.¹⁹ Additional measures can include establishing a steering committee with the host government to address specific issues (such as government implementation of the Voluntary Principles).

¹⁸ See [IFC Performance Standard 7](#), paras 21-22.

¹⁹ See Rachel Davis and Daniel Franks, "[The Costs of Company-Community Conflict in the Extractive Industry](#)", 2011.

Host government agreements or company practice may stipulate 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, but may also bring with it 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, including in amending existing procurement strategies and systems, as well as working closely with suppliers, contractors and local communities more broadly.²⁰ O&G companies will want to consider how to integrate human rights-related issues (beyond health and safety) into their **engagement with suppliers and contractors** for example through: training and skills development programs, the inclusion of requirements in contracts (especially during the construction phase), and engaging in constructive feedback and mentoring when problems are identified, rather than simply “black-listing” the relevant business.

Box 9: Relevant points for states with NOCs to consider

NOCs are subject to the responsibility to respect human rights. Under Guiding Principle 4, **states who own or control them** also have a particular role to play, for example by:

- Building policy coherence across relevant ministries that engage with the NOC (such as energy, health, foreign affairs, education and research);
- Including human rights issues in regular ‘owner dialogues’ with the company; and
- Developing guidance for all state-owned entities on human rights.

e) Mitigation in situations of heightened human rights risk

Where national law is **silent**, or **falls short** of international standards, the Guiding Principles make clear that companies should **operate to the higher standard**.²¹ Where national law appears to conflict with international standards, an O&G company’s assessment processes should pick up this risk and the company should then **test the extent of the conflict**, for example, through seeking clarification from the government, challenging the relevant provision, or learning from what peers have done. Companies will be well-advised to engage with stakeholders – including affected stakeholders wherever possible – for advice and to test any proposed approaches that would enable the company to honour the principles underlying the relevant international standards.

The more an O&G company has prepared staff for dilemmas through training, scenarios, lessons learned and similar approaches, the better the position it will be in to respond to challenging situations. One approach is to provide **specific guidance on heightened risk situations** (such as resettlement processes, compensation schemes, or engagement with indigenous peoples), backed up by specialist support when that situation is triggered, for example by sending corporate-level experts to accompany field staff through the process. Another is to empower a **cross-functional working group** with responsibility for

²⁰ See IPIECA, [Local Content Strategy: A Guidance Document for the Oil and Gas Industry](#), 2011, especially Tables 3 and 4.

²¹ Guiding Principle 23(a) and commentary.

identifying situations of heightened risk and developing appropriate strategies. Particular strategies will be needed for operations in conflict-affected areas.²²

4. Questions to Ask

The following questions should help test the extent to which the company's processes for integrating and acting on assessment findings are aligned with the Guiding Principles:

- Do we have appropriate processes for developing prevention and mitigation approaches in situations where we might cause or contribute to an impact?
- Have we adequately systematized cross-functional coordination in taking action on identified impacts, for example through a standing working group or through communication requirements?
- Do our prioritisation approaches (risk matrices, heat maps etc) take full account of the severity of potential impacts, as judged from the perspective of potentially affected stakeholders?
- Have we prepared staff for situations of heightened risk through scenarios, specific guidance and training? Have we identified local stakeholders that we could work with?
- Have we integrated human rights into existing guidance for those tasked with the job of entering into contracts (with host governments, joint venture partners, suppliers)?
- Are we prepared to respond to situations where an adverse impact is or may be directly linked to our operations by seeking to prevent or mitigate the risk of its recurrence?
- When we enter into business relationships, such as JVs, do we identify options for increasing our leverage regarding human rights issues, including where we are not the majority owner or operator? Have we considered opportunities for exercising or increasing it through both formal and informal channels?

III. Human Rights Due Diligence: Tracking

1. What the Guiding Principles Require

- Companies need to track the **effectiveness of their responses** to adverse actual and potential human rights impacts to verify whether 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.

2. Key Considerations

Tracking human rights issues and responses is an essential part of ongoing management of a company's impacts:

- it can help identify **trends and patterns**, highlighting where there are repeat problems that may require systemic change;
- it can also identify **good practices** that can be shared more broadly within the business to continuously improve performance; and

²² See generally International Alert, [Conflict-Sensitive Business Practice: Guidance for Extractive Industries](#), 2005.

- it is fundamental to the company's ability to **account both internally and externally** for its success in respecting human rights (external communication is discussed [below](#)).

Tracking systems need to be tailored to the company's situation – again, the Guiding Principles do not prescribe whether they should be **integrated into a company's existing systems or stand-alone**. Tracking should draw on **relevant internal and external sources** in order to derive as accurate a picture as possible, and should include both quantitative and qualitative feedback.

Quantitative indicators offer precision and can be more easily integrated into, or correlated with, existing systems. However, because respect for human rights is about impacts on people, **qualitative indicators** will always be important – including feedback from **potentially affected stakeholders** wherever possible. Stakeholder engagement processes and operational-level grievance mechanisms can perform important roles in this respect.

Where a significant human rights impact has occurred, companies should consider using **root cause analysis** or similar processes to identify how and why the impact occurred in order to help prevent, or mitigate the risk of, its recurrence.

3. Possible Approaches

a) *How can the tracking process build on existing systems?*

A number of O&G companies report that they find tracking challenging when it comes to monitoring respect for human rights. Companies will want to consider drawing on a range of **existing systems**, including internal process audits, self-assessments at the business unit level, and reviews by external third parties.²³ A review of these systems to assess their coverage of the salient human rights risks identified by the company can help **identify gaps** in current tracking efforts. Where relevant, the monitoring systems required by international financial institutions, and increasingly by certain private sector banks, should be included in this review.

Tracking systems should help build **internal traction** with other relevant departments for **effective action** in response to identified impacts. For example, data that shows cause and effect between the increased demands by procurement and code breaches by suppliers, or between those of construction staff and reactions from communities, can help engage the relevant departments in rectifying problems and avoiding their recurrence. A system that automatically requires that a lead function be named as responsible for an investigation, with automatic deadlines for response or update, can stimulate action, particularly where non-response leads to the issue being elevated within management. This can help drive home the relevance of human rights issues across the organisation, encouraging staff to **think preventatively** and not just in terms of responding when issues arise.

In order to drive continuous improvement, it can be important to link the conclusions drawn from tracking systems to both **departmental and individual performance assessments and rewards**, across all those parts of the business that influence human

²³ IPIECA, *Human Rights Due Diligence Processes: Practical Implementation Guide for Oil and Gas Companies*, forthcoming.

rights risks – for example, by requiring country-level manager sign-off on an annual review, or linking the results of root cause analysis to staff incentives.

b) What kinds of indicators may be appropriate?

In identifying indicators, O&G companies will want to consider a number of issues, some of which are highlighted in Box 10.

Box 10: Issues for O&G Companies in Developing Indicators

- Any **identifiable trends or patterns**, such as repeat types of incidents whether at one site (suggesting local lessons) or across sites (suggesting something broader to address at the company level);
- Any **feedback from local staff**, who have “boots on the ground” or live in local communities and may see and hear things that management cannot;
- The development of **behavioural indicators** – for example, if staff act in a way that is disrespectful of local communities, it can be a leading indicator of potential incidents or lack of support for the company, or at a minimum, of “blind spots” regarding potential impacts;
- How to solicit feedback as part of tracking from **affected stakeholders**, including how this can best be done for potentially vulnerable groups, and
- How to track **differential impacts** the company may have on women and men.²⁴

Qualitative indicators will often be central to the interpretation of quantitative data. For example, a relatively low number of complaints raised via the company’s grievance mechanism may reflect a reduction in incidents, or it may reflect a lack of trust in the mechanism itself. Feedback from potential users of the mechanism will be essential to understand which interpretation is correct. Just as O&G companies track the number of days since the last health and safety incident for employees and contractors, an **equivalent metric** could be developed for incidents affecting local communities.

Given the emphasis that many O&G companies place on training in human rights compliance, developing measures that test the **effectiveness of training** (beyond simply tracking the number of staff trained) are likely to be important. This should focus on assessing the level of understanding of participants and the extent to which they put the learning into practice in their work (for example, using baseline surveys pre and post-training, as well as at a set follow-up point).

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 be helpful in identifying other relevant indicators.²⁵

²⁴Here, work done in the [mining sector](#) on gender may be helpful.

²⁵ Global Reporting Initiative, [Sustainability Reporting Guidelines and Oil and Gas Sector Supplement](#), v3.1, 2012; IPIECA, API and OGP, [Oil and Gas Industry Guidance on Voluntary Sustainability Reporting](#), 2010. Ongoing work to develop indicators on implementation of the Voluntary Principles on Security and Human Rights may also be relevant.

c) How can tracking systems incorporate external stakeholder perspectives?

Operational-level grievance mechanisms can provide an important channel for affected communities to express their views about how impacts are being addressed. Equivalent mechanisms for workers can play a similar role with regard to impacts on their labour and other human rights – or when they see or hear something that provides evidence of how well the company is responding to human rights impacts more generally (see [below](#)).

Involving stakeholders directly in tracking processes can be an important means of generating credibility. There are a number of possible approaches, including:

- working with **trade unions** locally or at the global level (potentially under the terms of a Global Framework Agreement) and other civil society actors to monitor labour rights;
- setting up structured **joint fact-finding or monitoring** programs with independent experts, NGO representatives, or panels of local community members, which can also help build local capacity;
- where there is a **history of distrust** with affected stakeholders, identifying an individual or organisation that all parties will trust to provide accurate assessments of the company's efforts to address its impacts.

d) What kinds of tracking systems are helpful in relation to impacts arising through business relationships?

Supplier/contractor monitoring and auditing systems, usually tied to a program of corrective action where non-compliance is found, are commonly used.²⁶ Audits can provide useful and necessary “snap-shot” data about suppliers’ performance; however, consistent evidence suggests that they often miss issues due to their brief nature, suppliers’ manipulation of records and worker self-censorship in audit interviews.²⁷ They also have a **poor record in generating sustainable improvements** in labour standards over time, hence the emergence of more “partnership-based” and collaborative approaches that are complementing, or in some instances even replacing, audits. It will be important for companies to work with suppliers on **root cause analysis** methodologies in the case of significant impacts in order to “**reality test**” the conclusions drawn from audits. As noted above, there are real benefits in assessing not just suppliers’ compliance with human rights standards in terms of “outcomes”, but also the quality of their management systems to identify and address their own risks. This can include sharing knowledge about effective indicators and tracking systems.

Recommended approaches to monitoring the performance of **security providers** reflect some of this learning. Through the use of private security Service Level Agreements (SLAs) in contracts, compliance with SLA requirements can be measured as a percentage over time, resulting in bonuses or penalties and corrective action plans as appropriate, supplemented

²⁶ The Fair Labor Association [Workplace Code of Conduct](#) and Principles for Fair Labour and Responsible Sourcing, and the Ethical Trading Initiative [Base Code](#), have compliance benchmarks that may be relevant.

²⁷ See Richard Locke, Matthew Amengual, Akshay Mangla, “Virtue Out of Necessity? Compliance, Commitment and the Improvement of Global Labour Supply Chains”, *Politics and Society*, 37(3), 2009, pp 319-351.

by training and other measures.²⁸ Where misconduct occurs, recommended actions include conducting a lessons learned procedure.²⁹ Such approaches will also be relevant in developing MoUs with public security providers.

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 there is some kind of periodic reporting on the substance of complaints and outcomes. In addition to supporting effective supplier/contractor-level mechanisms, O&G companies may also want to consider providing a "**fall-back**" **channel** if issues are not being addressed, in order to ensure that the company is getting access to accurate information. The importance of grievance mechanisms in providing access to remedy is discussed further [below](#).

In terms of other business relationships, as noted above, **joint venture agreements** can incorporate provisions on monitoring and reporting to JV partners on designated topics, including human rights.

4. Questions to Ask

The following questions should help test the extent to which the company's tracking processes are aligned with the Guiding Principles:

- Have we reviewed existing tracking systems to see where human rights could be integrated and where there are gaps? Could they better support internal traction?
- Have we developed indicators that incorporate relevant trends and patterns, feedback from local staff and predictive behaviours?
- Do our indicators capture our responses to impacts on potentially vulnerable groups and differential impacts on men and women?
- What qualitative indicators do we need to ensure that we are interpreting quantitative data accurately, particularly regarding the 'absence' of grievances?
- Have we engaged workers and external stakeholders in our tracking processes?
- What do we do to supplement existing supplier audit systems to help build sustainable change in our supply chain beyond the area of security? What do we do in relation to contractors?

IV. Human Rights Due Diligence: Communicating

1. What the Guiding Principles Require

- 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.
- Communication needs to be **appropriate to the business' impacts** – in terms of its form, frequency, accessibility, the management of relevant risks and the sufficiency of information provided.
- Companies that may have severe human rights impacts should **report formally** on how they address them.

²⁸ ICMM, ICRC, IFC and IPIECA, [Voluntary Principles on Security and Human Rights: Implementation Guidance Tools](#), 2010, Annex L.

²⁹ Ibid, Tool 4.4.

2. Key Considerations

To communicate effectively, a company needs to have the necessary information available – drawing on all the earlier phases of the due diligence process. The focus of this step is on communicating about the company’s **general approaches** to addressing human rights risks, especially those that are the most salient, though it may also include information on **specific responses** to particular impacts in some instances.

Decisions about the **timing, audience, form and content** of any communication will be driven in large part by the **purpose** of the communication and the **severity** of the relevant impacts. Communication will be required, without waiting for a request, if there is a risk to affected stakeholders’ **safety or welfare** so that they can take steps to protect themselves. **Formal reporting** will be required where there is a risk or occurrence of severe impacts.

3. Possible Approaches

a) What is the relationship between communication and other stakeholder engagement processes?

Communicating about responses is distinct from broader stakeholder engagement processes, and also from consultation with stakeholders for the purposes of assessing or tracking impacts. However, this does not imply that “**silo-ing**” **communication responsibility** by locating it with a single department, particularly one that is removed from the activities of those on the ground, is the right approach. Those who engage with workers, communities, or other affected stakeholders on a daily basis need to be **empowered to communicate** about the company’s efforts to address impacts that are of direct concern to those individuals, or risk negatively affecting those relationships. It will be important for those in the relevant functions to understand the differences between the objectives of traditional public relations and those of communicating on the handling of human rights risks – which revolve around **accountability**.

b) What forms of communication are likely to be appropriate?

The **form** of an O&G company’s communications should fit the **purpose**. If the purpose is to communicate with affected stakeholders, then an in-person meeting may be the 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 relevant.

Formal reporting is likely to be appropriate for most O&G companies, given the risks inherent within the industry’s main activities and in many of its operating contexts.³⁰ (This is in addition to, not instead of, other forms of communication with directly affected stakeholders.) While reporting on social investment activities will be relevant, reporting for the purposes of human rights due diligence is primarily about conveying how the company is addressing its human rights risks and how it has dealt with any major incidents that have occurred.

³⁰ O&G companies were the second highest-reporting sector against GRI criteria in 2010, after financial services: IPIECA, “[Sustainability Reporting: Communicating Performance](#)”.

Formal reporting may involve self-standing annual Sustainability Reports or an integrated report on financial and non-financial performance. With appropriate metrics, **integrated reporting** can help demonstrate that respecting rights is seen as integral to the bottom line. At a minimum, O&G companies should provide financial and operating information in any non-financial report in order to provide business context for what is being said.³¹ O&G companies should seek to reflect the **full range of business relationships** in their reporting by identifying who the relevant entities are and what steps the company takes to maximise its ability to meet its responsibility to respect in the context of those relationships. Contractors in particular should be included in scope wherever possible.³²

GRI, IPIECA/API/OGP and ARPEL (the Latin American and Caribbean regional association of oil and gas companies) have produced relevant guidance on formal reporting.³³ The IPIECA guidance, which is widely used by companies who report, 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; and
- seeking to incorporate **stakeholder input** to the development of the report at relevant stages from pre-production to post-publication.

Box 11: Understanding Materiality in Human Rights Reporting

There has been an emerging recognition of the need for better reporting of non-financial risks and their integration into reporting of financial risks, in part because those risks can directly harm a company's bottom line. Evolving definitions of materiality focus not just on the perspective of the "reasonable investor", but also on the perspective of potentially affected stakeholders and on topics and indicators that would "**substantively influence the decisions of stakeholders**".³⁴ The Guiding Principles do not offer a particular definition of materiality with regard to how a company communicates on its efforts to address its human rights impacts – what matters is that it be informed first and foremost by the **severity** of those impacts, taking full account of the **perspective of potentially affected stakeholders**.

c) What about confidentiality and transparency?

The Guiding Principles recognise that there may be **legitimate reasons** for the non-disclosure of information, namely potential risks to affected stakeholders or staff, and the legitimate requirements of commercial confidentiality – meaning, for example, information that is crucial to negotiations regarding a significant business transaction for the duration of those negotiations, or information legally protected against disclosure to third parties.³⁵

³¹ See IPIECA, API, OGP, note 25 above, p 23.

³² Ibid, Stakeholder Panel comments, p 3.

³³ See note 25 above, also ARPEL, *Communications and Reporting Manual*, 2011. The GRI and IPIECA, API, OGP reporting frameworks are largely aligned, though there are some differences: see GRI, "[GRI G3.1 OGSS Content Index Cross-Referenced to IPIECA Guidance](#)", 2012.

³⁴ GRI, note 25 above, definition of materiality.

³⁵ Note 3 above, p 61.

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Companies should take care that **blanket assumptions** about confidentiality or legal risks arising from disclosure do not become an easy justification to avoid disclosing information that can legitimately be made public – or to avoid asking the necessary tough questions internally. Box 12 provides some observations in this regard.

Box 12: Transparency and Confidentiality

Building trust in a company's efforts to address its human rights impacts entails being **candid and open** about problems and **taking responsibility** when things go wrong. Disclosure expectations have existed in the **revenue transparency** area for some time, and are rapidly evolving in relation to **O&G contracts** with the adoption of the IFC's revised [Policy on Environmental and Social Sustainability](#) and Access to Information Policy (which have wider implications for disclosure) and of national laws on transparency. The Special Representative's [Principles on Responsible Contracting](#) recommend disclosure of the terms of investment contracts and state that any exceptions require "compelling justifications".

Under the Guiding Principles, companies retain the **legally protected confidential space** that they need to investigate difficult problems, evaluate them, and communicate internally to address them.³⁶ Given the potential legal risks of failing to respect human rights,³⁷ it is **highly prudent** for companies to investigate the underlying facts where allegations of company involvement in human rights abuses occur. (Guiding Principle 23, which states that companies should treat the risk of involvement in **gross human rights abuses** as a matter of legal compliance compels such an approach in situations that suggest this may be the case.)

Where a company decides **not to communicate** in response to an allegation, it should do so on the basis of knowledge of the situation and clear criteria. There remains the risk that a lack of communication about a specific allegation can compound views that the allegation is correct. Companies that have **pushed the boundaries of transparency** to discuss human rights challenges they face are generally seen as more credible in their claims of respecting human rights.

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**".³⁸ Stakeholders who are interested in the company's efforts to respect human rights will welcome a more candid explanation that acknowledges the challenges involved and clearly explains the processes in place to address them. Possible approaches include: reporting on operations that are a particular focus of concern, or using case studies to discuss systemic challenges. It will take time for any O&G company to implement the Guiding Principles, so reporting should indicate both what has been achieved and any plans to implement outstanding parts of the process. **Comparability over time** in reporting will be important, and **targets** can help demonstrate a commitment to continuous improvement in respecting rights, while recognizing that it can be a long-term process.

³⁶ John Sherman, "[Are There Risks in Knowing and Showing?](#)", Speech delivered October 22, 2012.

³⁷ See, eg, International Alert and Fafo, [Red Flags: Liability Risks for Companies Operating in High-Risk Zones](#), 2008.

³⁸ IPIECA, note 25 above, p 21.

4. Questions to Ask

The following questions should help test the extent to which the company's communication processes are aligned with the Guiding Principles:

- Do our existing forms of communication take into account all relevant stakeholder groups? Do they adequately take account of how those groups access information?
- Do we formally report on our efforts to address our human rights impacts? If so, how do we take full account of the perspective of affected stakeholders in determining which issues are material?
- What processes do we have in place to make credible decisions about what and when to communicate publicly and any risks associated with that?
- Do we test our approaches to communicating with external stakeholders? If not, how could we do so?
- Is our reporting on these issues consistent and comparable over time?

E. Remediation and Operational-Level Grievance Mechanisms

1. What the Guiding Principles Require

- Where a company identifies that it has **caused or contributed** to adverse 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 adversely 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**.

2. Key Considerations

Where it recognises that it has played a role in **causing or contributing** to adverse impacts, a company needs to be **involved in remediating** them.³⁹ In some cases, it will be most appropriate for remediation to be provided by an entity other than the company (for example, where crimes are alleged); the company should **cooperate** in any such legitimate processes. In all cases, it is important to understand the perspective of those directly affected regarding what would be an “**effective**” remedy. This may take a **range of substantive forms** the aim of which, generally speaking, will be to counteract or make good any human rights harms that have occurred. Remedy can include apologies, restitution, rehabilitation, financial or non-financial compensation, punitive sanctions (by state-based mechanisms) as well as the prevention of harm through, for example, guarantees of non-repetition.

To avoid delays in responding to adverse impacts, companies should have in place agreed processes for remediating impacts arising in any area or stage of operations. An **operational-level grievance mechanism** is a formalised means through which affected stakeholders can raise concerns about the impact the company has on them and can seek

³⁹ Where a company contests a claim that it has caused or contributed to an adverse impact, it is entitled to maintain that position but should not obstruct access to independent state-based mechanisms that could adjudicate any such dispute.

remedy. It is **distinct from traditional whistle-blower systems**; rather, it is a channel specifically intended for individuals or their legitimate representatives to raise concerns about impacts **without having to show a breach of any standard**, including human rights.

The mechanism should help to **identify and address problems early** before they escalate. To do this, it needs to be known and trusted by those stakeholders for whose use it is intended. The Guiding Principles establish a set of interrelated “**effectiveness criteria**” for such mechanisms contained in Box C below. Wherever possible, there should be clarity on the **points of recourse** that exist beyond the mechanism, so that the complainant understands the range of options, including if agreement cannot be reached.

An effective grievance mechanism can **support the due diligence process**, particularly in identifying impacts and tracking the effectiveness of responses to impacts raised through the mechanism. By demonstrating that the company takes their concerns seriously, such a mechanism can also **help build trust** and reinforce relationships with affected stakeholders, although it is **not a substitute** for broader stakeholder engagement processes.

Box C: Guiding Principle 31 – Effectiveness Criteria Applied to Operational-Level Grievance Mechanisms

In order to ensure their effectiveness, operational-level grievance mechanisms should be:

- (a) **Legitimate**: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) **Accessible**: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) **Predictable**: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) **Equitable**: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) **Transparent**: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism’s performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) **Rights-compatible**: ensuring that outcomes and remedies accord with internationally recognised human rights;
- (g) **A source of continuous learning**: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;
- (h) **Based on engagement and dialogue**: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

3. Possible Approaches

a) How can a grievance mechanism support internal embedding and integration processes to better prevent and mitigate adverse impacts?

A systematised approach to addressing complaints can have significant benefits both for integration (taking action on specific impacts) and for broader change within an O&G company as part of the embedding process – in addition to its role in providing remedy to

affected individuals. The process of developing a grievance mechanism (or reviewing existing mechanisms) has the potential to act as a catalyst for a **wider internal discussion** about relevant impacts and how to prevent and mitigate them.

On the “hard wiring” side, meaning relevant systems and processes, a grievance mechanism requires appropriate **senior-level oversight** to ensure that cross-functional coordination occurs once a grievance is lodged. It is important to involve the department responsible for any decision or action underlying a complaint to take **ownership of the response** can help embed an understanding of human rights risks within the company and contribute to future prevention. Where it is not appropriate for the relevant department to take the lead in addressing the complaint (perhaps due to conflicts of interest where a serious allegation is concerned), it certainly needs to be involved in the process of **learning lessons** in order to prevent repetition.

“Soft wiring” in terms of staff competencies and attitudes will also be relevant. It can be challenging to build internal understanding that complaints are not a threat and to counteract the view that “if grievances are generated we are failing at community relations”. Receiving and addressing complaints can be a constructive process that contributes to O&G company **learning and improvement** over time. It is also, of course, an essential part of the responsibility to respect.

For O&G companies, the focus will be first and foremost on **site-level mechanisms**. While the exact form of mechanisms may vary at site, not least to reflect culturally appropriate ways of raising and addressing grievances, it is important for data to be pushed back up to the corporate level for the purposes of tracking and learning.

b) What issues should the mechanism be capable of addressing and from which stakeholders?

A grievance mechanism **should not be limited** to addressing complaints that are framed as human rights issues or as a breach of other relevant standards. This risks missing a range of impacts, which, if left unaddressed, could **escalate** into serious human rights abuses. For example, a community that finds that its concerns about noise and dust, or employment opportunities during construction, are continually ignored may feel compelled to engage in a protest to get the company to pay attention. A grievance mechanism should be capable of picking up these kinds of issues early enough to avoid such escalation and address underlying issues.

An effective mechanism requires triggers for **escalation within the company**, depending on the gravity of the complaint, including guidance on when to involve state authorities. **Automation** can provide for escalation where set timeframes for a response or other action are not met. A mechanism should be able to exclude clearly vexatious complaints, but only after the application of established criteria and an effort to determine whether there is a legitimate issue underneath the (apparently vexatious) surface.

An O&G company may have separate grievance mechanisms for staff and for external stakeholders or they may have a combined one that is capable of receiving complaints from workers, community members, suppliers and contractors and their staff, and potentially other business partners as well. It may be advisable to establish **distinct mechanisms** for a particular issue, project or group, for example where the project has significant impacts on

indigenous peoples. Whatever approach is adopted, grievance mechanisms need to fit an O&G company's local operating context and take full account of **local culture**.

c) What are some early lessons about designing O&G grievance mechanisms?

A poorly designed mechanism is dangerous as it can distort internal assessments of how well human rights risks are being managed, and raise expectations among stakeholders without delivering on them, potentially compounding their sense of grievance. As O&G companies seek to implement the Guiding Principles' "effectiveness criteria", there is some **early learning about what works** and where caution needs to be exercised when it comes to designing appropriate operational-level grievance mechanisms,⁴⁰ aspects of which are summarised in Box 13 below.

d) What approach should companies take to grievances in the context of business relationships?

When adverse impacts are **directly linked** to an O&G company's operations by a business relationship, the company is not required under the Guiding Principles to remediate them (though many companies choose to do so). However, the company does have a **forward-looking responsibility** to seek to prevent and mitigate their recurrence. For example, where a complaint is brought to the grievance mechanism about a contractor causing damage to the property of local community members, the company will need to address this with the contractor to help ensure that the problem does not recur and also confirm that the contractor remediates the damage.

Key Point: Contractors pose a particular challenge as they are often on-site so their staff can quickly discern whether or not their rights are being respected by their employer to the same extent as those of the company's staff. Communities, however, are typically aware only of the main (operating) company and assume that all those working on the site are working directly for it. This can create a strong incentive for an O&G company to be prepared to **receive complaints involving contractors** through its own mechanism, using its leverage with the contractor to seek solutions – whether those complaints are from local community members or from the contractors' own staff.

Box 13: Early Learning on Design of Grievance Mechanisms in the O&G Sector

- Where trust in the company or the mechanism is low, **joint oversight** or at a minimum, affected stakeholder input into design, consultation on a draft design or evaluation will be critical to ensuring that those for whom the mechanism is intended are willing to use it.
- There is value in enabling a **range of access points** (for example, mail, email, secure phone line, secure website, or via community relations officers, line managers), including for off-shore workers, involving local community members as information sources, and making use of verbal and other **non-written forms of communication** wherever needed (for example, through dance, theater, cartoons).

⁴⁰ See Caroline Rees, [Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned](#), CSR Initiative, Harvard Kennedy School, 2011, Annex C; IPIECA, *Operational-Level Grievance Mechanisms: IPIECA Good Practice Survey*, forthcoming. See generally www.baseswiki.org.

- Companies are starting to seek to **build the capacity of potential users**, for example, through information sessions for contractor staff, or training in conflict resolution for local communities - or even with communities.
- It will be important to identify where complainants are members of **potentially vulnerable groups** and take this into account during the of handling of their complaint and in identifying appropriate remedies.
- Standardising procedures can contribute to a more **rigorous process**, including by: acknowledging receipt of complaints, providing indicative timeframes and updates, and reporting externally on the mechanism.
- **Capturing learning** from the mechanism is critical, for example by generating a log on the company's intranet of appropriately anonymised 'difficult issues' with possible responses.
- Involving **neutral third party dialogue facilitators or mediators** can bring real benefits, if both parties agree to it, in terms of arriving at sustainable solutions.⁴¹
- **Communicating about outcomes** from the mechanism in appropriate form (eg anonymised, aggregated or case studies), demonstrating the value of using it.
- Ensuring that the grievance mechanism does not supplant **stakeholder engagement** (which would signal that the company only wants to hear from stakeholders when they have a problem), and conversely, not assuming that stakeholder engagement covers the role performed by a grievance mechanism, since it generally reaches groups but can miss the perspective of aggrieved individuals.

4. Questions to Ask

The following questions should help test the extent to which the company's processes for handling grievances and providing remedies are aligned with the Guiding Principles:

- Do we take the perspective of affected stakeholders fully into account in identifying effective remedies where we cause or contribute to adverse impacts?
- Do we provide one or more mechanisms through which stakeholders who may have concerns about the impacts of our operations on their welfare, including their human rights, can raise those concerns with us?
- Are our mechanisms designed with inputs from those stakeholders for whose use they are intended, to ensure they take account of cultural specificities, including how they feel comfortable raising and addressing concerns?
- Do our mechanisms meet the effectiveness criteria set out in the Guiding Principles? Have we tested our assumptions in this regard with the groups for whose use they are intended?
- Are we confident that our mechanisms do not preclude access to judicial or other state-based processes, nor undermine the role of legitimate trade unions?
- In the event that grievances are not resolved through our mechanism, is it clear to all involved what alternative points of recourse exist?
- Do we track the results from our grievance mechanism to inform our due diligence processes, as well as to identify patterns and trends that suggest lessons for continuous improvement?

⁴¹ See "[The Only Government We See: Building Company-Community Dialogue in Nigeria](#)", a video produced by the CSR Initiative at Harvard Kennedy School.

ANNEX A: United Nations Human Rights Instruments Elaborating on the Rights Of Persons Belonging to Particular Groups or Populations

- 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
- The Declaration on the Rights of Indigenous Peoples
- The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

In most instances, the rights in these instruments relate to the *individuals* in the groups they address. The Declaration on the Rights of Indigenous Peoples addresses both the human rights of indigenous individuals and the collective rights of indigenous peoples.

Source: Office of the UN High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, 2011, p 12.

For the full text of these instruments, please refer to the OHCHR [website](#).

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ANNEX B: Activity-Stakeholder Matrix

	Company Workers	Supply Chain/ Contractor Workers	Affected Communities	Potentially Vulnerable Groups	Other Relevant Groups...
Land Acquisition/ Resettlement	Eg, Staff lack appropriate policies and procedures for carrying out resettlement processes, leading to conflict and possible physical reprisals - <i>Rights to Life, Liberty and Security of the Person, Right to Highest Attainable Standard of Health</i>	Eg, Contractor staff are pressured to acquire land using “every means possible” to meet project timelines, leading to severe stress – <i>Right to Highest Attainable Standard of Health</i>	Eg, Flawed compensation policies and processes (such as compensating for crops not land; below market rate compensation; failure to compensate individuals who hold customary title to the land) – <i>Right to an Adequate Standard of Living, Right to Housing</i>	Eg, Land acquisition process does not allow sufficient time to meaningfully consult with indigenous peoples, including obtaining consent as necessary, in relation to land - <i>Right to Self-Determination, cultural property rights</i>	
Drilling/ Seismic Testing	Eg, Company staff are pressured to obtain access agreements from local landowners under extreme time pressure, leading to severe stress and possibly physical harm if workers are from the local community – <i>Rights to Life, Liberty and Security of the Person, Right to Highest Attainable Standard of Health</i>	Eg, In remote areas, contractor staff are provided with poor living and housing conditions in seismic camps - <i>Right to Just and Favourable Conditions of Work; Right to Highest Attainable Standard of Health</i>	Eg, 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>	Eg, Seismic testing results in destruction of sacred sites, places of cultural heritage belonging to indigenous peoples – <i>Right to Self-Determination, cultural property rights</i>	
Construction of Facilities/ Pipelines	Eg, Staff are pressured to work excessive amounts of overtime, or to abstain from taking religious holidays, to meet project schedule – <i>Right to Just and Favourable Conditions of Work; Rights to Non-discrimination</i>	Eg, Migrant workers’ passports taken away by recruitment agencies supplying workers for construction and/or recruited workers are subjected to high fees by labour brokers, leading to bonded labour – <i>Freedom from all forms of Forced or Compulsory Labour</i>	Eg, Restricted access to land needed for, eg, cattle grazing due to pipeline route with inadequate consultation and compensation – <i>Right to an Adequate Standard of Living</i>	Eg, Failure to prepare for influx of mostly male construction workers results in increase in sexual exploitation of/abuse against local women and children and rise in HIV/AIDS - <i>Rights to Life, Liberty and Security of the Person; Prohibition Against Torture, Cruel, Inhuman or Degrading Treatment; rights of the child (eg Freedom from Sexual Exploitation); Right to Highest Attainable Standard of Health</i>	

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Environmental Management	Eg, Workers are exposed to petrochemicals without adequate preparation and training for handling potential industrial risks – <i>Right to Highest Attainable Standard of Health</i>	Eg, Contractor staff lack adequate protective equipment during the clean up of spills/leakages – <i>Right to Highest Attainable Standard of Health</i>	Eg, Air and water emissions are not effectively controlled impacting on local community’s land and environment (eg, gas flaring can lead to acid rain affecting crop yields; oil spills can pollute land/water sources) – <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>	Eg, Women and children 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>	
Human Resources Management	Eg, Full-time and/or temporary workers lack opportunity to join legitimate trade union – <i>Freedom of Association and Right to Collective Bargaining</i>	Eg, Contractors on-site subject to poorer employment conditions than company employees but lack access to any grievance mechanism – <i>Right to Just and Favourable Conditions of Work; Freedom of Association and Collective Bargaining</i>	Eg, 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/racial group – <i>Right to Non-Discrimination</i>	Eg, Failure to foster a workplace that is free from severe forms of harassment of women – <i>Right to Non-Discrimination; Prohibition Against Torture, Cruel, Inhuman or Degrading Treatment</i>	
Security	Eg, 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>	Eg, Private security providers lack opportunity to join legitimate trade union – <i>Freedom of Association and Right to Collective Bargaining</i>	Eg, Security providers break up peaceful community protest using force – <i>Right to Security of the Person, Freedom of Assembly</i>	Eg, Private security providers are hired from the dominant ethnic/racial group, increasing the vulnerability of minority groups to harassment, with a subsequent rise in assaults against minority group individuals - <i>Right to Non-discrimination</i>	
Planning/ Management of Decommissioning	Eg, Temporary workers are given risky decommissioning work to do with no follow up health checks - <i>Right to Just and Favourable Conditions of Work; Right to Highest Attainable Standard of Health</i>	Eg, Contractor staff are dismissed without payment of benefits due to them - <i>Right to Just and Favourable Conditions of Work</i>	Eg, Lack of proper remediation 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>	Eg, Lack of adequate consultation with vulnerable 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>	
Other Relevant Activities...					

**ANNEX C: Principles For Responsible Contracts:
Integrating the Management Of Human Rights Risks Into
State-Investor Contract Negotiations - Guidance For Negotiators**

The Principles for Responsible Contracts identify 10 Principles to help states and business investors integrate the management of human rights risks into investment project contract negotiations. Each principle in this guide is explained in brief, along with its key implications and a recommended checklist for negotiators. The guide was developed through four years of research and inclusive, multi-stakeholder dialogue carried out under the Mandate of the Special Representative of the Secretary-General for Business and Human Rights, Professor John Ruggie. It reflects the collective experiences of experts involved in major investment projects from government, commercial enterprises, non-governmental organizations and lending institutions.

The 10 principles are:

- 1. Project negotiations preparation and planning:** The parties should be adequately prepared and have the capacity to address the human rights implications of projects during negotiations.
- 2. Management of potential adverse human rights impacts:** Responsibilities for the prevention and mitigation of human rights risks associated with the project and its activities should be clarified and agreed before the contract is finalized.
- 3. Project operating standards:** The laws, regulations and standards governing the execution of the project should facilitate the prevention, mitigation and remediation of any negative human rights impacts throughout the life cycle of the project.
- 4. Stabilisation clauses:** Contractual stabilisation clauses, if used, should be carefully drafted so that any protections for investors against future changes in law do not interfere with the State's bona fide efforts to implement laws, regulations or policies in a non-discriminatory manner in order to meet its human rights obligations.
- 5. "Additional goods or service provision":** Where the contract envisages that investors will provide additional services beyond the scope of the project, this should be carried out in a manner compatible with the State's human rights obligations and the investor's human rights responsibilities.
- 6. Physical security for the project:** Physical security for the project's facilities, installations or personnel should be provided in a manner consistent with human rights principles and standards.
- 7. Community engagement:** The project should have an effective community engagement plan through its life cycle, starting at the earliest stages.
- 8. Project monitoring and compliance:** The State should be able to monitor the project's compliance with relevant standards to protect human rights while providing necessary assurances for business investors against arbitrary interference in the project.
- 9. Grievance mechanisms for non-contractual harms to third parties:** Individuals and communities that are impacted by project activities, but not party to the contract, should have access to an effective non-judicial grievance mechanism.
- 10. Transparency/Disclosure of contract terms:** The contract's terms should be disclosed, and the scope and duration of exceptions to such disclosure should be based on compelling justifications.

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ANNEX D: Additional Resources List

This is an initial list of additional relevant publicly available resources, *beyond those mentioned in the Guidance above*, that may be helpful to O&G companies seeking to implement the responsibility to respect in line with the UN Guiding Principles.

NOTE: This is an early list only. The Project Team would welcome feedback from all stakeholders on other relevant publicly available resources that could be included here. Please specify the extent to which those resources are aligned with the UN Guiding Principles.

1. Human Rights Due Diligence:

ICMM, [Integrating Human Rights Due Diligence into Corporate Risk Management](#)

International Business Leaders Forum, IFC and UN Global Compact, [Guide to Human Rights Impact Assessment and Management](#)

OECD, [Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict Affected and High-Risk Areas](#)

OECD, [Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones](#)

UN Global Compact Network Netherlands, [How to do Business with Respect for Human Rights](#)

2. Country Risk Analysis:

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](#)

US State Department [Annual Human Rights Reports](#)

World Bank, [Worldwide Governance Indicators](#)

3. Stakeholder Engagement:

IFC, [Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets](#), 2007

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](#)