



Assessing Human Rights Impacts

What do the UN Guiding Principles Expect?

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

Why is this Important?

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

What are the Steps Involved?



Key Points for Implementation

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

Possible Approaches

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

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

This suggests that the assessment should:

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

Resources: SIAs and Human Rights Impact Assessments

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

The IFC Performance Standards set the benchmark for robust SIAs

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

Example: Assessing Impacts Together with Affected Stakeholders

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

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

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

II B Understanding your Operating Context

Key Points for Implementation

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

Possible Approaches

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

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

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

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

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

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

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

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

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

Resources: Country-level Risk

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

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

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

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

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

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

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

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



Reviewing Business Relationships

Key Points for Implementation

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

Possible Approaches

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Suppliers/contractors based in locations where there are known human rights risks, such as limits on the right to form and join a trade union or poor enforcement of labour laws;
 - Suppliers/contractors with a track record of poor performance on human rights;
 - Suppliers/contractors that provide key products or services that themselves pose risks to human rights (for example safety or health hazards);
 - Local, smaller or new suppliers/contractors who may lack awareness of human rights issues or the capacity to address them.
- **Migrant and agency workers:** Agency workers are employed by a recruitment and employment agency and then placed with a third party "user enterprise" (such as an O&G company or a supplier) to perform work, typically under the user enterprise's supervision. The user enterprise pays fees to the agency, which pays wages to the workers. Some agency workers are also "migrant workers", meaning that they are engaged in work in a state of which they are not nationals.

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

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

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

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

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

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

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

II

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Drawing on Expertise

Key Points for Implementation

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

Possible Approaches

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

Resources: Matrix to Stimulate Internal Discussion of Potential Impacts

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

There are different ways to generate this internal conversation:

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

II E Consulting Affected Stakeholders

Key Points for Implementation

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

Possible Approaches

- **Mapping stakeholders:** Stakeholder consultation first requires a process to identify who a project's stakeholders are and any sub-groups within them, such as women, youth, workers with disabilities, contract workers etc. The IFC's [Good Practice Handbook on Stakeholder Engagement](#) highlights a range of considerations that can be important in mapping affected stakeholders. These include:
 - Considering stakeholders affected not only at the project site, but by other aspects of the operation, including associated facilities, transport routes, areas subject to cumulative impacts, or unplanned but predictable developments;
 - Identifying potential “cumulative impacts” on stakeholder groups that may not be immediately evident, by mapping out both the near-term and future facilities and considering the legacy of projects in the area;
 - Avoiding defining affected stakeholders too narrowly, since communities lying just outside of the designated project impact area may “perceive” impacts or feel they have been arbitrarily excluded from project benefits;
 - Assessing the significance of the project to each stakeholder group from their perspective, and vice versa – some groups may be impacted by the project much more severely than others;
 - Considering from the earliest stages who are the most vulnerable or marginalised individuals or groups among those potentially impacted, and whether special engagement efforts will be needed to involve them;
 - Paying attention when identifying representatives of stakeholder groups that they are indeed true advocates of the views of their constituents, and can be relied upon to faithfully communicate the results of engagement with the company back to their constituents.
- **Crafting an appropriate consultation processes with potentially affected stakeholders:** Consultation with stakeholders needs to be tailored to the local context where it takes place and the needs of the stakeholders being consulted. The IFC's guidance indicates that a good consultation process will ideally be:
 - Targeted at those most likely to be affected by the project;
 - Early enough to scope key issues and have an effect on the project decisions to which they relate;
 - Informed, as a result of relevant information being disseminated in advance;
 - Meaningful to those consulted because the content is presented in a readily understandable format and the techniques used are culturally appropriate;
 - Two-way so that both sides have the opportunity to exchange views and information, to listen, and to have their issues addressed;
 - Gender-inclusive through awareness that men and women often have differing views and needs;
 - Localised to reflect appropriate timeframes, context, and local languages
 - Documented to keep track of who has been consulted and the key issues raised;

Resources: Stakeholder Engagement

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

Other sources of guidance on stakeholder engagement/consultation include:

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

Example: Benefits of Community Consultation

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

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

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

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

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

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

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

- **Placing value on strong engagement skills:** experienced community relations practitioners stress the importance of showing that they can listen, of not defending the company “at all costs”, and of not trying to convince stakeholders that their opinion is “wrong.” Doing otherwise can risk undermining the credibility of the company.
- **Tracking and analysing information and commitments:** it is important to have systems for documenting the company’s engagements with communities, including any promises made, especially when staff turnover is high. This helps build internal memory and institutional learning. It can help avoid the frustration among affected stakeholders that arises when commitments are not met.
- **Including vulnerable or marginalised individuals:** Vulnerability can stem from an individual’s status or characteristics (eg. race, colour, sex, language, religion, national or social origin, property, disability birth, age or other status) or from their circumstances (eg. poverty or economic disadvantage, dependence on unique natural resources, illiteracy, ill health). Those vulnerabilities may be reinforced through norms, societal practices, or legal barriers. Vulnerable or marginalised individuals typically experience negative impacts more severely than others.

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

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

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

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

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

Resources: Vulnerable or Marginalised Groups

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

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

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

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

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

Resources: Films on Facilitated Dialogue Processes

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

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

Resources: indigenous peoples' rights

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

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

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

- Help avoid the reinforcement of existing local power structures if they are corrupt or discriminatory;
 - Help build the capacity of local communities to engage in the assessment process;
 - Help the company become a partner in discussions, rather than being seen as the controller or "patron";
 - Help the company and community resolve disputes and conflicts;
 - Help the company and community build a platform for continued consultation and engagement to address issues throughout the project life cycle.
- **Free, prior and informed consent:** Expectations about community consultation continue to evolve, not least as regards the process of obtaining "free, prior and informed consent" (FPIC). Some argue that the right to consent, rather than just consultation, applies to any community that legally or traditionally uses or occupies land. At the same time, many governments dispute that view of FPIC and some emphasise their own right of eminent domain – that is, to take land for a public purpose (such as economic development) subject to just compensation and in line with their human rights obligations. This complicates the issue for O&G companies seeking to do the right thing.

At a minimum, the right to FPIC applies to indigenous peoples with regard to activities involving land, territory or other resources that they traditionally own, use or occupy. This includes cultural heritage sites, which are essential to their survival as distinct peoples.

Consent is one part of a wider process of engagement with indigenous peoples, not the only issue. As the [UN Special Rapporteur on the Rights of Indigenous Peoples](#) has observed: "neither consultation nor consent is an end in itself, nor are consultation and consent stand-alone rights ... [They] constitute a special standard that safeguards and functions as a means for the exercise of indigenous peoples' substantive rights" – rights that may be affected by extractive operations. They are also not the only relevant safeguards: additional safeguards include impact assessments, mitigation measures, and benefit-sharing and compensation schemes.

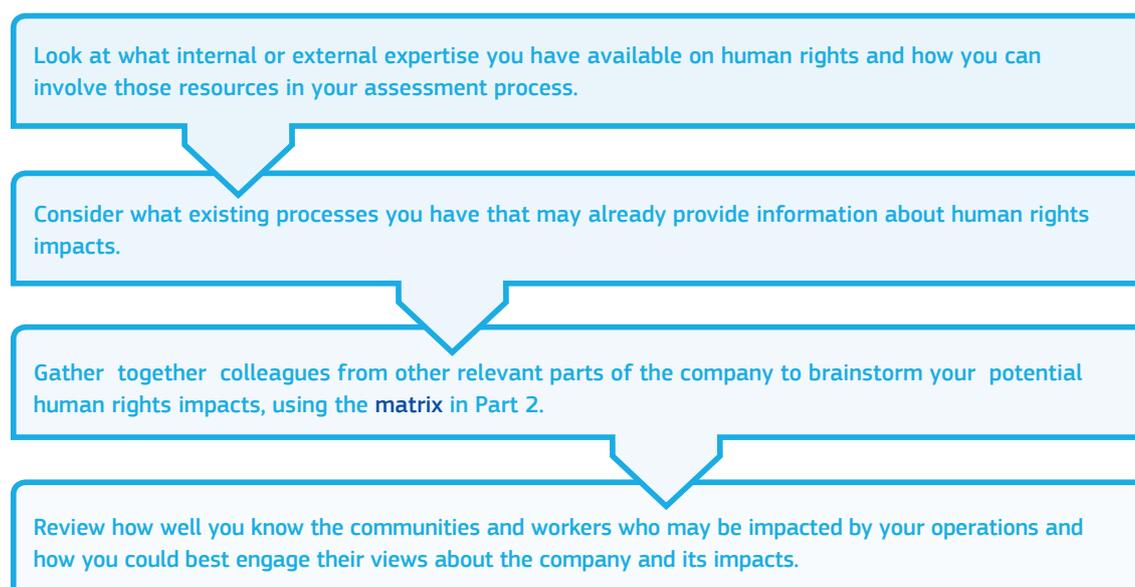
According to the work of the UN Special Rapporteur, to be effective, **consent** procedures should:

- Be based on equitable and agreed-upon terms that are proportionate to the impacts;
- Include appropriate mitigation, compensation and benefit-sharing procedures; and
- Set the terms of a sustainable relationship between the community and company based on genuine partnership; and effective **consultation** processes should:
 - Establish information-sharing mechanisms and build capacity on the community side to mitigate power imbalances and ensure that they are vehicles for dialogue;

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

Where to Start

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



Questions to Ask

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

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