

# THE BUSINESS PERSON'S GUIDE TO HUMAN RIGHTS RISK ASSESSMENT

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What is it, Why do it, How to get it done, and What to do with it.

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Nomogaia is a non-profit think tank devoted to making business and human rights work. We do not contract with business. However, we are happy to help any party, governments, academic institutions, NGOs or businesses, with finding additional resources to assist them with HRRRA.  
More information can be found at [www.nomogaia.org](http://www.nomogaia.org).

# An Introduction to Human Rights Risk Assessment

This Guide is meant to be a short explanation of what a Human Rights Risk Assessment is and how a company can use it. Business and Human Rights is a new, complex and often confusing area. An enormous amount of background explanation on business and human rights is readily available.<sup>1</sup> This Guide does not attempt to provide all of that information. It assumes that the reader has general familiarity with the UN Guiding Principles on Business and Human Rights (the “UN Guiding Principles”), which has become the recognized global standard. This Guide also assumes that the reader is a business person who needs to know about identifying and understanding human rights risks in a business operation. The Human Rights Risk Assessment is a specific tool for that use.

## What is a Human Rights Risk Assessment?

Human rights are principles defined in international human rights treaties and conventions to protect human dignity. The UN Guiding Principles are, at a minimum, directed toward the rights contained in the International Bill of Rights<sup>2</sup> and the core conventions of the International Labour Organization. Those rights have been further defined in international law, in treaties and by the United Nations. All human rights are held by humans who are, therefore, called “*rightsholders*.”

Human rights are a crystallization of centuries of learning addressing crucial,

worldwide struggles. Using human rights as a guide opens up powerful insights into what really matters to people – what drives them to protest a project, or embrace it. Making use of the accumulated wisdom embedded in human rights is called “using the *human rights lens*,” which is useful for both investigation and for analysis. HRRAs use the human rights lens.

Human rights risk is the risk that rightsholders will have their rights violated, impeded or curtailed.

Human Rights Risk Assessment (“HRRAs”) is an investigation and analysis that determines the human rights risk present in a business operation. The subject of the analysis is a single business operation, such as a factory, mine, plantation or pipeline. “Risk” refers both to the probability that human rights will be negatively affected and the magnitude or gravity of the human rights impact.

For HRRAs, the organizing principles and standards of judgment are the internationally recognized human rights themselves.

## When is an HRRAs needed?

An HRRAs is useful whenever a business needs to know the human rights risks present in a business operation. The following are examples of various business entities as they face a need to evaluate risks:

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<sup>1</sup> See, for example, The Business and Human Rights Resource Centre <https://business-humanrights.org/>

<sup>2</sup> Which includes the Universal Declaration of Rights, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights.

- A company conducting due diligence for the acquisition of, or merger with, a target company;
- A bank considering making a loan to a borrower, particularly a project finance loan;
- An insurance company underwriting a policy, particularly of political risk insurance;
- A company deciding whether to certify a supplier as an approved member of its supply chain;
- A government agency determining whether to approve a company to be a government supplier or contractor;<sup>3</sup>
- A multilateral or national development financial institution or national credit agency determining whether to make a loan or provide political risk insurance; and
- An investor seeking further information on a company's operations.<sup>4</sup>

While the details differ, in each case there is a “**Company**” with an “**Operation**” which the subject of scrutiny, as well as an “**Interested Third Party.**” These are the terms used below.

To determine if a human rights investigation is needed for a particular Operation, the Interested Third Party applies an initial screen. Many banks have systems in place to determine if a particular loan or

credit creates significant social, political or environmental risks.<sup>5</sup> Others look at the strength of the political and economic systems where the Operation is located, as well as political risks associated with the borrower and its owners. An investor, especially a “socially responsible” investor, or a potential acquirer may respond to complaints about a Company's Operation. Such processes amount to a screening process which can conclude that an Operation needs further scrutiny and that this should include a human rights analysis. The human rights lens considers potential adverse impacts to human rights related to the Operation which will become the responsibility of the Interested Third Party if the transaction is consummated or certification awarded.

#### How to have an HRRRA performed

An HRRRA is usually performed by an outside consultant. This is because few companies have in-house personnel with the specific expertise needed to effectively apply the human rights lens. Also, the analysis must be objective – unbiased and uninfluenced by loyalty to the Company or its personnel. An expert consulting firm is selected by the Interested Third Party. Depending on the specifics of the situation, the Company may have the right to consent to the firm being hired, paying for the HRRRA

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<sup>3</sup> For this example and the next, we are not addressing business people, but government officials. However, the points below, in substance, address this situation as well.

<sup>4</sup> Another situation is one in which the company itself desires deeper information on one of its own operations. For a company with an existing operation subject to human risks complaints, there is often no easy way to get accurate answers as to

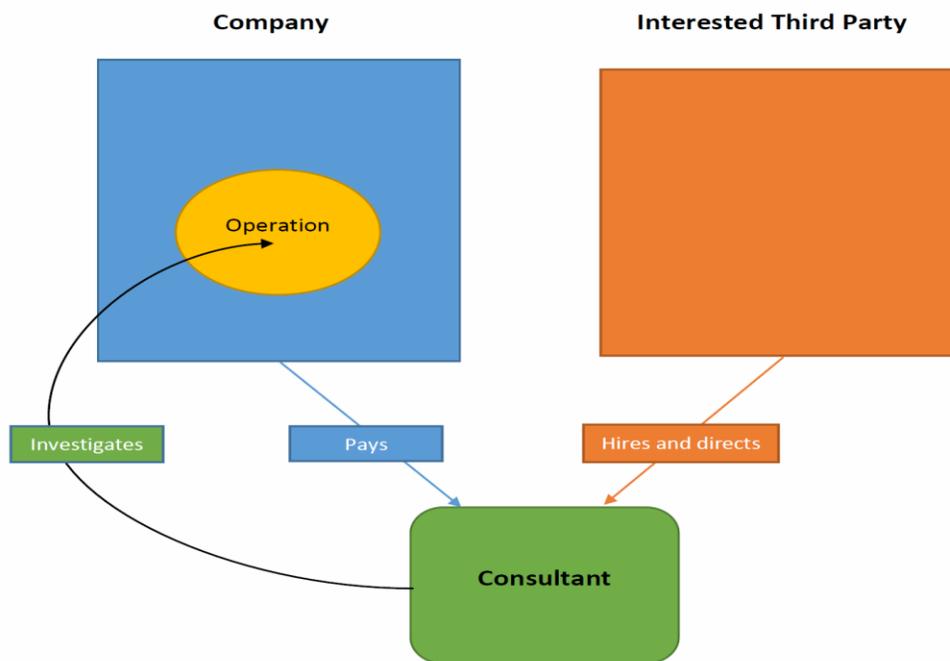
what is really going on through normal corporate channels. For these situations, the company, often a regional or the international headquarters, will want an impartial and accurate analysis of the risks. An HRRRA will help get this. In this situation the HRRRA is a form of human rights due diligence under the UN Guiding Principles.

<sup>5</sup> For example, the International Finance Corporation's categorization of A, B and C loans.

while the Interested Third Party hires and directs the firm. The consulting firm’s human rights assessors are given direction as to the needs and goals of the Interested Third Party for the assessment. However, it is important to give the Human Rights Assessor leeway to uncover human rights problems that may not be known or suspected. One of the benefits of the human rights lens is that it allows for human rights problems to be

uncovered, even if they have not otherwise been reported or have not yet matured into organized complaints.

The Human Rights Assessors are then given information about the Operation and the Company. As is the case with auditors, withholding, obscuring or misrepresenting information to the Human Rights Assessors is a serious violation of law and ethics.



The Human Rights Assessor desktop analysis is thorough. The operating context of the project is reviewed from all angles relevant to human rights. The political, social and economy background and current state of the locale is studied. Recent and ongoing conflict and disputes are reviewed. New reports and NGO stories are reviewed along with extensive materials gathered by or on behalf of the company in preparing for the project. These can include environmental and social impact assessments, stakeholder

mapping and political risk assessments and other studies. After reviewing corporate and contextual literature, preparing interview approaches, and identifying potentially salient rightsholder groups, Human Rights Assessors then visit the operation. The site visit will include (independent and company-led) tours of the operation itself (or its planned location if it is not yet built) as well as engagement with the local communities and rightsholders. Depending on the scale of the project, the budget and the time limits,

further site visits may be necessary. There is inevitably a need to follow up on the findings of the site visit, and so further Company information will be required. Other stakeholders, such as governments, trade unions and NGOs may be contacted.

### Content of the HRRR Report

The HRRR Report is delivered to the Interested Third Party and may be shared with the Company. It contains a brief description of the Operation and its political, social and economic context. Human rights risks related to a company can occur when a government has failed to respect, protect or fulfill human rights. The existence of such governance gaps are explained.

Human rights risks are reported in detail where they are found to be salient. Reporting will identify both the human rights at risk and the corresponding rightsholders at risk. The *impact* or magnitude of the harm

arising from the risk is stated, taking into consideration the number of people affected and the degree to which their rights are infringed. The *probability* that the rights will be violated, impeded or curtailed is also reported. The cause of the risk and its connection to the Operation are explained. The combination of these important, clarifying elements results in a clear and useful expression of human rights risks.

Because there are over 40 core human rights, which interact in complex ways, there are always a plethora of theoretically possible, small ways that a business operation can impact them. The HRRR is designed to be practical and targeted--it is not concerned with minutiae or the merely hypothetical. Its goal is to identify clearly and distinctly important rights risks with a significant probability of occurring.

The HRRR also includes risks whose probability is certain. These would include actual, ongoing human rights impacts in operations that are up and running, for which no prediction need take place. They also include situations when the national and local context of a planned Operation has attributes that will interact with the operation to generate inevitable human rights risks, such as exacerbation of extreme poverty, political unrest or entrenched bias against a social group.

HRRR is designed to identify human rights risks quickly and efficiently. As such, it is not a comprehensive, final or definitive human rights analysis. While, in some situations an HRRR may contribute to Human Rights Due Diligence as defined by the UN Guiding Principles, it is not designed

**FOR EACH POTENTIALLY IMPACTED RIGHT, A HRRR STATES:**

1. **THE RIGHT OR RIGHTS;**
2. **RIGHTHOLDER GROUPS;**
3. **IMPACT (HOW MANY PEOPLE AFFECTED AND DEGREE OF IMPACT);**
4. **PROBABILITY (THE RIGHTS WILL BE VIOLATED, INFRINGED OR CURTAILED);**
5. **CAUSES (OF THE RISK); AND**
6. **CONNECTION TO OPERATION.**

or intended to completely satisfy that requirement. Human Rights Due Diligence is an ongoing process and, depending on the operation and its context, may require in-depth analysis and operational responses. The HRRRA may be able to initiate or assist Human Rights Due Diligence.

### How to use an HRRRA

The HRRRA report delivered to the Interested Third Party is to be used as an input into the decision processes listed in Section III, above. The HRRRA does not make recommendations about business decisions, such as whether a company should be certified as a supplier or whether a project should receive a loan. It is up to the Interested Third Party to evaluate the HRRRA's conclusions as they are relevant to its decision, based on its own values, judgment and risk tolerance.

In some cases, the results of the HRRRA will be so clear that the decision is easy. An HRRRA may identify grave human rights

concerns that could imperil the Interested Third Party's reputation. In contrast, an entirely exculpatory HRRRA will indicate that, from a human rights standpoint, the project should clearly move forward. The Interested Third Party can then act in accordance with those findings and with its analysis as a whole. In many cases the results of the HRRRA will be mixed, for example the human rights risks identified, but their impact limited.

Sometimes the HRRRA will initiate further due diligence. An HRRRA can be presented to the Company, which may have the time and incentive, to make an effort to fix the problems identified, materially reduce the human rights risk, and then reestablish a relationship with the Interested Third Party after the risk has been mitigated. In those cases, the human rights assessor may be kept on to assist the Company with the remedial actions or asked to return to reassess the Operation after changes have been made.

## Sample HRRAs: How HRRAs Can Be Used

What do HRRAs look like? We have provided two examples in the Appendices. These are real HRRAs which consider actual operations and human rights risks. We will summarize them and walk through how they can be used.

### Certification of Equatorial Palm Oil's Palm Bay Plantation in Liberia

The HRRAs described here is real, the Interested Third Party, CloverGreen, is fictitious. Equatorial Palm Oil and its Palm Bay Plantation are the Company and the Operation. Both are real.

CloverGreen is a large, multinational consumer goods company based in Europe. It uses palm oil in many of its foods, cosmetics and household products. It has a Human Rights Policy which states that it respects human rights and that one element of this respect is its human rights due diligence, which it conducts on major suppliers before they can be certified. Part of the certification process includes a screen to determine if the would-be supplier should undergo an additional human rights review process. Because palm oil has been subject to vociferous human rights criticism, palm oil raises a red flag in the screening process. There is a short list of countries in which palm oil plantations have been particularly controversial, which also raises a red flag. Another red flag is raised if the supplier

applicant has been subject to a complaint before the Roundtable on Sustainable Palm Oil (an international palm oil industry group) and that complaint has not been completely resolved.

Equatorial Palm Oil's Palm Bay Plantation in Liberia has made an application to be an approved palm oil supplier to CloverGreen. As part of the screening process, it is noted that Liberia is on the list of countries in which palm oil production has been especially controversial. In addition, a complaint regarding land grabbing was made by a community in Liberia against the Palm Bay Plantation. That complaint was determined to have merit. Equatorial Palm Oil's Palm Bay Plantation raises three red flags, and so, under CloverGreen's screening procedures, it must undergo an additional human rights review. Equatorial Palm Oil has the option of either being rejected as a supplier or being subject to this further review, which includes a Human Rights Risk Assessment. Equatorial Palm Oil agrees to the review.



*Figure 1 A palm oil worker atop a full truck of "fresh fruit bunches"*

The B&HR Consulting Firm (which is fictitious) is selected by CloverGreen to do the review.<sup>6</sup> B&HR performs background research on the human rights situation in Liberia. It reviews the government's Concession Agreements with Equatorial Palm Oil and the other large palm oil plantations. It discovers that Equatorial Palm Oil is majority owned and controlled by

Kuala Lumpur Kepong Berhad, a Malaysia-based multi-national conglomerate with a market capitalization in the billions of dollars. B&HR also reviews the many public complaints against the large palm oil companies moving into Liberia, including the complaints formally lodged with the Roundtable for Sustainable Palm Oil.

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<sup>6</sup> The Palm Bay Plantation HRRR was performed by NomoGaia, a non-profit think tank. It was conducted as pure research and it was not commissioned, requested or funded by Equatorial Palm Oil.

Equatorial Palm Oil did allow access graciously cooperated in the assessment and commented on the draft HRRR.



*Figure 2 - A palm oil worker carrying a "fresh fruit bunch"*

B&HR conducts a site visit. At the Palm Bay Plantation, BH&R personnel review company information and interview employees (including field workers), contractor employees (who, management, office and mill workers, teachers and clinicians. They also meet with government officials, union officials, opposition NGOs, ex-employees, community representatives and members of nearby communities. After these interviews, the B&HR human rights assessors obtain follow up information from numerous parties, including the company and the government. The entire process is completed in six weeks. The Human Rights

Risk Assessment is completed and supplied to CloverGreen.<sup>7</sup>

Most of CloverGreen's concerns with the Palm Bay Plantation stem from the repeated and vociferous complaints over land acquisition and resettlement. These "land grab" complaints are not unusual when large scale agriculture moves into a low governance country like Liberia. The HRRR did consider and address the land grabbing allegations, but found that the complaints against the Palm Bay Plantation had subsided and that Equatorial Palm Oil had a new policy of free, prior and informed consent of communities before land was added to the Planation. The land grab

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<sup>7</sup> The actual NomoGaia Human Rights Risk Assessment is available for download at [www.nomogaia.org](http://www.nomogaia.org)

situation was in flux, but there was residual anger in some of the local communities, elements of which dated back to the forced relocations by a predecessor of Equatorial Palm Oil in the 1960s. Most community members welcomed the plantation and the jobs it brought. The land grab situation was decidedly mixed.

The human rights assessors used the human rights lens and considered other rights which had neither made headlines nor were the subject of formal complaints. They discovered that a number of human rights related to labor were at risk. For example, the personal protective equipment needed for safe use of toxic chemical were not sufficiently available or used, violating the workers' Right to Favorable Working Conditions. Worker housing, needed because the plantations are large and transportation to the fields is difficult, was substandard, with two families unhappily sharing a house built for one, no sanitation facilities, no safe drinking water and no electricity (as promised in the company's Concession Agreement with the government and its Collective Bargaining Agreement with the Union). The housing situation alone was a cause of significant unrest. Worse, the great majority of field workers were not categorized or treated as employees -- who receive benefits, union representation and labor law protections -- but were considered subcontractors, who receive no benefits and painfully low wages (below the "extreme poverty" level). This system appeared to be an intentional avoidance of the national labor laws.

BH&R identified the rights affected (Right to Favorable Working Conditions, Right to Just Remuneration, Right to Housing) and the impacted rightsholders (employees, employees' families, contract laborers). They determined that the impacts varied from medium to high, affecting hundreds of people. The probability of these impacts was certain, because the rights were currently and obviously being degraded. Adverse impacts were certain to continue into the future unless Equatorial Palm Oil changed how it operated. The cause of the rights violations was the company itself, not some external force manipulating the company. The human rights impacts were entirely the fault of Equatorial Palm Oil.

Labor Rights were not publicly reported to be a problem before the HRRRA was conducted. CloverGreen has strongly worded policies about how it respects labor rights in its supply chain. Labor rights are included in its certification program for major suppliers. The HRRRA's finding leads CloverGreen to conclude that Equatorial Palm Oil's Palm Bay Plantation cannot be certified as a CloverGreen supplier and CloverGreen will not purchase its palm oil. CloverGreen so states to Equatorial Palm Oil. However, CloverGreen also informs Equatorial Palm Oil that the labor rights infringements can be reversed. As it appears to be doing with land acquisition, Equatorial Palm Oil could change its policies and procedures in order to respect labor rights. In that case, Equatorial Palm Oil may reapply for certification as a CloverGreen supplier.



*Figure 3 A rubber plantation worker, uninformed about World Bank development plans*

### Investment in Myanmar's Thaton Gas-Fired Power Plant

Both the HRRRA and the Interested Third Party are real in this case study, but the funding model is unique, which is how this HRRRA can be made public. NomoGaia conducted the HRRRA of the proposed Thaton Power Plant project on behalf of the World Bank. However, the World Bank did not commission the HRRRA and the Thaton plant did not fund it. NomoGaia's independent donors funded the study, and the World Bank accepted the HRRRA and its findings.

The World Bank is a multilateral development bank dedicated to poverty reduction worldwide. The World Bank's Corporate Responsibility Program aims to mainstream sustainability throughout the institution, and its infrastructure investments are guided by a Sustainability Framework that was updated in August 2016. In its 2015 "Sustainability Review," the World Bank observed that "reducing its own

corporate environmental impacts is in line with the institutional mission to reduce poverty, as environmental degradation affects the world's poor disproportionately." To this end, "Key aspects related to the Bank's environmental footprint include the following: energy, emissions, effluents and waste, and procurement practices (including supplier environmental assessment, supplier assessment for impacts on society, and supplier human rights assessment)."

Thaton is a 65-year-old gas-fired power plant in Mon State, Myanmar, seeking funding for a much-needed upgrading. Historically the Thaton power plant has supplied energy primarily to a privately owned tire factory, which sells products to neighboring Thailand. The refurbished plant will produce twice as much energy with the same amount of fuel, presenting opportunities for power to be supplied

beyond the industrial sector. The decision to refurbish Thaton was jointly made by the Government of Myanmar and the World Bank, in light of its rural location, its age and inefficiency, and its existing connections to the (generally limited) electric grid. To secure funding for the upgrade, Thaton was subject to the World Bank's Environmental and Social Safeguards, including an environmental and social impact assessment process. Because the power plant is located in an area with an extensive history of conflict with government, and where a peace agreement hinged on an array of benefits flowing to ethnic minority populations, it was agreed that an additional review, explicitly considering human rights was required. This was the trigger for the stand-alone human rights risk assessment performed by NomoGaia.

NomoGaia is encouraged but not financially supported to conduct the review. NomoGaia performs background research on the human rights situation in Myanmar, Mon State and the Thaton vicinity, finding that the power plant came under direct rebel fire at least three times in its history, and finding that on-site chemical storage was insufficient to prevent hazardous materials from flowing downstream into neighboring residents' rice paddies. It exposes additional relationships between the power plant and a military-run prison complex within the state, which is a likely recipient of additional electricity, as well as a workforce demographic makeup that is not representative of the local area, being predominantly ethnic Burman in a Karen-ethnic area.

The NomoGaia assessors conduct a site visit. They meet with government officials, government opposition, NGOs, current employees, community representative and members of nearby communities. NomoGaia finds workforce safety protocols unenforced, local residents uninformed about upgrades, and a consistent affirmation that no consultation had been conducted in Karen language (the language of local residents) or with Karen leaders, who recently signed a ceasefire with the government. After these interviews, NomoGaia human rights assessors obtain follow-up information from numerous parties, including the World Bank. The entire process is completed in six weeks. The Human Rights Risk Assessment is completed and submitted to the World Bank.

The Thaton project is overseen by engineers. As such, the socio-political risks, including those pertaining to conflict, health risks and inequitable distribution of benefits, had not been fully considered. The human rights lens brought into focus rightsholders that had been considered by the World Bank (employees experiencing unsafe working conditions) as well as those that had not (e.g. local residents not receiving employment opportunities, access to electricity, opportunities to participate in public discussions about infrastructure development, information about health risks associated with construction on a brownfields site). Potentially impacted rights included the right to health, public participation, nondiscrimination, and, if the terms of the power agreement failed to align with the new peace agreement, risks to security of person from renewed



*Figure 4 "Safety First" at the existing deteriorated power plant*

conflict. NomoGaia identified the probability of impacts ranging from high to certain, with impacts ranging from high to extreme (in the case of potential renewed conflict). Aside from labor, none of these risks had been investigated before the HRRRA was conducted. In addition to the human rights risks identified in the HRRRA, risk management strategies were proposed.

The World Bank validated NomoGaia's findings through an internal review process and incorporated additional benchmarks into project development, recognizing

"substantial" environmental and social risk. The project is said to be on track for completion in 2017, now benefitting from additional social oversight by the World Bank and linked into a broader "National Electrification Plan" that explicitly incorporates "off-grid" communities into plans for electrification. The World Bank moved forward with the investment and is now better positioned to identify, validate and manage ongoing problems of land confiscation and weak social engagement.

## Further Information

Human Rights Risk Assessment uses the power of the human rights lens to get answers that businesses need. It allows a third party, which must judge a company's operation, to make a genuinely informed decision. HRRAs have multiple uses for different users in various situations, but they all boil down to the same root: does this company's operation pose risks to human rights?