Rights incorporated: integrating human rights impact assessment into global business practices

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LIST OF ABBREVIATIONS

ART	Antiretroviral treatment
CDC	Centers for Disease Control and Prevention
CEO	Chief Executive Officer
CHRAGG	Commission for Human Rights and Good Governance of Tanzania
CSR	Corporate social responsibility
EIA	Environmental impact assessment
EITI	Extractive Industries Transparency Initiative
ESHIA	Environmental, social and health impact assessment
FAO	Food and Agriculture Organization
GDP	Gross domestic product
HIA	Health impact assessment
HRIA	Human rights impact assessment
ICMM	International Council on Mining and Minerals
IFC	International Finance Corporation
ILO	International Labour Organization
IMCI	Integrated management of childhood illness
IMF	International Monetary Fund
IPIECA	International Petroleum Industry Environmental Conservation Association
LNG	Liquid natural gas
MDA	Mass drug administration
MHRC	Malawi Human Rights Commission
MNC	Multinational corporation
MoH	Ministry of Health
MoU	Memorandum of understanding
NBS	National Bureau of Statistics
OHCHR	Office of the High Commission for Human Rights
SIA	Social impact assessment
SoW	Scope of work
Swiss TPH	Swiss Tropical and Public Health Institute
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commission on Rights
UNICEF	United Nations Children’s Fund
WHO	World Health Organization

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SUMMARY

Background: In 2011, the United Nations (UN) Human Rights Council unanimously endorsed a protocol dictating the role of multinational corporations towards human rights. What resulted, the UN Guiding Principles on Business and Human Rights, set forth a framework for corporations to proactively "respect" human rights. The responsibility to respect was reasoned to include: (i) policy statements; (ii) the conduct of "human rights due diligence," to know and demonstrate that companies understand and manage their human rights impacts; and (iii) processes for hearing and addressing human rights-related grievances from affected people. This framework was embraced by the business, government and civil society communities, but it did not include detailed guidance on *how* it could be implemented.

Objectives: Four specific objectives were pursued in this PhD thesis: (i) to develop and advance tools and methods for human rights due diligence and, specifically, human rights impact assessment (HRIA) with the intention that these tools can be readily adapted to a variety of industries and contexts; (ii) to validate these tools at investment projects around the globe; (iii) to draw from existing environmental, social and health impact assessments and build on best practices while avoiding redundancy with environmental, social and health impact assessments; and (iv) to synthesise the experiences of HRIA practitioners, find commonalities and consider next steps.

Research partnership: These doctoral studies were carried out through a public-private partnership between the Swiss Tropical and Public Health Institute (Swiss TPH), NewFields LLC and NomoGaia. NewFields is an international consulting firm with long-standing expertise in health impact assessment (HIA) in developing countries. NomoGaia is a global human rights think tank dedicated to making human rights due diligence a core practice for multinational corporations. Fieldwork for NomoGaia's assessment served as a platform for the present research, while learnings from consulting work with NewFields clients informed the candidate's understanding of issues.

Methods: This PhD thesis entailed fieldwork primarily at four investment projects in low- and middle-income countries in Africa, Southeast Asia and Central America. Analysis was also informed by additional field experience through work with NewFields and NomoGaia. At

each project location, HRIA tools were employed, modified, consolidated and validated. Follow-up monitoring at several locations contributed methodological developments for longitudinal "surveillance-response" approaches to HRIA.

Results: The culmination of fieldwork and desk-based analysis has resulted in a comprehensive depiction of HRIA in practice. The chapters that follow, as both published and working papers on HRIA, describe how HRIA can be conducted, and how its implementation can affect corporate behaviours. Each assessment conducted and analysed identified corporate impacts and risks not identified in other assessment. Each also documented positive changes in corporate behaviour over time. A key finding was the importance of longitudinal assessment, using initial HRIA as a benchmark for ongoing, periodic analysis of changing contexts and impacts. Because neither companies nor human rights exist in a vacuum, companies must be nimble and responsive to changes. By assessing the Kayelekera uranium mine repeatedly over five years, we identified contextual risks associated with HIV transmission that posed minimal threat during initial assessment but became significant as contextual conditions deteriorated. At the Uchindile plantation in Tanzania, we found that major improvements in housing and working conditions were limited to specific dormitories, making clear the necessity of broad assessment across operations. This was particularly relevant with regard to health, where improved access to care for one population was presented as a positive, but assessment found that decreased access to medical care for others outweighed those gains.

Conclusions/significance: The systematic HRIA approach that evolved over the three years of this PhD and the four preceding years of preliminary fieldwork represents a vital first step in the establishment of HRIA as a valuable corporate tool. Evidence-based, transparent, dialectic, responsive and holistic HRIA is increasingly seen as an appropriate approach to identifying and managing corporate human rights risks. Going forward, companies will need to embrace transparency to further validate HRIA and to demonstrate that affected rightsholders are entitled to know the human rights risks they face and to have a say in how they are managed. Governments can support this effort by mandating that companies conduct and publish HRIA for capital intensive projects planned within their jurisdiction.

1. INTRODUCTION

1.1. Early days in business and human rights

At 2 a.m. on a September night in 2004, the president-director of Newmont Mining Corp's Indonesian operations was pulled from his bed and taken to the police station, where four of his colleagues were already booked. Richard Ness was almost immediately released, but the four other men spent the next 32 days in jail cells, charged with causing methyl-mercury poisoning in residents of Buyat Bay through the company's waste disposal mechanisms.

Two and a half years later, Ness and his company were acquitted on all charges, but not before the international scandal marred the company's reputation and the local community had been torn in half. Villagers who claimed the bay was poisoned broke ties with neighbours and family members who insisted it was clean. They moved up the coast, 12 hours away by boat. Activists supplied lorries and while villagers piled in, they gave speeches calling to evict foreign miners from the country. All the while, video cameras rolled.

My own investigation of the Buyat Bay scandal began in 2006, months before Ness's trial ended, when it still seemed likely that he would be the first foreign manager to fall from mingling with ambassadors to eating bread and water in an Indonesian prison. First impressions suggested the company was guilty. When mining companies are accused of human rights abuses, polluting watersheds and harming public health, few doubt the claims. However, six months of research, building on the ecological, toxicological and other studies commissioned in the course of the trial, revealed that the bay was clean, the community was misled, and the company's greatest failing was in treating the local populations equitably.

A district border dispute had left a beach community in limbo, and the government told the company to disregard its inhabitants and encourage them to live in neighbouring villages. The company complied, but the villagers did not. They watched jobs, benefits and infrastructure flow to their neighbours while they languished on the beach. When an enthusiastic young activist approached them with the prospect that, not only were they neglected by the company, they were also being harmed, some embraced the narrative. Housing and wealth were promised to those that would publicise the allegations. Poor

villagers, recognising an opportunity to gain from a company that had overlooked them, were eager participants.

But the bay was not polluted, and the villagers who complained of mercury poisoning did not receive new houses, lands or wealth. Instead, they lost credibility and community cohesion. The villagers who moved to a new settlement eventually trickled back, confessing their old fishing grounds were preferable. A 10-year environmental monitoring programme, now in its eighth year, has proven what the company had claimed all along: the bay is as safe as ever (Nuraida, 2012).

How did a globally respected mining company fail to see the signs of discontent, and how did an activist and a handful of frustrated villagers trigger a multi-year lawsuit? Was it preventable?

That question has defined the work of this dissertation. Toxicologists at human health consulting firm NewFields LLC exposed the fallacy of pollution allegations, but they also recognised that a fundamental corporate failing had occurred. Thus began a multi-year partnership between NewFields and the individuals who would, in 2008 found NomoGaia, which was dedicated to helping companies identify and manage human rights impacts.

1.2. The origins of human rights impact assessment

The year after the Buyat Bay scandal broke, the Secretary General of the United Nations (UN) appointed a Special Rapporteur to identify the role of multinational corporations towards human rights. Between 2005 and 2011, Special Rapporteur John Ruggie, a professor at the Harvard Kennedy School for Government, established a governance framework to incorporate transnational business enterprises into the global human rights regime (Office of the High Commissioner for Human Rights (OHCHR), 2008).

Ruggie generated consensus among civil society, governments and companies through six years of consultations, culminating in a three pillar approach governing human rights. First, governments were allocated a duty to protect, promote and fulfil human rights. Second, companies were charged to respect human rights. Third, both were called upon to provide remedies to victims of human rights abuses (OHCHR, 2011). Further clarifying the corporate role, Ruggie drafted the UN Guiding Principles on Business and Human Rights (Guiding Principles, in short), outlining the expectations that corporations respect human rights by creating policy statements committing to “respect,” and by conducting “human

rights due diligence" that would be an ongoing process of evaluating and managing human rights risks (OHCHR, 2011). Human rights due diligence begins with a human rights impact assessment (HRIA), which is the central topic of this dissertation. The Guiding Principles were unanimously endorsed by the UN Human Rights Commission in June 2011, and efforts to implement them are ongoing.

1.3. HRIA in concept

1.3.1. Core values

Corporate HRIA is a process for systematically identifying, predicting and responding to the actual and potential human rights impacts of a business operation or capital project. It has its roots in governmental HRIA, which have been used to evaluate government policies and trade agreements since the 1990s. HRIA is designed to complement a company or government's environmental, social and health impact assessment and due diligence processes and to be framed by appropriate international human rights principles and conventions (Global Compact, 2008). It is also rooted in the realities of the particular project by incorporating the context within which it will operate from the outset, and by engaging directly with those peoples whose rights may be at risk (OHCHR, 2011).

Although there is no universally accepted methodology for HRIA, there is broad consensus among practitioners that project-level HRIA should (i) employ a normative human rights framework; (ii) adhere to standards of public participation, requiring direct engagement with affected rightsholders: (iii) employ non-discriminatory processes for conducting assessment and implementing mitigation measures; (iv) be transparent in process and outcomes; (v) render duty-bearers accountable for findings and for mitigation measures; and (vi) be interdisciplinary (Felner, 2013). An expansion of category three is the principle that, in conducting HRIA, assessors should not violate rights. This principle requires sensitivity to how, when and whether to engage certain rightsholders, publish certain elements of assessment, and engage with duty-bearers (Beyrer and Pizer, 2007; Walker, 2009).

1.3.2. Human rights as defined in HRIA

The human rights instruments employed in corporate HRIA include the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; and the International Labour

Organization (ILO) Fundamental Conventions on Rights at Work (UN General Assembly, 1948; 1966a; 1966b; International Labour Organization (ILO), 2002b). These instruments, listed by Ruggie as central to the human rights regime are, in some circumstances, supplemented. For example, companies operating on indigenous lands may also include the Declaration on the Rights of Indigenous Peoples (OHCHR, 2011).

1.3.3. Interdisciplinarity and process

The principle of interdisciplinary research is crucial to corporate HRIA, because human rights impacts, in practice, are crosscutting. They touch on cultural, economic, environmental, health, legal political and social topics. HRIA that rely solely on local cultural knowledge, which are common among civil society-led HRIA, often lack an evidence base in science and project engineering, limiting their ability to issue meaningful guidance on actual environmental and health impacts (Harrison, 2013). Conversely, HRIA that rely solely on legal compliance analysis often lack local input and rightsholder observation, failing to identify perceived issues and experienced impacts (Bishara and Hess, 2014). Key capacities for an HRIA team include human rights expertise, empathic interview skills (which characterise journalists, litigators, social scientists and others), technical expertise (which characterises epidemiologists, toxicologists, engineers, medical practitioners and other scientists) and local knowledge.

Although several methodologies are currently available for HRIA, all involve basic concepts of assessment, including screening, scoping, appraisal and implementation of mitigation measures. Different assessments employ different terms to describe these steps, sometimes subdividing the process into additional steps. The methodology presented in this dissertation also incorporates monitoring, which is not universal among existing HRIA.

1.3.4. Collaborative framework

This dissertation is a collaborative project by NewFields, NomoGaia and the Swiss Tropical and Public Health Institute (Swiss TPH). The involvement of the scientific, corporate and non-profit worlds is important in achieving cohesion among several diverse but equally relevant disciplines and perspectives. The current disjoints in the ways diverse actors in the business and human rights sphere understand human rights is an underlying challenge in conducting human rights due diligence. The composition of the advisory committee enabled the candidate, whose background is non-profit human rights, to bring scientific rigor to HRIA, where it has historically been strongly guided by community perceptions and legal

compliance. The transdisciplinary committee has also brought key perspectives to discussions of the inherent links between security and political rights on one side (which companies often see as the entirety of human rights as applied to their operations), and economic, social and cultural rights (including health and the environment) on the other. The HRIA tools and guidance presented in this thesis depict a cohesive set of interrelated and interacting rights, and processes to understand their systemic, dynamic interactions.

In the wake of the UN Human Rights Council's unanimous endorsement of Ruggie's Guiding Principles, there is a global mandate for business to respect human rights. However, methodological consensus has been slow in coming, frequently marred by a lack of rigour and complicated by the fact that there is no proper discipline to contain business and human rights (Kemp and Vanclay, 2013). It is not a strictly legal process, as companies are not legally bound by state-ratified treaties governing human rights. Nor is it appropriately limited to corporate social responsibility (CSR) departments, which have historically focused on acting charitably rather than assessing and eliminating harm (Morris et al., 2013; Peloza et al., 2014). The methodological detail supplied in this dissertation does not provide an answer to where, within a corporate structure, HRIA belongs; instead it draws links among the myriad disciplines that have a role in managing human rights risks.

1.4. Structure of this dissertation

This dissertation is organised into five chapters, including three peer-reviewed publications and two papers currently under review. It begins with a manuscript on HRIA methodology, detailing the process of conducting HRIA as validated on two projects in Malawi and Tanzania. "Assessing human rights impacts in corporate development projects" was published in the September, 2013 issue of *Environmental Impact Assessment Review*. It is named, simply, "Methodology" as Chapter 2. Chapter 3 builds backwards from the methodology by exploring "The roots of HRIA." This chapter draws links between HIA and HRIA, examining the methodological assets of HIA as rights-centred, systems-based and limited by an organisational framework. It is currently under review at *BMC International Health and Human Rights* under the title "Experience and lessons from health impact assessment can guide human rights impact assessment." It details the process of linking HRIA to HIA through a case study on the Uchindile pine and eucalyptus plantation in southern Tanzania. Chapter 4 takes the long view on assessment, chronicling six years of assessment

and monitoring at the Kayelekera Uranium Mine in northern Malawi. Titled "Assessing corporate project impacts in changeable contexts: a human rights perspective" in *Environmental Impact Assessment Review* (July, 2014), within this manuscript it carries the title "Surveillance response: assessing corporate project impacts in changeable contexts." Chapter 5 moves into the concrete lessons of corporate human rights impacts, documenting the history of corporate engagement in public health, and presenting a framework for companies to contribute to a human rights approach to infectious disease management. Titled "Multinational corporations and infectious diseases: embracing human rights management techniques" in the open-access *BMC Journal of Infectious Diseases of Poverty*, it builds on the UN Guiding Principles, corporate practices and World Health Organization (WHO) literature to recommend ways forward for collaboration among duty-bearers. It also identifies weak governance as major challenge for companies operating in low-income countries, a topic revisited in the discussion section, as corruption and conflict can significantly affect a company's ability to respect human rights in its operations. Chapter 6 takes stock of human rights due diligence across industries, regions and capital expenditure as a description of the current state of play for companies publishing human rights policies, committing to due diligence, and professing a role in remedial processes. It is currently under review at the *International Journal of Human Rights* under the title "Corporate human rights commitments and the psychology of business acceptance of human rights duties: a multi-industry analysis." The discussion chapter draws lessons from the HRIA discussed within the dissertation as well as from the other published corporate HRIA currently available. A review of these assessments over time reveals a coalescing of good practices and an increasing standardisation of assessment principles, if not actual methodologies. It presents growing opportunities in the field as well as some risks for the potential direction human rights due diligence could take if transparency does not become more central to corporate human rights approaches.

At Swiss TPH, researchers pursue the institute's mandate to improve global public health through the three pillars of innovation, validation and application. Table 1-1 summarises the contributions of the present PhD thesis to these pillars of scholarship.

Table 1-1 Summary of contributions to the pillars of innovation, validation and application

Chapter	Innovation	Validation	Application
2	Creation of a peer-reviewed methodology for assessing corporate impacts on human rights	Validated on two capital projects in sub-Saharan Africa	Recommendations applied at both sites, resulting in improved human rights outcomes, including 20% wage increases, reinstatement of union personnel, development of HIV/AIDS control programmes and others
3	Established links between HIA and HRIA	Validated on a piloted HRIA of a forestry project in southern Tanzania	
4	Incorporated longitudinal monitoring and surveillance-response into HRIA process	Validated on a pilot HRIA of a uranium mine in northern Malawi	Longitudinal monitoring identified areas of practice where its policies resulted in positive human rights outcomes above national conditions
5	Developed links between the WHO human rights-based approach to infectious diseases and corporate disease interventions		Identification of elements of corporate social responsibility that fall short of respecting the right to health and other rights
6	Created a compendium of human rights policies for the world's largest multinational corporations. Identified patterns in acceptance of human rights duties	Validated findings through standard regression analysis and ordinal logistic regression, cross-checked findings with companies	These findings form the basis of broader conclusions about the human rights movement and identify region and industry leaders who can guide future advancement

2. METHODOLOGY: ASSESSING HUMAN RIGHTS IMPACTS IN CORPORATE DEVELOPMENT PROJECTS

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2.1. Abstract

Human rights impact assessment (HRIA) is a process for systematically identifying, predicting and responding to the potential impact on human rights of a business operation, capital project, government policy or trade agreement. Traditionally, it has been conducted as a desktop exercise to predict the effects of trade agreements and government policies on individuals and communities. In line with a growing call for multinational corporations to ensure they do not violate human rights in their activities, HRIA is increasingly incorporated into the standard suite of corporate development project impact assessments. In this context, the policy world's non-structured, desk-based approaches to HRIA are insufficient. Although a number of corporations have commissioned and conducted HRIA, no broadly accepted and validated assessment tool is currently available. The lack of standardisation has complicated efforts to evaluate the effectiveness of HRIA as a risk mitigation tool, and has caused confusion in the corporate world regarding company duties. Hence, clarification is needed. The objectives of this paper are (i) to describe an HRIA methodology, (ii) to provide a rationale for its components and design, and (iii) to illustrate implementation of HRIA using the methodology in two selected corporate development projects—a uranium mine in Malawi and a tree farm in Tanzania. We found that as a prognostic tool, HRIA could examine potential positive and negative human rights impacts and provide effective recommendations for mitigation. However, longer-term monitoring revealed that recommendations were unevenly implemented, dependent on market conditions and personnel movements. This instability in the approach to human rights suggests a need for on-going monitoring and surveillance.

Keywords: human rights impact assessment; corporate development project; developing country; Malawi; Tanzania.

2.2. Introduction

In 2011, the United Nations Human Rights Council (UNHRC) unanimously endorsed Guiding Principles for Business and Human Rights. These principles were developed in collaboration with the private sector, the non-profit sector and governments. The Guiding Principles set forth a system for delegating human rights duties between companies and governments. As with traditional discussions of human rights, a differentiation between rightsholders and duty-bearers is made. Unlike existing agreements, businesses are included as duty-bearers, taking on the duty to "respect" the human rights that governments are duty-bound to protect and promote as signatories to treaties and purveyors of justice. The corporate duty to "respect" human rights is an active duty requiring verification processes to demonstrate that operations do not negatively impact human rights (OHCHR, 2011).

Corporations began incorporating this duty into policy statements and the discourse of corporate social responsibility (CSR) (Harrison, 2011). Multinational corporations in extractive and industrial sectors began announcing intentions to conduct human rights impact assessments (HRIA) but faced an immediate setback, as CSR personnel do not include HRIA practitioners (Wettstein, 2012). An important underlying reason for the lack of HRIA expertise is that no HRIA discipline exists to train assessors. Indeed, as of the end of 2012, we are aware of only two corporate-commissioned HRIA in the public domain, one in summary form only. These assessments, produced for BP's Tangguh project in Papua New Guinea and GoldCorp's Marlin mine in Guatemala, were prefaced with observations that, lacking an established methodology for HRIA, assessors had to pursue assessment using a patchwork of tools (On Common Ground, 2010). Thus far, corporate calls for guidance on HRIA have been discussed in webinars and conferences, but still without establishing, field-testing and validating needed tools.

The need for corporate HRIA tools has been clearly demonstrated. Not only are major institutions calling for corporations to conduct human rights due diligence (International Finance Corporation (IFC), 2008; OECD, 2011; Food and Agriculture Organization (FAO), 2012), business enterprises themselves have human rights concerns. For example, in August of 2012, human rights-based protests indefinitely halted the development of a US$ 5 billion gold mining project in Peru although all permits were in place and the environmental impact assessment (EIA) and social impact assessment (SIA) had conformed to best practices (Jamasmie, 2012; Rubio et al., 2012). A new round of opposition to GoldCorp's Marlin Mine

in Guatemala, initiated in March of 2012, is based on human rights listed in international conventions (FIAN, 2012). As these cases illustrate, corporations need a mechanism to predict and mitigate adverse human rights impacts.

The purpose of this paper is to describe an HRIA methodology, including the rationale for its components and design as developed and refined over 4 years of piloting. The methodology has been applied to corporate development projects in Africa and Latin America to assess positive and negative impacts. The scope and limitations of the methodology are discussed and illustrated, drawing on two HRIA case studies from East Africa. Our case studies were both externally funded by NomoGaia, a non-profit think tank dedicated to clarifying the role of business in human rights. Corporations collaborated willingly, with an understanding that NomoGaia would own all obtained information and might make findings publicly available. The two projects were selected based on their size and industry to explore the breadth of applicability of our methodology.

2.3. Developing assessment methods

2.3.1. Human rights

HRIA is designed to prospectively and retrospectively identify positive and negative effects on human rights. As such, it is important to clarify what these rights are. The most widely embraced list of human rights is presented in the International Bill of Rights, a compendium of three instruments ratified by 159 countries, incorporating political, civil, cultural, social and economic rights (UN General Assembly, 1996). Table 2-1 summarises frequently impacted human rights drawn from the International Bill of Rights and the International Labour Organization (ILO) Eight Core Conventions (ILO, 2002a). These instruments comprise the basis for assessment, and their contents benchmarks the adequacy of a company's performance (Walker, 2009). Although companies are not signatories to these instruments, they have adopted the duty to respect the human rights enumerated therein by accepting the ‘Business and Human Rights’ framework described in the introduction.

Table 2-1 Summary table of human rights, drawn from the International Bill of Rights

Rights Topics	Right / Freedom	Article # from Source Doc.			
UD = ***Universal Declaration of Human Rights;*** **ESC** = ***Convention on Economic Social and Cultural Rights;*** **CP** = ***Convention on Civil and Political Rights;*** **ILO** = ***International Labour Organisation Core Conventions.***		ILO	UD	ESC	CP
I. Labour					
A. Working Conditions	1. Right to Favourable Working Conditions		23	7	
	2. Right to Work		23	6	
B. Child Labour	1. Freedom from Exploitive Child Labour	138		10	
C. Non-Discrimination	1. Non-discrimination	100 111	1,2,6	2,7	Var.
	2. Equal Pay for Equal Work	100	23 7	7	
	3. Freedom of Religion		2	2	26
D. Unions	1. Freedom of Association	87 98	20	8	22
	2. Right to Belong to a Trade Union	87 98	23	8	22
	3. Right to Strike			8	
E. Fair pay	1. Right to Just Remuneration	100	23	7	
	2. Right to Holidays with Pay		24		
II. Security					
A. Freedom from violence and coercion	1. Life, Liberty, Security of Person		3		Var.
	2. Freedom from Degrading Treatment/Torture/Slavery		4, 5		7, 8
	3. Freedom from Arbitrary Arrest, Imprisonment		9		9
B. Free speech	1. Freedom of Thought		18		18
	2. Freedom of Expression		19		19 25
	3. Freedom of Assembly, Movement		20		21
III. Health and Welfare					
A. Environment	1. Right to Adequate Supply of Water		3	11 12	
	2. Right to Clean Environment			12	
B. Health	1. Right to Health		26	12	
C. Housing	1. Freedom of Residence, Movement		13		
	2. Right to Housing		25	11	
D. Livelihood	1. Right to an Adequate Standard of Living		25	12	
E. Property	1. Right to Property		17		
F. Privacy	1. Right to Privacy (Non-interference)		12		17
G. Food	1. Right to Food, Freedom from Hunger		25	11	
IV. Political and Civil					
A. Education	1. Right to Education		26	13	
B. Childhood	1. Rights of Children				24
C. Corruption	1. Right to Public and Political Participation				17
V. Indigenous and Cultural Rights					
A. Informed consent	1. Right of Self Determination, Subsistence			1	1
B. Culture	1. Right to Cultural Participation		27		27

It is important to note that human rights have historically inhabited the quasi-legal sphere of international agreements among governments. From a corporate standpoint, human rights are not a legal matter but rather a perspective. This difference is not semantic, but is fundamental to how governments and corporations are held accountable to international human rights instruments. Whereas governments can be judged for their compliance with human rights law, corporations can only be benchmarked by their operations' interactions with the components of each right as laid out in human rights documents.

This has two implications for the usefulness of the human rights framework for corporate assessment. First, it provides benchmarking standards absent in other currently available assessment tools. While the impacts that corporations have on people can be qualified as “social”, “environmental”, “political”, among others, they can only be qualified as “human rights-related” if a human rights lens is employed. For example, a company cannot be held liable for violating the right to the highest attainable standard of health; instead the thresholds of affordable, accessible, adequate and culturally appropriate care can be examined contextually and then analysed for how a corporate project would influence the affordability, accessibility, adequacy and appropriateness of care.

Second, the human rights perspective elucidates corporate duties beyond legal compliance. While governments can only be held accountable to the treaties they sign and the laws through which they codify international duties, companies accept the duty to respect all the human rights in the International Bill of Rights and the ILO Core Conventions, regardless of whether national law requires it. This is because companies risk allegations of “complicity” when their actions contribute to rights violations. This paper does not aim to clarify the corporate duty to respect human rights, as that work has been done by the UN Special Representative on Human Rights and Business. Rather, our paper intends to document a process for ensuring that respect is achieved in corporate project development.

2.3.2. Phases of assessment

As shown in Figure 2-1, our HRIA methodology is a four-phase process, consisting of (i) scoping; (ii) cataloguing and analysis; (iii) ratings; and (iv) monitoring. In phase 1, assessors conduct scoping studies to develop a basic understanding of the project, its context and the company(ies) involved in developing and operating it. Scoping is routine and standardised in EIA, SIA and health impact assessment (HIA) (Ebisemiju, 1993; Wood, 2003) but has a more limited definition in many of the HRIA tools currently available (IFC, 2006; 2011). This is partly because corporate HRIA tools are generally derived from the field of compliance assessment, wherein scoping is used to identify the limits of CSR, rather than the range of rights relevant to assessment (Jungk, 2003; Danish Institute for Human Rights, 2006). In line with the theoretical writing of Harrison (Harrison, 2013) and Walker (2009) and the practical process described by Winkler et al. (Winkler et al., 2010; Winkler et al., 2011), for HIA, we define scoping as a process to identify the range of potential positive and negative impacts, uncover

missing data required for completing the assessment and consider what additional information is needed to proceed with assessment.

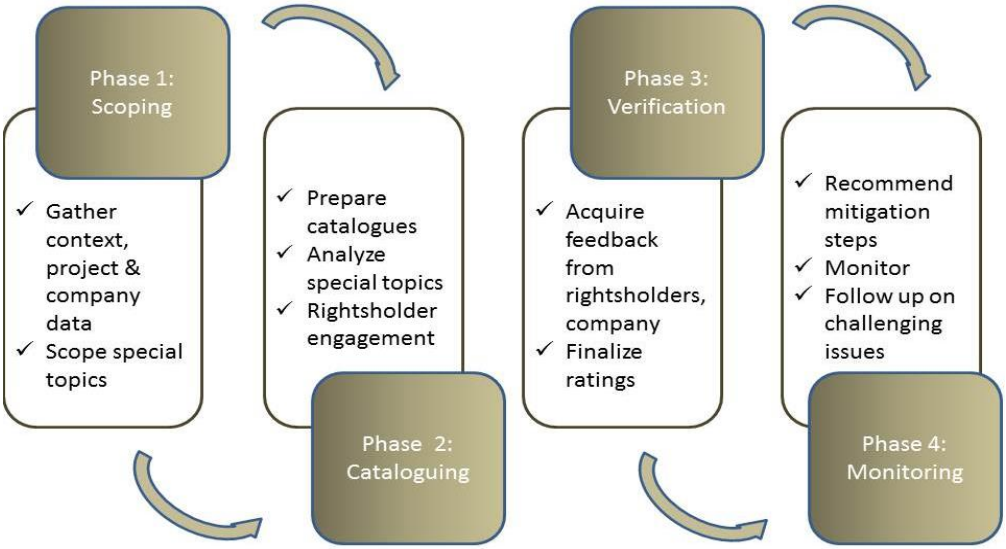

Figure 2-1 Phases of corporate, project-level human rights impact assessment

Phase 2 is an information-gathering process, incorporating fieldwork and further literature review. A process of data classification and coding, called cataloguing (Bulmer, 1979; Bradley et al., 2007) is introduced for the purpose of linking data inputs with impacted rights and rightsholders. Cataloguing maps complex relationships among topics, categories, human rights and rightsholders and begins an investigation of causality—connecting changes in rights conditions with project impacts on rights (Ragin, 1999). Cataloguing is an iterative process; as assessors apply successive topics within the cataloguing framework they modify inputs throughout the assessment to better reflect realities as they become more fully understood (Adcock, 2002).

Three separate catalogues address topics pertinent to (i) the context; (ii) the project; and (iii) the implementing company. Each catalogue is organised first by category (socioeconomic, political, legal, environmental, health and labour) (Table 2-2), then by sub-category and, finally, by topic. Fieldwork and desk-based research produce inputs for each topic, reflecting responses elicited from rightsholders and stakeholders as well as existing ethnographic, health, economic and political research. The qualitative inputs derived from this research are given a numeric, quantitative score. Data reliability concerns are noted in an "uncertainty score" (Coffey and Atkinson, 1996; Katz and Singer, 2007). Over 300 topics are catalogued during each assessment. Table 2-3 provides a sample of subtopics from each of the three catalogues (context, project and company).

Table 2-2 Summary of topic catalogues demonstrating the rights topics considered in human rights impact assessment "cataloguing" process

Categories	Sub-Categories	Rights Topics
Labour	Wages Unions Exploitive Practices Discrimination Labour Laws Project employment profile	23 Context Topics, 20 Project Topics 14 Company Topics
Health	Health Regulations Underlying Health Determinants Access and Infrastructure Food Infectious Diseases HIA Risks to Safety and Health	37 Context Topics, 18 Project Topics 9 Company Topics
Environment	Surface Water and Groundwater Geology/Ecosystem Air	33 Context Topics, 21 Project Topics 5 Company Topics
Political/ Legal	Form of Government Strength of Civil Society Law Systems Strength of Governance Non-discrimination Regulations Civil War/Conflict/Security	34 Context Topics, 18 Project Topics 10 Company Topics
Economic/ Cultural/ Social	Demographics/Local Psychology Economics Indigenous Peoples Education National Culture Local Cultures Land the Project Occupies	32 Context Topics, 29 Project Topics 3 Company Topics

Literature review for catalogues incorporates data and analysis from readily available international (e.g. World Health Organization), national (e.g. Ministry of Health (MoH)), demographic and health surveys (DHS), and provincial/regional/local sources (e.g. health demographic surveillance systems (HDSS) and local clinic logs). Company financial reports, existing ethnographic studies, news reports and activist publications are also reviewed. A short-list of such resources is included in the online HRIA toolkit (http://www.nomogaia.org/tools).

2.3.3. Rightsholder and stakeholder engagement

Conventional stakeholder engagement techniques and journalistic interview styles, characterised by informal, conversational questioning, are employed to engage company and government stakeholders and health and education authorities (Mosavel et al., 2005; Richards and Rees, 2011). Project managers are interviewed, as well as personnel from all clinics and schools in the project's zone of impacts.

Table 2-3 Three sample catalogue inputs, from the context, project and company catalogues

Category	Subcategory	Topic	Input	Source	Impacted Rights	Impacted Rights-holders	Score
Labour	Discrim-ination	Groups at risk for marginalisation in hiring	Women say employers are reluctant to hire them because they require maternity pay and must sometimes leave work to attend to sick relatives -- a duty that falls on women rather than men. Rural in-migrants and non-speakers of Spanish struggle to find employment.	CEDLA	Non-Discrim-ination, Work Con-ditions	Women; Indigenous peoples; Recent in-migrants	-9
Political/ Legal	Security	Extent of Project to be patrolled (including monitoring/sea rching employees)	In the Exbol factory the doors are guarded and strip searches were previously employed to deter and catch thefts. Lower-quality jewellery is produced at contractor entities, and security is outsourced rather than be conducted by Exbol.	CEDLA	Security of Person	Employees	-3
Labour	Discrim-ination	Non-Discrimination in hiring and promotion	Company workforce is 52% female and 48% male (2007 data) and the company has been rewarded for employing non-discriminatory practices (Triple Sello Award). Company policy prohibits Discrim-ination on the grounds of race, gender, age, sexual orientation, political views or religion. Promotions and retaining of employees are based on the results of employee reviews, which include discussions of "behaviour" – union-savvy workers are seen to be ill-behaved	2007 CSR Report	Non-Discrim-ination; Equal Work for Equal Pay	Union sup-porters; Educated workers	5

Rightsholder engagement, with the individuals most likely to be impacted, incorporates focus groups and a variety of semiformal interview styles, all designed to accommodate rightsholders' privacy concerns and trust level with outsiders (Weiss, 1995). To achieve rapport between rightsholders and assessors, discussions are conducted in local dialects. The assessor persuasively (authentically) employs local mannerisms. Rightsholders are selected for engagement following criteria-based, extreme case and maximum variation sampling. In small communities (< 300 people), it is desirable to engage the whole population, in a combination of interviews, focus groups and large-group meetings. In denser population areas, the saturation concept is applied (Glaser and Strauss, 1967) and purposeful, maximum variation sampling is conducted (Marshall, 1996). Assessors demonstrate the thoroughness and appropriateness of engagement using “thick description”, including quotes from rightsholders and local lore pertinent to project development (Denzin, 2001; Bowen, 2008). Reflecting the time constraints of corporate impact assessments, existing ethnographic studies augment assessors' knowledge. In this phase, assessors frame discussions around topics and indicators associated with human rights conditions, rather than using human rights

terms. During feedback (described below), assessors use human rights terminology to link what rightsholders describe with what the human rights framework evaluates. This is for two reasons. First, human rights instruments are documents with which rightsholders are often unfamiliar. Second, the idea of human rights is broad and indistinct and, perhaps even more important, sometimes human rights as a concept has been politicised. To discuss fundamental human conditions, the politics are not useful.

The assessment team is usually multidisciplinary, including human rights, ecology and sociology expertise. Local guides who have roots in or near the project area but have lived away, and thus developed an external perspective, are included in the assessment team. These guides can be drivers and workers in the informal labour force, or from academia, though disparities in education levels may widen the hierarchical gap between interviewer and interviewee. Whenever possible, assessors share meals, free time, community work and sleeping spaces with the local population to narrow the hierarchical space between assessor and rightsholder. Ethnographic or anthropologic “empathic” understanding of rightsholders is essential to provide greater depth of appraisal.

The assessment team also interviews employees of the project under study. When collaborating with a company to conduct an assessment, employees (as rightsholders) are sampled randomly for interviews and sorted (along existing social divisions) into focus groups. Within reason, the sample size and number of focus groups must increase with the number of relevant social divides, discerned through informal preliminary interviews.

2.3.4. Ratings

The cataloguing process produces qualitative data and a quantitative rating. A column headed “score” is located at the far right of the catalogue. Each context topic is assigned a score for the extent to which rights are protected in existing legal and social settings. Each project and company topic is associated with a score for the impact that is likely to result from project activities. The outcome is a contrast of baseline and impact scores for each applicable right (i.e. each significantly impacted right), as shown in Figure 2-2. These scores can be negative or positive, reflecting the fact that corporate projects can affect human rights negatively and positively.

The ratings are a hybrid of qualitative data and quantitative scoring. Inputs into catalogues, as derived from research, are largely qualitative but are given a numeric score for

ease of analysis. Each score represents a contrast of existing conditions, regional/global averages and a standard of "adequacy" developed by the relevant UN body (e.g. WHO).

Companies require quantitative scoring to provide clarity on how they impact human rights and how mitigating steps should be prioritised; narrative explanations of human rights conditions and impacts do not effectively guide companies towards action. However, qualitative analysis is vital as evidence, documenting assessors' findings and demonstrating the direction and magnitude of project impacts as they diverge from baseline conditions. Companies assessed by NomoGaia have repeatedly used the qualitative data in the catalogues to cross-check ratings they found unfavourable.

Example: Human rights impact ratings

Context	Human rights	Impact
	Adequate standard of living	
	Clean environment	
	Right to housing	
	Non-discrimination	
	Right to food	
	Right to work	
	Privacy	

Figure 2-2 Sample ratings. Sample context ratings are on the left; sample impact ratings are on the right

Rating is further hybridised in the final assessment, where only impact scores are published and context scores are excluded. The final assessment only allows readers to contrast qualitative context descriptions with quantitative impact scores.

Although context ratings are developed in the same fashion as project and company ratings, quantitative context ratings are excluded from assessment for political reasons. Government bodies are not assessed in corporate HRIA and are unlikely to appreciate being judged in a corporate analysis. Further, the methodology establishes a context rating pertinent only to the project area, not a nationwide human rights scoring system as exists elsewhere (Bollen, 1986; Arat, 1991; Landman, 2004). Because they do not rate a nation-wide baseline and are not aimed at governments, HRIA cannot justifiably publish ratings that condemn government actions. Further, evidence suggests that some governments facing human rights scrutiny react negatively to judgment, increasing oppressive tactics or reducing public welfare funding (Lopez and Stohl, 1992; Hafner-Burton, 2008; Kennedy, 2012). In such cases, the process of HRIA itself would put human rights at risk. This can be avoided by withholding context ratings while retaining qualitative inputs pertaining to human rights conditions and thus refraining from judging government human rights performance.

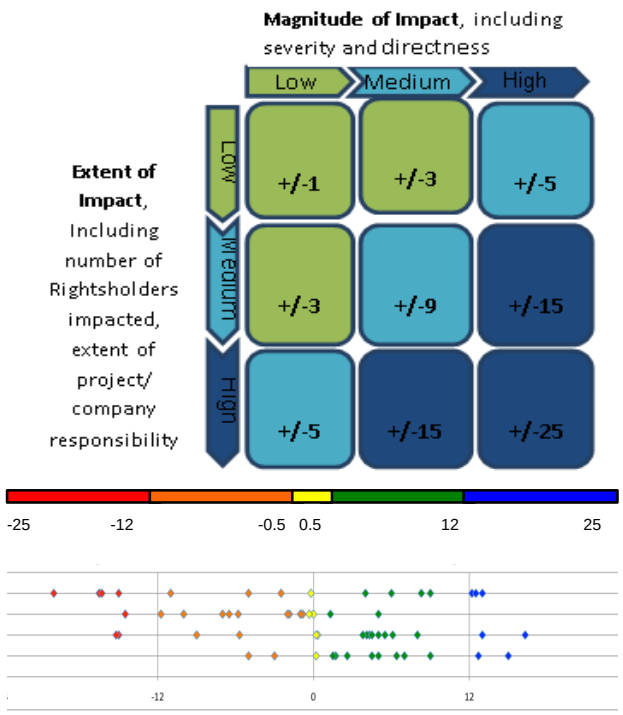

Figure 2-3a Indicator scoring matrix demonstrating the relationship between extent and intensity, used to score each catalogued rights topic

Figure 2-3b Rating spectrum linking the average scores for rights topics to a coloured rating for the human right impact

Figure 2-3c Scatterplots of existing HRIA ratings, demonstrating natural breaks in ratings at +/- 12

Numerical topic scores are derived from an intensity and extent matrix (Figure 2-3). Intensity is defined as the severity with which an impact will alter a single life and the degree to which the company is responsible. Extent is defined as the breadth of the impact on the rightsholders likely to be impacted by the project (NEPA, 1969). The matrix uses a rank order scale with numerical scores of 1, 3 and 5. Direction of impact is represented as a plus (+) for a positive improvement in rights conditions or a minus (−) for a negative impact on rights. Each topic is analysed for uncertainty resulting from absent, inadequate or untrustworthy data (Katz and Singer, 2007; Wood, 2008). Uncertainty is coded as high or medium, depicted by a black or grey mark, respectively.

The arithmetic mean of the topic scores relevant to a single human right produces a numerical rating between − 25 and + 25. This rating falls into one of the five grades located on an ordinal scale, shown in Figure 2-3b. Ratings are colour-coded for ease of use.

Red indicates that a right is likely to be severely negatively impacted by a project to the extent that it poses risk to the success of the project itself. Orange indicates that the project has the potential to impact a right in negative ways. Yellow indicates that impacts are variable but are likely to be significantly positive or negative. Because of the contingent nature of yellow ratings, monitoring is necessary to determine whether, which way and how severely the rights end up being impacted. Green indicates that the project is likely to impact a right in positive ways. Blue ratings represent significant improvements in the protection of the

human right assessed. These can be examples of outstanding positive influence in a community.

The range for yellow ratings is only one, compared to double-digit ranges between other colour ratings (e.g. − 25 to − 12; + 0.5 to + 12). The narrowness of the yellow rating reflects the reality that few impacts are perfectly balanced to be, on net, neutral. A scatter analysis of ratings shows a natural break at 12 on both the positive and negative sides, where mid-low and mid-high thresholds have been set (Figure 2-3c).

Ratings represent a change from baseline conditions with an understanding that a slight improvement over abusive baseline conditions does not represent a positive impact. The logic is as follows: corporations are complicit in human rights abuses where they benefit, directly or indirectly, from their commission (OHCHR, 2011). If baseline conditions do not meet human rights standards and the company operates slightly more respectfully of rights than baseline without meeting standards, it still benefits from the violation. For example, if baseline wage rates are below the cost of living and the company pays slightly higher wages, but workers are still unable to support themselves, it is complicit in the violation by benefitting from the deflated wage rates. The impact score may move from red (baseline) to orange, but it cannot become positive until the company ceases to participate in the violation.

2.3.5. Verification and measurement

After scoring, assessors return to the field to verify findings with rightsholders and the company. Like initial rightsholder engagement, feedback sessions rely upon empathic connections encouraging openness from rightsholders. Applying the concepts of 'ideal consensus' and 'ideal speech situation' as theorised by Habermas (1962) and adapted by co-authors (AM and BHS), assessors present their findings, and rightsholders divide into homogenous groups to discuss the plausibility of designated possible human rights impacts. Feedback from assessors to rightsholders, and *vice versa*, is conducted in a format and style acceptable to rightsholders, accommodating schedules, literacy levels and reticence.

Once a consensus on ratings is achieved through the aforementioned feedback process, the overall HRIA is finalised. Where ratings are negative, recommendations are issued. This is not a standardised process, because the particulars of recommendations are project-specific. However, at the most basic level, recommendations should be:

- detailed, targeting the specific features of the negative impact;

- concretely actionable, recognising that corporate actors are not accustomed to viewing projects through a human rights lens and may not intuit the purpose of vague or broad recommendations; and
- tied to an on-going surveillance-response strategy, to ensure that the recommendations remain appropriate in a changing rights context and to adaptively tune responses as project implementation proceeds.

2.4. Case studies

The two HRIA described below were initiated by two co-authors (KS & MW) via NomaGaia and in agreement with management of the companies involved. A major motivation for initiating the assessments was the desire to develop a systematic HRIA methodology. In our view, a defensible methodology could not be developed independent of an experiential base rooted in case studies. We anticipate that the specifics of the present methodology will be further refined as HRIA with follow-up surveillance-response strategies become institutionalised. Thus far, NomoGaia staff members have completed five HRIA and are in the process of completing five additional HRIA. The two HRIA presented here were selected to present different industries and projects, while also allowing for comparisons between similar contexts (East Africa).

2.4.1. Green Resources' Uchindile eucalyptus and pine plantation, Tanzania

Green Resources is a Norwegian tree farming company with operations in sub-Saharan Africa. The company sells wood products within Africa and carbon credits in Europe. The European carbon market has stringent standards for carbon sinks, so Green Resources secured certifications from a variety of auditors and assessors, including the Forest Stewardship Council, the Kyoto Protocol's Clean Development Mechanism, the UN Framework Convention on Climate Change, and the Climate, Community and Biodiversity Alliance (CCBA).

The project under assessment, Uchindile eucalyptus and pine plantation, is the oldest of Green Resources' farms. Planting started in the mid-1990s on degraded grasslands in the southern highlands of Tanzania. When HRIA commenced, in December 2008, the first trees were approaching harvestable size. NomoGaia selected Uchindile for assessment because the transition to harvesting would involve significant alterations in project operations and dynamics.

The assessment commenced in December 2008. Three site visits were conducted (March 2009, February 2010 and November 2010). The first site visit was restricted to engagement with the company, local non-governmental organisations (NGOs) and government personnel. All corporate managers were interviewed, and company documentation of community meetings, environmental monitoring and CSR programming were collected. The second site visit involved the majority of rightsholders and local stakeholders. Community members were interviewed with the permission (and, at times, oversight) of village head men in Uchindile and Kitete towns, the areas impacted by the project. Village head men sat in on stakeholder interviews with teachers and health personnel. Modules from the World Bank's Living Standards Measurement Surveys (LSMS) for health, education and cost of living were adapted to the informal interview style of rightsholder engagement and administered narrowly, to key informants and selected rightsholders.

Overall, 39 rightsholder interviews and six focus groups were conducted in Uchindile, Kitete and worker dormitories. Rightsholders engaged included past and present male and female employees of the project, men and women not employed by the project, contract workers hired as day labour (comprising 80% of the workforce) and full employees, first- and second-wives of project employees and male and female residents of project dormitories. These categories reflected the main divides in the community as reflected by stakeholders and rightsholders themselves. Interviews took place in the clinic, in individuals' houses, on walks (to water sources, to work and between houses) and at the water source where rightsholders were washing dishes and laundry. Interviews lasted, on average, 45 min, sometimes with follow-up on later days (at the rightsholders' request). Assessors slept in the community and awoke with workers to observe day-to-day community activity.

Information gathered from these interviews was complemented by literature review and validated by studies conducted concurrently by two Norwegian scholars researching Norwegian CSR abroad (Refseth, 2010). All information was organised into topic catalogues over the course of four weeks. Scoring was conducted after all information was gathered, resulting in ratings shown in Table 2-4.

At the time of the second site visit, we found disconnects between project documentation and on-the-ground implementation (see Table 2-4). The company had acted to reduce its environmental impacts, resulting in no net impact at all on environmental rights.

However, no attention had been paid to human impacts, including labour rights and the impact of large-scale land investment in agricultural areas.

The company's occupational health and safety performance did not align with company policies or adequacy benchmarks laid out in the human rights framework. For example, safety gear was not universally issued and was infrequently used, resulting in injury rates higher than industry norms. Employees had no safe transportation to their work site, and company dispensaries (first aid stands) were inadequate for the health risks of forestry work. Workers lodging in company dormitories slept three-to-a-bed, shared two latrines among over 70 workers, and had no clean water. All drinking, cooking, bathing and cleaning water was drawn from an unsafe stream approximately 1 km from lodgings. Despite being in an HIV epidemic zone, the company had no HIV/AIDS policies or training programmes, which put it at noncompliance with its government-approved Uchindile forest plan and with the human rights standard of respect for the right to health.

Table 2-4 Initial human rights impact ratings for two case studies, juxtaposed for comparison. For interpretation of colour coding, see Figure 2-3

	Initial rating	
Right	**Uchindile**	**Kayelekera**
Right to work		+5.6
Right to food	–5	0
Right to water (community)	0	+8.6
Right to water (workforce)	–5	
Right to a clean environment	+1.6	–0.8
Right to favourable working conditions	–13	+1.6
Right to belong to a trade union, strike	–15	–2
Freedom of assembly		–0.3
Right to just remuneration	–18	+4
Right to an adequate standard of living	–8.3	+1
Right to housing (local)	–5	+1.6
Right to housing (dorms/squatters)	–12	
Right to health (general)	–5	+5
Right to health (HIV)	–12	–18
Nondiscrimination	–7	–3.8
Equal pay for equal work	–6	–2
Right to education	–5	+2.6

Labour organising rights were also violated. For example, though the company claimed that workers participated in a national forestry union, those familiar with it – including the project manager – said the union leader had been transferred to another farm 6 months prior, leaving Uchindile with no union and no union representatives to conduct collective bargaining. Further, temporary workers, comprising 80% of the workforce, did not believe they could participate in the union. As they explained, they could not effectively lobby for workplace changes, because complaints resulted in their dismissal.

Temporary workers, who are protected under all of the ILO Core Conventions (Ahn and Sung, 2009; Danesi, 2011), experienced numerous rights violations. Many had worked for 10 years without being elevated to “full time” status, stating there was no established process for promotion. Temporary workers could not participate in collective bargaining, lacking the job security required to empower workers to pressure management. With neither sick leave nor maternity leave, workers lost pay for becoming ill or pregnant. A short-form cost survey, derived from modules of the World Bank LSMS demonstrated that wages were too low to support workers and their families.

Within the community, there were rising concerns of food insecurity. Wages were insufficient to cover costs of living, and most workers (or their families) supplemented household food supply with subsistence farming. For those without wives and children to guard fields, crops were regularly raided by wild animals, while Uchindile employees were at work. Skill levels remained stagnant, with the company importing non-locals to the plantation for semi-skilled jobs. The lack of training for locals created a discriminatory comparative disadvantage and violated the company's commitment to capacity building, stated in its Voluntary Carbon Standards, and CCBA validation (Green Resources, 2009; Schröder et al., 2009). The managerial decision to bring in outside workers was not deliberately discriminatory—this was an instance where cost-cutting had human rights implications that were not inherently visible to managers. Assessment indicated that the accumulation of such subtle acts of disregard (or unfamiliarity) with human rights had pushed community anger to a peak and was likely to result in violence or arson if identified community interests and human rights violations were not addressed.

The company initially disregarded these findings. Several months later (October 2009), arson affected over 100 ha of plantation. Shortly thereafter, assessors' major recommendations were implemented, including revival of the union, increase of wages to levels specified in the HRIA and improvements in worker housing. These changes were visible during a monitoring survey 18 months later (in November 2010). The visit had been intended to verify earlier observations and found that conditions had improved considerably. Assessors projected images of conditions witnessed previously, and stakeholders and rightsholders described the extent to which conditions had changed. The visit also allowed to update the previous ratings, which was conducted in collaboration with rightsholders and resubmitted to the company 3 weeks later. Upon completion of this visit, the company requested that

assessors conduct an additional trip to monitor on-going progress but, at the time this manuscript was drafted (December 2012) such a visit has yet to be conducted.

2.4.2. Paladin Kayelekera uranium mine, Malawi

Paladin is a mid-sized Australian uranium mining company. The Kayelekera project, designed as a 10-year mine, represented an expansion for the company and an industrial leap for Malawi, which had no prior experience with transnational mining companies. The country's regulatory agencies and laws were outdated or delayed in the legislative process; the Malawian Mines and Minerals act had not been updated since 1981, and prior to the 2011 passage of an Atomic Energy Bill, no regulations oversaw social and environmental protections against the harmful effects of radiation, radioactive material or nuclear material. The national government was (and is) a partner in the project.

Paladin began developing the Kayelekera project in the northern part of Malawi in 2005, when Kayelekera was a dispersed, 300-person community of subsistence farmers without roads, telecommunications, electricity or water infrastructure. It was economically inactive and poor by Malawian and regional standards. By 2006 the population had more than doubled, and when production began in 2009 it had reached 3,000. Kayelekera offered the nation's most enticing job prospects, but public fear of uranium and radiation remained high, exacerbated by local media. The area had previously been sufficiently remote to avoid an HIV epidemic. Additionally, the area was positioned for an economic overhaul, transitioning from a subsistence economy to a wage economy.

Assessment was conducted between January 2009 and October 2011, involving three site visits (February 2009, January 2010 and October 2010). Follow-up correspondence with the company over key concerns, particularly the development of HIV and human rights policies and procedures, continued for an additional 12 months. More than 50 rightsholder interviews and six focus groups were conducted. Field-based data were incorporated into topic catalogues already populated with document-derived data. An important source of information was a HDSS less than 100 km from the project area, which had demonstrated the progression of an HIV epidemic in a previously rural community. Additional documentation included extensive health research conducted by King and King (1992, 2000, 2007) in Karonga district, spanning a more than 30-year history. Coding was completed and ratings generated in 4 weeks following the third site visit (see Table 2-4).

The first site visit emphasised stakeholder engagement, with in-depth interviews with the company's community development personnel, local NGOs, and project area health and education staff, some lasting a full day. The second site visit included interviews with company experts in engineering, environmental management, a mine tour and rightsholder engagement. Three assessors participated in the engagement process, two foreign and one Malawian. The Malawian team member conducted independent interviews with community members focusing on local perceptions and the incorporation of the project into community lore when non-Malawian assessors were engaged with project personnel; other interviews were conducted in translation, run by foreign assessors and translated by the Malawian assessor. Rightsholders interviewed included recent in-migrants and long-term residents (men and women of both categories), jobseekers, project employees, project contractors, spouses of each of these groups and children. Engagement with health personnel (company and community), teaching staff and company personnel was furthered, taking into account on-going demographic changes in the community. Members of six communities were interviewed: (i) Karonga (the district capital); (ii) Kayelekera; (iii) Kayelekera squatter village; (iv) Juma; (v) Simfukwe; and (vi) Bwiliro. The latter community had not been analysed in the existing, company-commissioned EIA, but it was located at the intersection of the main road from Kayelekera and the district capital of Karonga and was the closest town with a health facility, thus it was frequently visited by inhabitants of the project area. Interviews were conducted in clinics, schools, in open air and at boreholes. These were locations preferred by rightsholders, generally for convenience.

Two assessors (one foreign, one Malawian) returned for additional rightsholder and stakeholder engagement and rightsholder feedback in October 2010. During the two visits, nearly 300 rightsholders and stakeholders had been engaged from a community of approximately 2,500. Rightsholder feedback was then conducted, allowing rightsholders to verify information gathered by assessors during the two visits. Projected photographs of daily life were utilised to explain human rights conditions and impacts. Unemployed jobseekers felt that their conditions were not adequately reflected in the presentation, but one-on-one conversations with rightsholders from other social groups indicated that assessors had properly interpreted conditions and perceptions. Hence, an additional focus group was held to adequately incorporate the perspective of unemployed jobseekers.

The facets of the project leading to negative effects on human rights pertained largely to a squatter village that developed in the valley of Kayelekera, in close proximity to the mine (see Table 2-4). There, rights to housing, sanitation and health were at risk. At the time assessment began in January 2009, the company had no HIV policy. Existing literature on the spread of HIV in the region suggested that prevalence rates would rapidly rise with in-migration to Kayelekera; if unmitigated, the human rights impacts would span social, economic, health, labour and non-discrimination rights (Glynn et al., 2004; Floyd et al., 2007; 2008). Contextual challenges associated with the right to non-discrimination (ethnic and gender-based) also risked being exacerbated under existing project design and employment structures. Furthermore, the project's inadequate response to allegations of health and environmental risks threatened Malawians' sense of personal security. As a human rights issue, perceived impacts are relevant when they affect the decisions people make to safeguard their wellbeing.

The company responded to the assessment within 6 weeks, implementing rights-positive programmes that aligned with (but did not directly fulfil) recommendations. Impacts were mixed but even before assessment was complete, the company began providing feedback and updates on improvements in rights performance. For instance, worker rights were well protected, and public/community development initiatives were well conceived and in the process of being well implemented. Infrastructure development resulting from mine activities (including roads, mobile phone towers, and the influx of wealth that enabled the purchase of generators and electrical goods) improved standards of living and quality of life.

2.4.3. Synthesis of case studies

The two case studies conducted in Tanzania and Malawi demonstrated that diverse sets of rights are relevant in different contexts (Table 2-5). Both projects impacted the rights to education, non-discrimination, health, just remuneration and water, but in divergent ways. Only the Kayelekera mine in Malawi impacted political rights, owing partly to its important position in the country and the part-ownership by the government in the project. These initial impacts offered a snapshot of each project at the time of assessment. Follow-up visits one year later showed remarkable change at Kayelekera and Uchindile.

Table 2-5 Human rights impact ratings for two case studies during monitoring 12 to 18 months after initial assessment

	Monitoring rating	
Right	**Uchindile**	**Kayelekera**
Right to work		+6.3
Right to food	+2	+0.5
Right to water (community)	0	+17
Right to water (workforce)	–3	
Right to a clean environment	+1.3	–2.1
Right to favourable working conditions	–2	+4.6
Right to belong to a trade union, strike	–9	+3
Freedom of assembly		0
Right to just remuneration	+1	+4
Right to an adequate standard of living	+3	+4
Right to housing (local)	+5	+4.3
Right to housing (dorms/squatters)	–2	–2.3
Right to health (general)	–3	+6
Right to health (HIV)	–13	–12
Nondiscrimination	–5	+1.8
Equal pay for equal work	–3	+1
Right to education	+2	+8.2

Green Resources severed communications with the assessment team in the months following assessment, rejecting the HRIA findings. However, a follow-up visit 18 months after the initial visit and 9 months after the HRIA was submitted to management revealed improvements in impacts to working conditions, remuneration, housing and education. The company sought an additional follow-up visit 2 years after assessment, indicating that further improvements had been made.

Paladin improved its public communications to appease local fears and made sweeping changes to local schools to mitigate the effects of a ballooning school population. A community development programme to feed workers with goods supplied by local workers effectively mitigated food security fears. Transportation improvements also enabled Kayelekera residents to access previously unavailable foods from the district capital. The company had begun an HIV education initiative prior to assessment but developed an integrated approach in the months after assessment.

2.5. Discussion

There remains no standard operating procedure for project-level HRIA, although the need has been demonstrated and the interest level – from companies, governments and NGOs – is high and growing. We developed, applied and refined a methodology for corporate HRIA on projects in Africa. The methodology we have outlined integrates policy-level HRIA theory with components of EIA, SIA and HIA practice, consolidating existing understandings of cultural, socioeconomic, political, legal and labour issues associated with corporate capital projects. It also builds on the knowledge of consultants, government agencies and NGOs that have worked to develop corporate human rights tools (BP, 2004; Danish Institute for Human Rights,

2006; Rights and Democracy (R&D), 2008; On Common Ground, 2010; IFC, 2011). In the process of developing and validating our HRIA methodology, key findings pertained predominantly to the cataloguing process, ratings, feedback mechanisms, and monitoring and surveillance. These findings are specific to the projects and project areas examined and may reflect the unique condition under which assessments were carried out, namely with external funding from a neutral third party (NomoGaia) and with company permissions (granted by management personnel after meetings to establish NomoGaia's intentions and scope of work) but no commitments to act upon findings. Additionally, these findings represent a longer period of assessment and monitoring than is customary for impact assessments. If the company had commissioned these assessments, timelines would have been truncated and data gathering would have been more concentrated. In the remainder of this paper, we discuss experiences and lessons, placing particular emphasis on the second (cataloguing and analysis), third (ratings) and the fourth phases (monitoring) of assessment.

2.5.1. Cataloguing and analysis

Cataloguing was comprehensive and became more inclusive of indicators with each assessment, culminating in the 306-topic catalogue summarised in Table 2-2. The association of each topic with relevant human rights and rightsholders facilitated interpretation of impacts by creating clear links between seemingly unrelated issues. For example, the appearance of HIV as a factor in economic, political, social and labour topics enabled assessors to consider recommendations that addressed rights to education, health, non-discrimination, labour and political participation cohesively in proposed HIV interventions at Kayelekera (as opposed to considering HIV only as a health issue alone).

Links between rights and topics also revealed conditions on the ground that had not been perceived during EIA and SIA. We attribute this to two main factors. The first factor is the participatory nature of our assessment with broad and direct engagement with rightsholders. The second factor pertains to the structure of the human rights framework, which not only provides boundaries for the topics of investigation in the form of universally accepted human rights, but also provides benchmarks. Simple tasks like visiting water sources, sleeping in project-area villages and communicating with workers on the job and over meals provided counter-evidence to the assertions of conventional assessments. Being guided by inquiries of the adequacy, accessibility and quality of water sources – standards laid

out under “General Comments” of human rights instruments – ensured targeted and efficient investigation of the relevant topics.

2.6. Ratings

In the selection of a 1, 3 and 5 matrix for scoring indicators, assessors aimed to demonstrate that differences between severe and mild impacts were significant without being excessive. The scoring system could just as well have been 0, 2 and 4 or 1, 5 and 10. What was important was the ability to capture distinctions while (not excessively) weighting unequal increments between levels of severity.

The ratings system was developed through a combination of empirical and interpretive processes. The middle rating, coloured yellow and centred around 0, had a range of only 1 on a scale from − 25 to + 25, largely because we found that companies very rarely had positive and negative impacts on a right that resulted in a net-zero impact. Over the course of assessment, we found instead that negative impacts were concentrated on one rightsholder group, while positive impacts were concentrated within a different rightsholder group, resulting in a dual rating for a single right, rather than a yellow rating (Figure 2-4).

Example: Rightsholder feedback	
Assessors conclude that a farmer’s Right to an Adequate Standard of Living has been negatively impacted by resettlement to less fertile land. During feedback sessions several farmers say they have reduced their farming activities and diversified their livelihood activities, benefitting from improved access to labourmarkets. Some farmers couldn’t find employment, however, and have been impoverished concretely and comparatively, as their colleagues prospered relative to them. Right to an Adequate Standard of Living is then split into 2 ratings for 2 rightsholder groups	
Right to Adequate Standard of Living– farmers with diversified incomes	
Right to Adequate Standard of Living– farmers with no alternative income	

Figure 2-4 Sample rating associated with rightsholder feedback, demonstrating that a single right can be rated positively and negatively, addressing different rightsholder groups

2.6.1. Feedback

Submitting assessors' initial findings to review by those interviewed was deemed necessary from the outset, because without an iterative feedback process with rightsholders, ratings risked being at odds with, or even missing, important components of rightsholder input. Engaging rightsholders in such a way that assessors could be confident that their understanding was correct and complete was necessarily a 2-step process. First, engagement had to generate trust and parity between assessors and rightsholders. Then assessors had to define human rights in ways that rightsholders could understand and accept. In some cases, human rights are deeply politicised and their meanings are misconstrued by local

connotations. In other cases, human dignity is understood but the existence of a Universal Declaration of Human Rights is not known. What is essential is that assessors glean human rights perceptions from rightsholders without being overwhelmed by existing understandings or misunderstandings. Mutual understanding is notoriously difficult to achieve, let alone to verify (Geertz, 1983). For this reason rightsholder engagement expanded from a straightforward investigative interviewing process to a probing cultural excursion. Ethnographers and anthropologists have blazed paths in this style of engagement, and assessors borrowed from techniques for in-depth understanding and thick description from other disciplines. Techniques for doing this within the tight time constraints of HRIA are in need of further development (Denzin, 2001; Bowen, 2008).

2.6.2. Monitoring and surveillance

The fact that companies incorporated human rights recommendations into corporate activities, and that their implementation was visible during monitoring conducted shortly after initial assessments, suggest that the process of impact assessment was useful to companies. At Kayelekera we found a deeply engaged community development team and proactively encouraging corporate management group. Contributions from these two levels of the corporate hierarchy were vital to the success of mitigation measures. At Green Resources, in contrast, recommendations were initially not accepted. This changed once negative outcomes came to fruition. We interpret this delay as an indication that some companies do not readily accept the human rights framework, perhaps because it offers an unfamiliar perspective.

6. Outlook

Both the implementation successes and the delayed responses to some recommendations point to a need for an on-going formalised surveillance-response programme. Delays in implementation resulted in negative human rights impacts. These delays might have been shortened by improved oversight of mitigation programmes. It is possible that the fact that assessments were not commissioned by the company reduced the incentive to follow through with recommendations. The non-commissioned nature of these assessments also affected timelines. Assessors benefitted from a high degree of flexibility on schedule, but data collection was slow as assessors operated with only minimal support from company staff. Lags may have diminished the sense of urgency of findings.

Prescribed monitoring systems have their roots in risk mitigation techniques associated with audits. We see the audit approach as too limited – in both scope and methods – to comprehensively investigate the severity of human rights impacts and the adequacy of mitigation approaches. It is too rigid a format to allow for detailed investigation of concerns most pertinent to rightsholders. A multi-layered, externally validated process would be the ultimate ideal, as advanced by the growing movement for transdisciplinary research (Holling, 1978; Lee, 1999).

Additionally, the external approach to HRIA, as independent from EIA, SIA and HIA, was not always efficient. A major weakness of EIA, from a sustainability perspective, is the failure to integrate the role of social dynamics, public health, project engineering and other components of an ecosystem in analysis (Benson, 2003, Briggs and Hudson, 2013, George, 1999 and Kain and Söderberg, 2008). HRIA incorporates these topics but when human rights assessors have no input into the environmental assessment processes, some environmental topics are not comprehensively addressed to provide sufficient inputs for human rights assessors. While the trend towards integrated impact assessment poses risks to the comprehensiveness of analysis of each topic assessed (Krohn, 2008), it does offer promise if done well (Krieger et al., 2012). Incorporating human rights questions into social and health surveys would streamline assessment and ensure the comprehensiveness of formal social studies. Engagement between EIA, SIA, HIA and HRIA teams in discussions of project design alternatives could prevent misunderstandings akin to the one that halted the Conga project in Peru (Jamasmie, 2012, Newmont, 2012 and Rubio et al., 2012). As an umbrella, human rights offers promise by augmenting existing impact assessments with the human rights lens as validated by local perceptions (Chapman, 2009). We see this paper as the first step in helping companies understand and mitigate human rights impacts. Future research will examine ideal mechanisms for merging and integrating assessments.

3. THE ROOTS OF HRIA: LESSONS FROM HEALTH IMPACT ASSESSMENT

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3.1. Abstract

As globalization has opened remote parts of the world to foreign investment, global leaders at the United Nations and beyond have called on multinational companies to foresee and mitigate negative impacts on the communities surrounding their overseas operations. This movement towards corporate impact assessment began with a push for environmental and social inquiries. It has been followed by demands for more detailed assessments, including health and human rights. In the policy world the two have been joined as a right-to-health impact assessment. However, in the corporate world, this approach fulfils neither managers' need to comprehensively understand impacts of a project, nor rightsholders' need to know that the full suite of their human rights will be safe from violation. Despite the limitations of a right-to-health tool for companies, integration of health into human rights provides numerous potential benefits to companies and the communities they affect. This paper examines the positive and negative health impacts of a corporate operation in a low-income setting, as viewed through the human rights lens, considering observations on the added value of the approach.

Keywords: health impact assessment; human rights impact assessment; corporate development project; industrial agriculture; Tanzania

3.2. Introduction

In recent years, governments, international institutions and civil society have pressed companies to show whether and how their actions might affect the human rights of populations surrounding their projects (Harrison, 2013). The process for identifying, preventing, mitigating and accounting for companies' impact on human rights is now referred to as human rights due diligence (Office of the High Commissioner for Human Rights (OHCHR), 2011). Corporate actors have begun to attempt prognostic assessments of human rights impacts (Jamali and Mirshak, 2009), but methodological guidance is needed.

Existing impact assessment frameworks do not provide human rights analysis. Environmental impact assessment (EIA), dating back to the 1970s, provides clear guidelines for predicting how human activity is likely to affect the natural environment (Benson, 2003). However, EIA typically fails to link environmental impacts and social and health outcomes (Ross, 1998). Social impact assessment (SIA) was, at its inception, limited by disciplinary exclusionism – a drive to pursue social science wholly independently of other sciences. Efforts to broaden its lens have lacked clear direction and structure (Dunlap and Marshall, 2010; Durkheim, 1964). Current SIA guidance includes archaeological, touristic, infrastructural, institutional and psychological impacts with social effects (Vanclay, 2002). In practice, only a handful of such inclusive SIAs have been published, with most indicating an approach to quantitative data analysis of socioeconomic conditions of communities, augmented or pared down at the assessor's discretion.

The more recent development of health impact assessment (HIA)(Scott-Samuel, 1996; Winkler et al., 2013). recognises that human impacts, like environmental and social impacts, need to be understood within a circumscribed framework of analysis. HIA integrates interdisciplinary interests with inclusive public health frameworks (Whitehead, 1992; Lock, 2000; Krieger et al., 2003). As such, HIA represents a stepping stone towards human rights due diligence. This paper describes a human rights impact assessment (HRIA) conducted on an industrial agriculture project in rural Tanzania, using HIA as a methodological guide.

3.2.1. HIA as a stepping stone

Several content and design components of HIA make it an appropriate precursor to HRIA. First and foremost, HIA is a process, rather than a single-event report. A transdisciplinary combination of inductive and deductive fieldwork, drawing from social and natural sciences, is used to examine a network of interactions that is likely to result in positive and negative outcomes for individuals (Beecham, 1998; British Medical Association, 1998; Harrison, 2013; Salcito et al., 2013; Ayres and Agius, 2004). Importantly, HIA investigates changes in non-health sectors that may affect human health (Winkler et al., 2010). Hence, HIA addresses right-to-health principles in consideration of a project before and after the occurrence of actual effects (Joffe and Mindell, 2002). It is an iterative, non-linear and adaptable process (Winkler et al., 2010; Adam et al., 2012). Done well, HIA incorporates the direct and indirect effects of economic growth, in-migration, infrastructural developments and other factors affecting human health (Winkler et al., 2010; McCarthy et al., 2002; Fehr et al., 2012). Attention to labour, environment, water, education, housing and non-discrimination acknowledge additional, non-health, issues that are intrinsically rights-related (UN General Assembly, 1996).

Yet, HIA does not expose all the human rights impacts of a project, programme or policy; that is not its aim. HIA does not analyse human dignity, which is intrinsic to a human rights lens and imperative to understanding how rightsholders will perceive the effects of a project or policy (Donnelly, 2003). Additionally, conflicts over resource management, which are prevalent in project development, are fundamentally rights-related and crucially dependent on the perceptions of those involved (Adams et al., 2003; Jamali and Mirshak, 2009). Finally, HIA does not involve soft-law compliance with international standards. HRIA derives structure, and legitimises value judgments, from the instruments governing universal human rights.

Health itself is specifically addressed in the International Bill of Human Rights, as a right “to the enjoyment of the highest attainable standard of physical and mental health”, benchmarked by standards of adequacy, affordability, availability and cultural appropriateness (UN General Assembly, 1996). Right-to-health impact assessment is an important and growing field (Scott-Samuel and O'Keefe, 2007; MacNaughton and Hunt, 2009). The range of interests for HIA supplementing HRIA, according to topical groupings of

HRIA, is presented in Figure 3-1. Right-to-health impact assessment has made recent headway, investigated as a means for inequality and poverty reduction (MacNaughton and Hunt, 2009; Carmalt, 2014), for protecting public safety (Anand, 2012) and as a measurement of peace (Hinestroza, 2012). Efforts to identify evidential links between human rights and health have been fruitful (Beyrer and Pizer, 2007). The task for human rights impact assessors is to use the broad understanding of challenging and complex systems that HIA uses on health networks to assess the entire suite of rights.

This is not to say that HIA is subsumed, but rather that its expertise is incorporated into HRIA. In the same way, expertise of EIA, SIA and other project-commissioned studies contribute to HRIA. These broad themes are analysed in the topical groupings listed in Figure 3-1.

Figure 3-1 The range of interests in human rights assessment as divergent from health

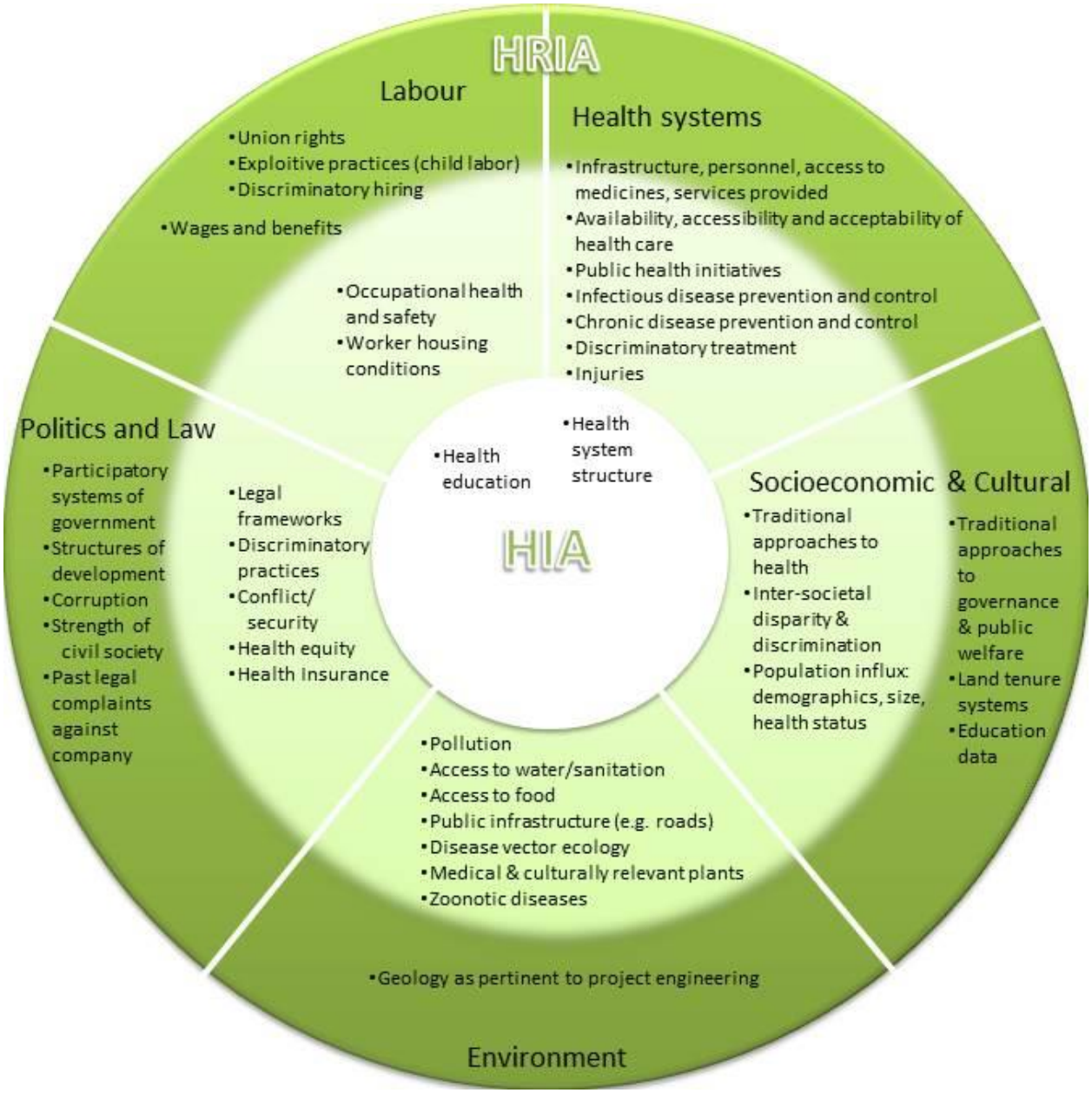

Figure 3-2 List of subtopics pertinent to HRIA (dark green), HIA (white) or both (light green)

As health is the filter through which health impact assessors examine cultural, ecological, environmental, political and social conditions, so human rights is the filter for HRIA. The process for vetting relevant content is standardised in impact assessment as scoping (Parry and Stevens, 2001; Winkler et al., 2012). Scoping, incorporating interviews, focus groups and document review, enables assessors to focus attention on certain human rights indicators included in topic catalogues used for assessment. It also dictates which additional modules of assessment (e.g. pertaining to HIV or conflict zones) to incorporate.

3.3. Experience and lessons from a case study in Tanzania

3.3.1. Project selection

HRIA of the Green Resources Uchindile plantation in southern Tanzania was undertaken to examine common and divergent interests of health impact analysis and the context of HRIA. Uchindile is located on the boundaries of Iringa and Kilombero districts, approximately 100 km from Iringa town, accessible on rough roads. It was selected for its rural location, where impacts could clearly be allocated to the project, not to third-party actors in the area, which did not exist when the project began in December 2008. It also has high poverty and infectious disease rates, low education and employment opportunities, and a growing migrant workforce. In short, the human rights baseline suffered from low state capacity to fulfil rights, and there were many ways in which the project could interact with existing human rights conditions, positively and negatively.

Uchindile plantation, founded in 2000, is owned and operated by Norway's Green Resources AS. Assessors from NomoGaia, a non-profit think tank that builds and tests corporate human rights due diligence tools, examined likely impacts associated with the plantation's transition from planting into harvesting. Green Resources provided interviews with all major management personnel (14 interviews over the course of three site visits) and a site tour. The assessment was not commissioned by the company and was externally funded by NomoGaia. The company was a willing collaborator in assessment, interested in human rights findings and willing to share data and facilitate interviews.

3.4. Approach to evaluation

HRIA was carried out using the NomoGaia methodology comprising scoping, cataloguing, scoring and monitoring/mitigation (Salcito et al., 2013). Scoping entailed a systematic review of all publicly available audits, company financial reports, local and regional health and development reports and existing ethnographic studies. Certification reports, EIA, management plans, community questionnaires, annual reports and policy documents were studied as well as Tanzanian laws, MoH reports and data from the national census and recent "Living Standards Measurement Surveys" from 2008 and 2010 (LSMS).

Table 3-1 Human rights topics addressed during assessment, organised by broad subjects[1]

Categories	Sub-categories	Rights topics
Labour	Wages	23 context topics 20 project topics 14 company topics
	Unions	
	Exploitive practices	
	Discrimination	
	Labour laws	
	Project employment profile	
Health	Health regulations	37 context topics 18 project topics 9 company topics
	Underlying health determinants	
	Access and infrastructure	
	Food	
	Infectious diseases	
	Risks to safety and health	
Environment	Surface water and groundwater	33 context topics 21 project topics 5 company topics
	Geology/ecosystem	
	Air	
Political and legal	Form of government	34 context topics 18 project topics 10 company topics
	Strength of civil society	
	Law systems	
	Strength of governance	
	Non-discrimination regulations	
	Civil war, conflict, security	
Economic, cultural and social	Demographics, local psychology	32 context topics 29 project topics 3 company topics
	Economics	
	Indigenous peoples	
	Education	
	National culture	
	Local cultures	
	Land the project occupies	

A systematic search of all multinational publicly traded companies in Mufindi district, revealed foreign funding for the Mufindi paper mill and the presence of Unilever. Public documents pertaining to these sites were obtained to contribute to context analysis. Additionally, a Google Alert for “Mufindi,” “Iringa,” “Uchindile” and “Green Resources AS” between 2008 and 2014 alerted assessors to news stories and activist reports during the period. Peer-reviewed literature in the fields of public health, economics, history and anthropology were drawn from a screening of authors’ personal collections as well as a Google Scholar screen for the same terms listed in Google Alerts. Additional national-level data was drawn from international databases – e.g. International Labour Organization (ILO),

1 The column at right presents the number of topics analysed within each subject (adapted from: Salcito et al., 2013). Topics pertinent to “context” refer to existing conditions in the country and project area. Topics pertinent to “project” refer to the ways that a project’s design, implementation, engineering, employment, etc. will interact with the context. Topics pertinent to “company” refer to company policies, practices and historical events pertinent to human rights conditions.

United Nations Children's Fund (UNICEF), World Bank, United Nations (UN) and World Health Organization (WHO). Data more than 10 years out of date and not from the Kilombero or Iringa districts were excluded. Data included biased reports from the grey literature to document both perceptions and misperceptions. All data were catalogued alongside sources, and all data were cross-checked during interviews with rightsholders, company personnel, and local leaders, clinicians and other relevant authorities.

Cataloguing and monitoring involved primary data gathering and five site visits (March 2009, February 2010, November 2010, November 2013 and March 2014), each lasting between five and ten days, involved engagement with health, education and government personnel (key informants) and rightsholders. Rightsholders are inhabitants of the project area whose human rights are likely to be impacted by project development and operations. Initial site visits represented a baseline from which observations in later visits were benchmarked. Rightsholder interviews were conducted with the most marginalised stakeholders, rather than with a random sample; starting with the most vulnerable and marginalised population subgroups enabled deeper exploration of relevant issues in subsequent interviews through a process of snowball sampling. Key informant interviews helped identify rightsholders experiencing disparate impacts. Rightsholders included full-hire employees, contract labourers (both male and female), former employees, first and second wives of employees, the elderly, children, the ill, disaggregated for Kitete and Uchindile villages and plantation dormitories. Assessors also interviewed workers for job-specific impacts (e.g. fire guard, planters, pruners and nursery workers). Four feedback sessions with rightsholders, health personnel and project staff were held to verify findings. All interviews used semi-structured formats that allowed for digressions (sometimes extensive) onto topics deemed important by rightsholders.

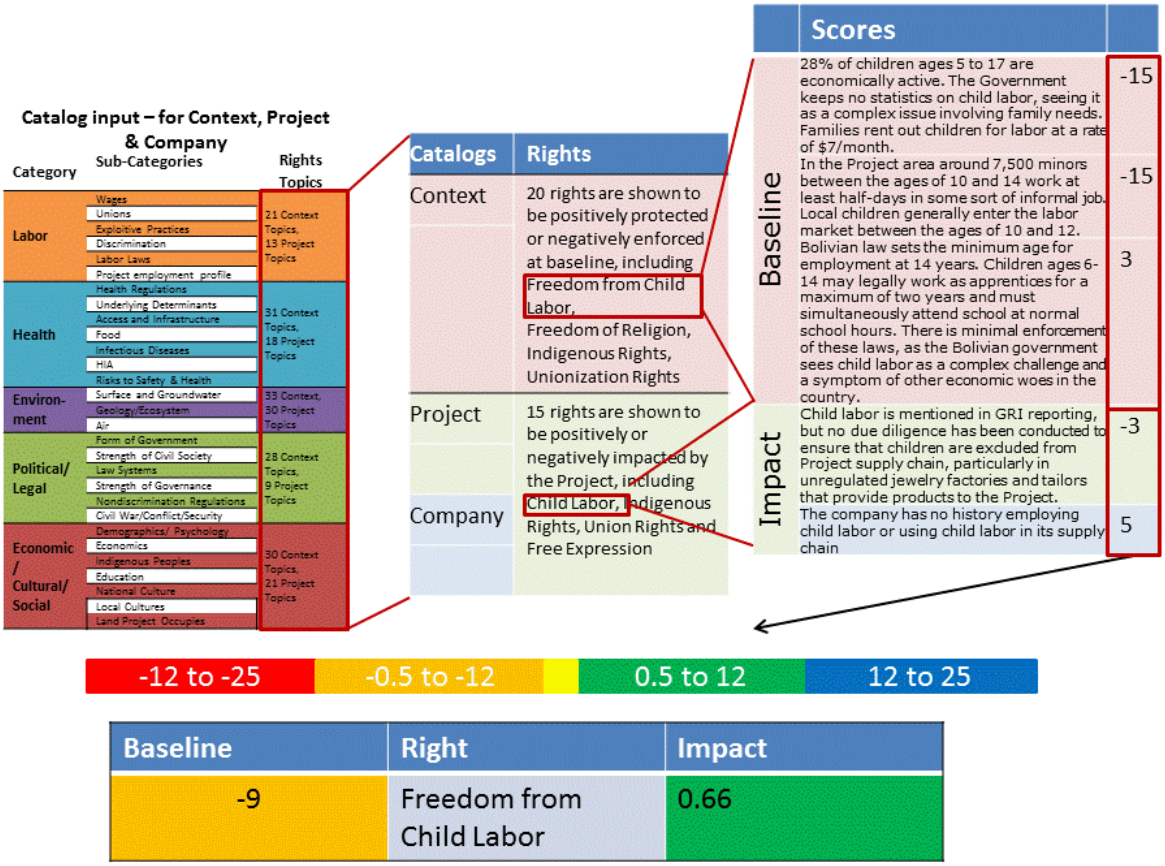

Figure 3-3 Flow chart of assessment and impact rating process, documenting the relationship between inputs and quantitative scoring

Rights were scored through investigation of over 300 context- and project-related indicators, each linked to one of five topical groupings associated with rights conditions, as shown in Table 3-1. A scoring system weighing the intensity (severity for each affected rightsholder) and extent (number of rightsholders and degree of corporate complicity) of impacts established what topics to include in assessment. These scores were sorted by human right and averaged to produce a rating ranging from -25 (extreme negative) to +25 (extreme positive). A flowchart of the process of scoring is depicted in Figure 3-3. Scoring is derived from an evaluation of intensity and extent of impact. Intensity of impact refers to the severity of the impact, either positive or negative. Extent of impact, including the number of rightsholders impacted, is not a designated number or percentage, but rather varies according to how many rightsholders exist within a certain subgroup of rightsholders. For example, if only two pregnant women are impacted by a policy, but there are only three pregnant women in the area, the impact has a high intensity on the particular rightsholder group. Likewise, if 100 working-age men are affected by an occupational harm, out of a workforce of 1,000, the extent of impact remains significant, even though it is not a majority.

A right was assessed if intensity was greater than zero for its related topic. Actual assessment exposed the extent to which that impact is positive or negative (Salcito et al., 2013).

Finally, recommendations were issued and monitored in follow-up site visits.

3.5. Human rights impacts

Initial assessment found positive impacts on the right to a clean environment and negative impacts on the right to water, working conditions, unionization, remuneration, standard of living, housing, health, non-discrimination and education (Table 3-2). Rightsholders impacted included fulltime employees, contract workers, women, the ill and children.

Human rights impacts overlapped with health impacts with regard to labour conditions, community welfare and project implementation. The company did not supply water to dormitories; workers' drinking water came directly from streams. Low wages inhibited workers' ability to provide housing, clothing, healthcare and education to their families. Dormitories were rotting, had leaks and lacked space. At one housing bloc, 70 inhabitants were sharing 24 beds and two latrines. Workers reported being penalised for becoming pregnant and ill, including being assigned hard labour when health conditions would not permit such work. Maternity leave was available to 20% of female workers. The project had no HIV policy or training programmes, which put it out of compliance with its government-approved development plan. The company's failure to supply protective gear (e.g. for pesticide sprayers, who require respirators, goggles, gloves, boots and full-body coveralls) resulted in elevated injury rates above industry norms. Workers rode to fields on tractors, which, twice in one year, slid off muddy roads, injuring workers. Others walked 17 km to job sites. Project clinics suffered repeated stock outs of medicines and materials to treat work-related injuries. On two occasions assessors found clinics closed and unstaffed during site visits. No transportation was available to clinics, which were several kilometres away from worker housing.

Additional human rights impacts had no direct connection to health. Wage equity appeared to be violated; women represented 20% of the workforce but earned 17% of total wages. Many workers could not file discrimination complaints, because, lacking literacy, they could not read grievance mechanism forms. Labour rights, including the right to unionise and

collectively bargain, were restricted. For example, the union leader at Uchindile was removed from the plantation, leaving workers without a union liaison. Eighty per cent of the workforce believed they were ineligible for union participation, because, though most worked full time, they were hired as day labourers. Lacking job security, they did not feel empowered to demand better conditions or higher wages. Workers alleged that complaints resulted in dismissal.

Table 3-2 Human rights impact ratings at initial assessment (2009), one and a half years later during monitoring (2011), and three years later during second monitoring (2014). Impact ratings are colour-coded according to the spectrum presented in Figure 3-3.

Right	Initial assess. 2009	Monitor 1 2010-2011	Monitor 2 2014
Right to favourable working conditions			
Right to work			
Non-discrimination			
Right to belong to a trade union			
Right to collectively bargain			
Security of person, freedom from fear			
Right to water and sanitation (dormitories)			
Right to water and sanitation (community)			
Right to a clean environment			
Right to health (general)			
Right to health (HIV)			
Right to housing (dormitories)			
Right to housing (communities)			
Right to an adequate standard of living			
Right to property (dormitories)			
Right to just remuneration, holidays with pay			No change
Equal pay for equal work		No change	No change
Right to food			
Right to education (children)			
Right to education (Adults)			
Public participation			
Political participation			

Red represents the most severe negatives, orange represents moderate negatives, yellow represents mixed impacts that have the potential to shift in either direction, green represents moderate positive impacts, and blue represents significant positive impacts above and beyond the standard of “do no harm.” Boxes left blank represents impacts not registered at the time of assessment.

3.6. Recommendations

Assessors cross evaluated local conditions, industry standards (set by the World Bank and forestry initiatives), and human rights standards of adequacy (drawn from ILO, WHO and UN guidance). The following specific recommendations resulted.

- Increase worker salaries to a living wage (approximately US$ 2/day)
- Provide safety gear to all workers with penalties for non-usage
- Improve water access and quality using sand filtration
- Provide minimum three lorries to transport workers safely to project sites
- Increase bed numbers, toilet facilities and dormitory capacity to accommodate all needed workers, and treat wooden construction materials to reduce rot and insect infiltration
- Develop and implement a comprehensive HIV programme
- Install solar panels at clinics to enable storage of antibiotics and provide light for emergency treatments needed after dark
- Develop an anonymous, call-in grievance procedure to accommodate illiterate workers

3.7. First monitoring and mitigation

Round one monitoring, conducted in November 2010 (20 months after initial assessment), documented several improvements in human rights conditions. Negatively scored impacts from initial assessment benchmarked improvement or deterioration in human rights conditions associated with each catalogued indicator. The company demonstrated positive impacts on the rights to adequate living standards, food, remuneration, housing and education. In several cases, workers used supplementary income from recommended wage increases to upgrade houses. Project investment in a local school improved attendance and teacher retention rates. Insofar as classes were not interrupted by leaks and pupils were not at risk of injury within crumbling walls, conditions for learning improved.

Discriminatory conditions persisted. However, mitigation measures demonstrated progress. A manager who sexually harassed female workers was replaced. Work conditions

remained difficult, and worker transportation problems had not been solved, but the company implemented midday meals, improving work conditions and the right to food. Equipment to protect workers against occupational hazards (e.g. protective boots, coveralls, gloves and masks for firefighting crews during dry season), became more widely available after assessment, reducing occupational health risks.

Management improved water access but continued to provide untreated water. Although several negative impacts on rights relevant to health were mitigated, ratings for the right to the highest attainable standard of health remained negative. The health rating associated with HIV dropped from negative to severe negative, as monitoring coincided with project relocation of workers from Iringa district (estimated HIV prevalence 15.7% among men and women 15-49)(National Bureau of Statistics Tanzania (NBS), 2011) to Uchindile dormitories (estimated HIV prevalence 6%) to conduct harvesting activities. The company has reported further improvements in human rights respect, which will be reviewed during a future site visit.

3.8. Second monitoring and mitigation

A second monitoring evaluation, conducted three years later, with site visits in November 2013 and March 2014, evaluated whether mitigations had been sustained and/or new impacts had developed. Table 3-2 depicts that most changes from monitoring 1 were positive or neutral, with key exceptions for employee housing and workforce training. Table 3-3 breaks down human rights impacts by rightsholder group, depicting that impacts became increasingly targeted to certain sub-populations.

Major negative impacts surfaced for workers in Kitete and dormitories. Worker treatment had backslid, with decreasing access to transportation, a seasonal reduction to one daily meal, and significant degradation of dormitories, including broken beds and disintegrating, unsanitary mattresses. The reversal suggested that human rights lessons had not been internalised, despite the company's development of a human rights policy and reporting process.

Table 3-3 Human rights impacts disaggregated by rightsholder group[2]

Human Right	Contract labour	Casual labour	Permanent workers	Kitete 1 Dorms	Kitete 2 Dorms	Uchindile 1 Dorms	Uchindile 2 Dorms	Uchindile Villagers	Kitete Villagers	Women
Right to favourable work conditions										
Right to work										
Non-discrimination										
Right to belong to a trade union										
Right to strike										
Right to security of person										
Right to adequate water/ sanitation										
Right to clean air/environment										
Right to health										
Right to housing										
Right to an adequate standard of living										
Right to property										
Right to food, freedom from hunger										
Right to education										
Right to public participation										
Right to political participation										
Right to privacy										

However, major positive impacts were documented in Uchindile village, associated with living wage rates and political engagement. As the company distributed its first tranches of revenue from carbon sales, communities constructed and improved local infrastructure. Politicians came to appreciate the value of forestry in the region, triggering a debate over whether Uchindile should be redistricted into Iringa. In an effort to retain control of the area, Kilombero district authorities are increasingly attentive to the needs of Uchindile residents,

2 The same spectrum of Major negative impacts surfaced for workers in Kitete and dormitories. Worker treatment had backslid, with decreasing access to transportation, a seasonal reduction to one daily meal, and significant degradation of dormitories, including broken beds and disintegrating, unsanitary mattresses. The reversal suggested that human rights lessons had not been internalised, despite the company's development of a human rights policy and reporting process. Blank boxes represent occasions where impacts were not registered for particular rightsholders.

improving boreholes, schools and clinics. For the first time in memory, Uchindile residents feel they have a voice at the district level. Additionally, continually increasing wages have enabled the majority of residents to improve houses.

3.9. Discussion

HRIA at the Uchindile plantation benefitted from existing HIA approaches. The study of human rights elucidated health issues which, in turn, revealed further human rights impacts associated with food, water, disease and occupational hazards, as well as non-discrimination, housing, living and labour standards (Backman et al., 2008; UN General Assembly, 1996). Increased mobility associated with harvesting activities was linked to potential impacts on the spread of HIV infection (Boerman et al., 2002).

Monitoring revealed major improvements in several health-related human rights impacts, but the impact scores for the right to the highest attainable standard of health were unchanged. This suggests that facets of health may be more cohesively assessed under the umbrella of human rights than health. Several health impacts required non-health remedies, such as increased salaries, improved grievance mechanisms and management personnel changes. For example, workers replaced thatch roofs with corrugated iron sheets when salaries increased. Conversely, examination of education rights exposed health risks; the crumbling school the company promised to replace posed hazards to local children. Such right-to-health related risks were not immediately foreseeable through a health lens.

There is significant overlap between health issues and human rights. HIA draws from environmental, social, political, health, labour and economic data to issue recommendations on health. HRIA draws from similar resources and frameworks, while broadening the investigation to incorporate civil, political, social and welfare rights. This process has the potential to enable companies to holistically address the risks and benefits they pose to the systems where they operate.

HIA is an increasingly accepted and established tool for identifying the impacts that corporate projects are likely to have on affected communities, while companies are increasingly being called upon to employ a broader “human rights lens” to their impact assessments. The same approaches that make HIA valuable—i.e. employing interdisciplinary research, generating concrete and actionable recommendations, basing findings on

evidence—are needed in HRIA. Although not as well established or as well-developed, HRIA is increasingly expected of companies, builds on these techniques and augments them with perceptions and experiences of affected people. Our case study demonstrates the synergistic benefits of an intersectoral approach to impact assessment. The evidence-based approach of HIA, combined with consideration of "local knowledge" and experience, provides a framework for an HRIA that adds value to corporate assessments while meeting the expectations of the global community that they "do no harm."

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4. SURVEILLANCE RESPONSE: HUMAN RIGHTS IMPACTS IN CHANGEABLE CONTEXTS

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4.1. Abstract

Project-level impact assessment was originally conceived as a snapshot taken in advance of project implementation, contrasting current conditions with a likely future scenario involving a variety of predicted impacts. Current best practice guidance has encouraged a shift towards longitudinal assessments from the pre-project stage through the implementation and operating phases. Experience and study show, however, that assessment of infrastructure-intensive projects rarely endures past the project's construction phase. Negative consequences for environmental, social and health outcomes have been documented. Such consequences clarify the pressing need for longitudinal assessment in each of these domains, with human rights impact assessment (HRIA) as an umbrella over, and critical augmentation of, environmental, social and health assessments. Project impacts on human rights are more closely linked to political, economic and other factors beyond immediate effects of a company's policy and action throughout the project lifecycle. Delineating these processes requires an adequate framework, with strategies for collecting longitudinal data, protocols that provide core information for impact assessment and guidance for adaptive mitigation strategies as project-related effects change over time. This article presents general principles for the design and implementation of sustained, longitudinal HRIA, based on experience assessing and responding to human rights impact in a uranium mining project in Malawi. The case study demonstrates the value of longitudinal assessment both for limiting corporate risk and improving human welfare.

Keywords: corporate development project; human rights impact assessment; cumulative impact assessment; confounders; longitudinal study

4.2. Introduction

Since the United Nations (UN) 'Guiding Principles for Business and Human Rights' (Guiding Principles, in short) were unanimously endorsed by the UN Human Rights Council, assessment of companies' human rights impacts has been conceptualised as an ongoing process (OHCHR, 2011). This view recognises that risks to human rights change over time, "as the business enterprise's operations and operating context evolve" (OHCHR, 2011). It is also consistent with best practice in the field of impact assessment.

Although "best practice" remains difficult to pin down in this relatively new approach to impact assessment, it is becoming clearer what components are central to human rights impact assessment (HRIA). The Guiding Principles themselves lay out procedural elements of HRIA, including a screening or scoping process; consultation with potentially affected individuals; analysis of impacts on a wide range of human rights; a management framework for preventing, mitigating or remediating adverse impacts on human rights; and a tracking process for evaluating the effectiveness of interventions, which incorporates communication with affected rightsholders. In public accounts of the current approach to corporate HRIA, principles of transparency, external verification (by rightsholders and stakeholders), and ongoing monitoring and review have become central (Melish and Meidinger, 2012; Harrison, 2013). Achieving all of these aims requires thorough investigation of myriad contextual conditions and project-related impacts. The most detailed publicly available methodology for such a process involves analysis of over 300 human rights indicators (NomoGaia, 2012; Salcito et al., 2013).

4.3. Challenges in longitudinal impact assessment

Although project impact assessments were originally designed as ex-ante analyses to guide construction and early-stage operations, ongoing auditing and monitoring is now favoured to account for the dynamism of environmental, social and health systems (Bjorkland, 2013). Though standards have changed, corporate approaches largely remained the same (World Bank, 2010). The World Bank has identified several reasons why companies do not maintain sustained monitoring of impacts. For example, locally hired assessors may lack the training and capacity to monitor changes in impact and context over time. Additionally, assessment is viewed as a means to acquire permits rather than a process for understanding impacts. In other cases, management teams change in the transition from

construction to operations and fail to transfer knowledge. Also, project assessment budgets, which are set to meet the terms of loan agreements, shrink after construction is completed (World Bank, 2010). Commitments made to conform with environmental and social standards set by the International Finance Corporation (IFC), Equator Principles banks and regional development banks expire after debts are repaid. In some projects, this may happen soon after operations begin (Pegg, 2009). That impact assessment was initially envisioned as an ex-ante requirement may also contribute to its persistence as a one-off activity instead of sustained process. Indeed, the impact assessment lexicon has no standardised term for the extraneous variables that compound (increase) or mediate (decrease) the intensity of an impact, the effectiveness of an intervention or the stability of a context (Ball et al., 2013). Indirect and cumulative impacts may develop slowly and may have a causal link to the project even as they interact with external changes in the operating context. Pre-project snapshots are not designed to capture these effects.

The absence of ongoing impact monitoring has had well-documented consequences for environmental, social and health outcomes. The degradation of river systems downstream of the Ok Tedi mine in Papua New Guinea is one of the most thoroughly documented environmental examples (Hettler et al., 1997). In social and health spheres, the failure to foresee, track and manage the spread of HIV at mine sites in sub-Saharan Africa has been similarly consequential, for human rights and for the corporate bottom line (Scudder, 2005; Venter, 2005; Rosen et al., 2007).

The consequences of inaction, and thus the need for longitudinal analysis, are particularly urgent in HRIA. In health impact assessment (HIA), most impacts result from project-induced in-migration, which can be predictably identified during the pre-construction period (Rogers and Tarzumanov, 2012; Tucker et al., 2012). Similarly, for environmental assessment, impacts can be most efficiently and cost-effectively managed during the front-end engineering design phase that occurs prior to full construction (Raissiyan and Pope, 2012). Yet even health and environment can be difficult to manage without longitudinal assessment. The health impacts associated with community resettlement change over time, and the environmental impacts of a project can be affected by common events, such as a truck driver spilling chemicals (illustrated below). This is all the more pertinent for human rights, which are sensitive to political, economic and other shocks that arise beyond the

domain of a company's control. From the standpoint of civil and political rights, large extractive industry projects (e.g. mines and oil/gas developments) typically operate for 20–30 years, while political regimes rarely last that long. As Lee Raymond, the former Chief Executive Officer (CEO) of ExxonMobil once stated: “We see governments come and go” (Coll, 2013). In low-income countries, where new extractive industry exploration is on the rise (International Monetary Fund (IMF), 2012), already fragile states face increasing risk of political, social and economic shocks (Haglund, 2012; Marshall and Cole, 2012). These shocks pose myriad human rights risks, which intersect and interact with corporate activities in extractive industries.

This article draws from tools available in the fields of impact assessment and epidemiology to provide general guidance for the design and implementation of ongoing longitudinal HRIA. The evolving contextual framework of a uranium mine project in Malawi, and the measured human rights impacts and responses taken, provide an example of how such a system is useful. It demonstrates the importance of longitudinal assessment both for limiting corporate risk and safeguarding human welfare.

4.4. Capturing context

The challenges of longitudinal assessment are neither novel nor unique to HRIA; precedent has been laid in epidemiology and in traditional impact assessments (Salamon, 1979; Pauly, 1995; Hulme, 2001; Grimes and Schulz, 2002; Mate et al., 2013). Epidemiology provides a variety of tools for identifying the “confounders” that should be considered in long-term project monitoring (Victora et al., 2011). In the impact assessment field, new research has examined contextual instability, and cumulative impact assessment provides key guidance on the interactions among enterprises (Seitz et al., 2011; Seitz et al., 2013).

Longitudinal research tools from epidemiology (e.g. trend analysis and survey techniques) offer particular value in HRIA, because they can be employed in a qualitative and semi-quantitative fashion. Epidemiological methods are extremely powerful and useful, but observations and interpretations are always associated with issues of chance variation, bias and confounding. Evaluating the limitations of epidemiological data is highly technical and potentially time-consuming and expensive. However, unlike in HIA, where robust incidence and prevalence rates are critical, the same level of statistical certainty is not needed to establish whether human rights are respected. For example, a single violently quashed

protest may be sufficient to establish a human rights context that is not respectful of the right to freedom of expression, regardless of precisely how many protesters were affected. A quality HRIA employs a large quantity of data, covering as many as 300 indicators pertaining to the context and the project, but assessment tools do not need to be employed to perfection (Egger et al., 1998; von Elm and Egger, 2004). Indeed, in corporate impact assessment, insisting on perfection might not result in any improvement at all. However, rigorous standards of assessment suited to the HRIA context are in clear need of explication.

As to the importance of such processes, the case for longitudinal assessment is financial as well as humanitarian, particularly in the mining sector. Human rights concerns associated with political leadership are guaranteed to change over the life of a mine, and a project is guaranteed to be immersed within those changes. Mining in Latin America provides pertinent and contemporary evidence. Gold and copper deposits in Chile, Ecuador, and Peru were explored at great cost for a decade or more while political leaders encouraged foreign investment. Between 2008 and 2013, as mining companies ramped up exploration activities, presidential politics became increasingly enmeshed in dealings with foreign mining companies. In Chile, just before the 2013 presidential elections that former President Sebastian Pinera lost, he entered the fray over the fate of the now stalled US$ 8.5 billion Pascua Lama project (Urkidi, 2010; Cavallo, 2013; McHugh, 2013). In Ecuador, President Rafael Correa recently handily won re-election in 2013 after the country's new mining law, as implemented by his administration, proved too onerous for international operators to construct the large Fruta del Norte project, which became a US$ 720 million write-down in mid-2013 (Regalado Aguirre, 2012; Buchanan, 2013; Koven, 2013). In Peru, former President Alan Garcia spent only one term in office after failing to rewrite mineral agreements and increase royalty rates. Voters replaced him with the more leftist Ollanta Humala, who also pledged to redistribute wealth from natural resources (Bebbington et al., 2008). In 2012, advancement of the legally approved US$ 5 billion Minas Conga project, which was strongly supported by President Humala, was met with deadly protests over residents' perceived threat to the right to water. The government declared a state of emergency in the area, which restricted myriad civil and political rights (Triscritti, 2013). The mine, which had been slated to begin production in 2015, remains stalled in the pre-construction phase at the time of

writing the current piece. The contextual changes occurring within these countries may have fatally compromised mine development.

A framework converting contextual findings into actionable project developments draws from epidemiology and cumulative impact assessment, while building on a validated methodology for HRIA (Salcito et al., 2013). The HRIA methodology can be employed for both the initial assessment and long-term monitoring, modified with a framework for tracking the dynamic relationship between shifting contexts and shifting project inputs. This framework is depicted in Figure 4-1.

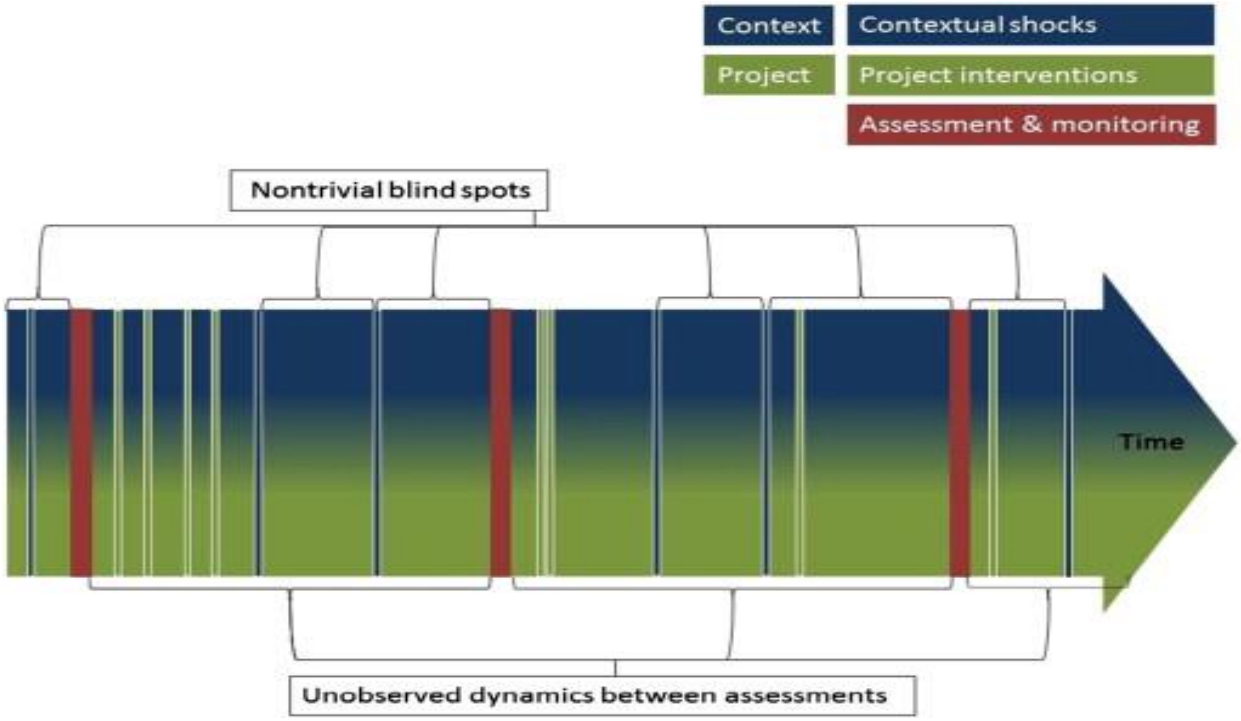

Figure 4-1 Time-course for dynamic context and impacts

Human rights conditions change over time, fluctuating in response to contextual factors and project interventions. A company, whose core business is not human studies, can only monitor these changes periodically. In between assessments, companies generally ignore such dynamics. If there are few or no contextual shifts or interventions, monitoring may only be required infrequently. The aftermath of each contextual shift, however, creates a blind-spot in assessment, during which time human rights conditions may change without being recorded by companies, who need to understand local contexts to meet best practice standards and to stay agile as conditions change. A severe shock, or frequent fluctuations, necessitate(s) frequent monitoring. Figure 4-1 shows all relevant project interventions theoretically affecting the context, and all significant contextual shocks affecting the project.

This will not be the case in reality; some interventions will be too minimal to affect human rights outcomes, and some shocks, though major at a country-, district- or local-level, could leave a project largely untouched. This is information that can only be gathered during assessment, after the events have occurred.

Contexts change constantly but are only monitored periodically. This has two primary implications. First, the HRIA context is most inclusive in the initial assessment, when historical data supplements current conditions to depict trends in rights protections. Past events that continue to have bearing on politics, policies and mind-sets are part of the groundwork for ongoing HRIA. Second, interventions by the company essentially deform a local dynamic. The deformation caused by a mitigation measure may have unforeseen, negative consequences. Periodic assessments allow researchers to link previous contextual conditions to current conditions, tracking human rights conditions over time, and producing causal links between interventions and outcomes. Inherent in the assessment process is the assumption that the baseline conditions do not generate a benchmark for corporate action going forward. This differs from classic impact assessment, where the aim is to mitigate negatives as forecasted in an initial assessment. In HRIA the "do no harm" principle requires assessors to consider the standards of adequacy against which human rights are measured and ensure that all their non-neutral impacts bring affected rightsholders closer to those standards where any impact occurs.

Project interventions that fulfil HRIA recommendations are not necessarily implemented immediately after assessment is conducted. Some interventions are difficult or costly to implement; some are delayed by project managers or others, at times to the detriment of human rights. In theory, the interventions should be prioritised according to the most severe negative impacts exposed during assessment. In practice, companies may choose low-cost or high-visibility mitigation measures over costlier but more effective ones. For example, a mining company may impact the right to education through project-induced in-migration, overwhelming small local schoolhouses. The company may opt to construct a school and hand it over to local authorities. The presence of a school, while visible and often lauded, does not ensure that education will become more accessible, affordable, adequate or culturally appropriate. Housing for teachers might be necessary to retain educators; partnership with the Ministry of Education may be needed to ensure that provision of learning

materials meets national and international standards of adequacy. Longitudinal assessment documents changes (or stagnation) in indicators related to the adequacy of education, documenting whether an intervention was appropriate or had unforeseen consequences.

4.5. Experiences from Kayelekera uranium mine

4.5.1. Initial assessment: impacts in a rural setting

In 2009 we began an HRIA on the Kayelekera uranium mine in northern Malawi (Figure 4-2). The mine is owned and operated by Paladin Energy Ltd., a mid-sized Australian mining company. To define baseline and conduct the initial HRIA, the Salcito et al. (2013) methodology for HRIA was employed, framing the context through the use of approximately 150 context indicators. The operating context at the time of project development in 2009 was challenging, insofar as Malawi's economic development scores were among the lowest in the world; it ranked 164th out of 177 on the UN human development index (UNDP, 2008). The legal regime was weak and imprecisely written. For example, a major dispute had recently arisen over whether a two-term president could run for a third term so long as it was not consecutive. Having recently transitioned to democratic governance after a 30-year dictatorship, the country had no recent history of foreign direct investment and was among the world's poorest. Life expectancy was below 55 years, over 8,000 malaria deaths were reported per year (61 per 100,000 population), and maternal mortality was 630 per 100,000 live births (WHO, 2014). HIV rates in Malawi were estimated at 16% in the general population, with higher rates along transit corridors and in population centres. In the context catalogue, health, education, labour, political/legal and social/economic indicators scored low.

The Kayelekera project was developed as an 8-year mine with an additional 3 years of ore processing. Project infrastructure included a mine, tailings dam, mill and power generator. Worker housing was not supplied for most Malawians, and jobseekers built temporary lodgings in the valley 3 km from site, near existing farms and markets. Malawi's power sector could not support the energy needs of the project, owing partly to Kayelekera's location in an under-developed region that was not on the power grid. Infrastructure, including health, education and roads, were minimal. Prior to project development there was no vehicle-safe road from Kayelekera village to the nearest road, 11 km north.

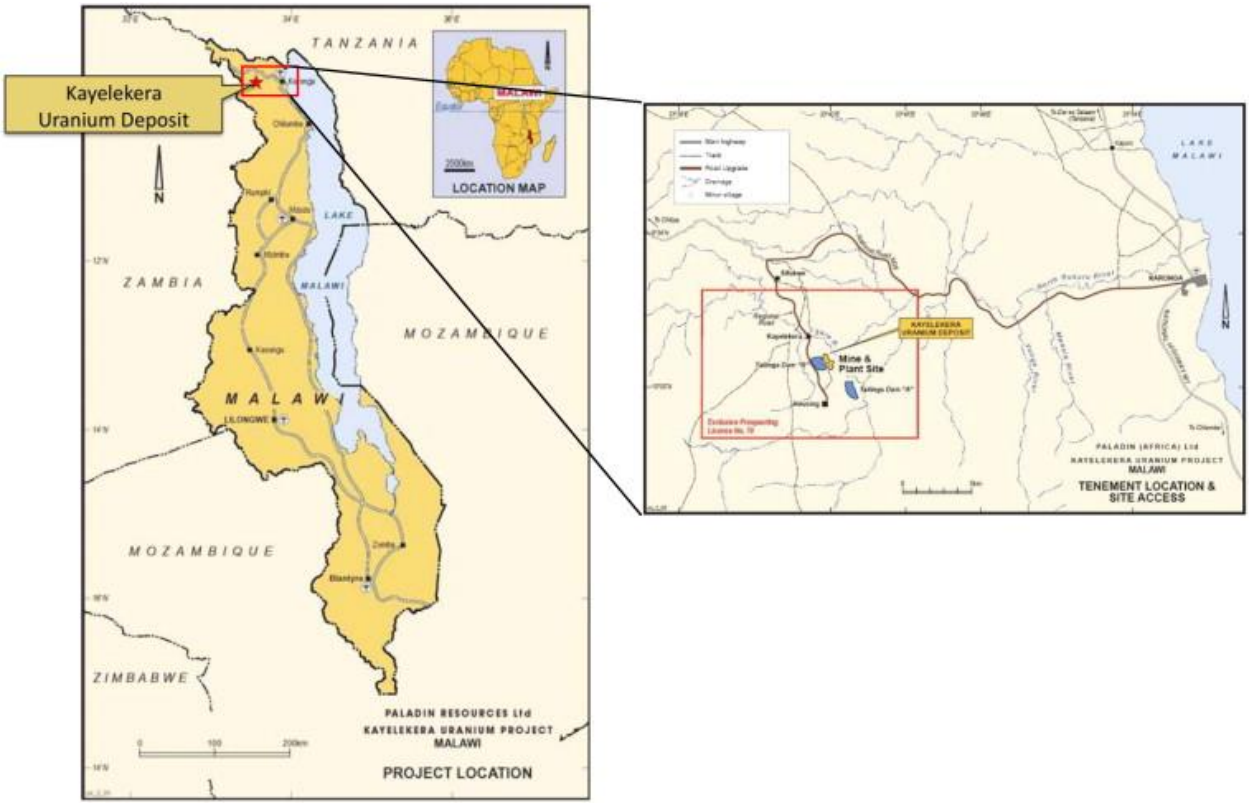

Figure 4-2 Map of Kayelekera uranium mine in Malawi

Processing uranium requires chemical interactions. Reagents, including sulphur, lime, ammonium and hydrocarbons, were transported by road to the site. Stack emissions were controlled through air scrubbing. Spill management guidelines were extensively detailed, and project engineering, including environmental monitoring mechanisms, met IFC standards.

The project operator, Paladin Energy, was entering its second production-oriented operation after several years working on exploration projects in Australia. Paladin did not have detailed plans for community relations or public welfare, although it hired a committed and competent team for building local relationships. The company entered this context with little experience operating in Africa. Its only other African project was a uranium mine in the Namibian desert, remote from settlements, which opened in 2007 (Paladin, 2009a).

The HRIA methodology required assessors to link context-, project- and company-related “human rights topics” to the human rights and rightsholders most affected. Rights encompassed include “primary” rights (e.g. civil and political liberties) as well as “secondary” rights (e.g. economic, social and cultural entitlements). The data, including qualitative and perception inputs from interviews, were catalogued in a spreadsheet file (Excel). The HRIA incorporated close to 300 indicators. Modifications were made to the Salcito et al. (2013)

human rights catalogues to accommodate monitoring inputs. These modifications are depicted in Table 4-1, and the full spreadsheet template is available through NomoGaia (http://www.nomogaia.org).

The spreadsheet format allowed findings to be sorted and coded to suit the interests of assessors. It enabled analysis of single rightsholder groups (e.g. women) or single human rights (e.g. health) as needed to examine the dynamism and variation in human rights conditions (Landman and Hausermann, 2003).

Table 4-1 Assessment and monitoring platform

Category & sub-category		Topic	Input	Monitoring input	Impacted rights & rightsholders	
Socio-econ-omic	Edu-cation	School costs	Public spending on public education represents 5.2% of GDP	Public spending on public education represents 5.71% of GDP	Nondis-crimination; education	Children; girl children; the poor; rural residents
Health	Risks to safety	Traffic accidents	Traffic accident risks have increased significantly, resulting in five deaths and three chemical spills in the past 24 months; children play in the streets, the road runs feet from the primary school	There has been an increase in the risk of traffic incidents associated with the increased traffic from a new neighbouring coal mine. These workers do not obey posted speed limits	Right to health	Employees; contractors; project area inhabitants; school children
Politico-legal	Security	Security plans	Ninety-three guards secured the compound. That number was expected to decline to approximately 30 in the EIA, but such decreases are not currently under discussion. Security is mostly devoted to reducing theft, which is a major issue, and trespassing. There is little violent crime in the vicinity. Paladin is not a signatory to the VPs	The security force has slightly increased, rather than decrease, to approximately 100 guards. Additionally, the company subsidizes the cost of retaining two government police forces on site and along the transit corridors. No private security is armed, however theft has increased and criminals are armed, increasing risks to community and security personnel	Security of person	Project employees; contractors; project area inhabitants; children

The development of a large-footprint, capital-intensive project invariably intersects with at least some human rights in low-income countries. Just in the context of hiring, this benchmark almost always requires proactive, mitigating steps by the company, just to ensure that the impacts do not cause the status of rights protection to fall below their previous position. A project's own human rights performance is measured, in part, by the sufficiency of its human rights practices within an operating context (SHIFT, 2013b).

During initial assessment at Kayelekera, the government violated primary rights from project area inhabitants on at least one occasion; namely, teargasing protesters at the mine site who were exercising free expression and freedom of assembly. Additionally, the government had for decades fallen short on its duties to promote access to numerous secondary rights, including access to healthcare, access to education, adequate housing and an adequate standard of living. Standards of non-discrimination were not protected or promoted in the project area, despite efforts nationwide to reduce ethnic and gender disparities. These contextual conditions complicated the corporate role in respecting human rights. The historic disenfranchisement of women resulted in skill and education deficits, rendering them unemployable at the mine. As such, the company risked exacerbating the comparative disadvantage between men and women in Kayelekera by hiring the already qualified men to the detriment of unqualified women. Mitigation would require skills training for women, which was implemented along with a salary equalisation programme in 2012 and 2013 ensuring that Malawian women took home earnings equal to Malawian men.

The absence of functioning health facilities in Kayelekera triggered Paladin's responsibility to proactively ensure it was not compounding the already inadequate access to the right to health in the community. Because project construction involved significant population influx, non-action would negatively impact the right to health, increasing pressure on local facilities and exposing more rightsholders to inadequate care in the area. A major concern at the project was the spread of HIV. The improvement in roads, the influx of young, single, male and female jobseekers and construction workers, and the increased traffic between rural Kayelekera residents and high-risk urban populations in Karonga increased the risk of disease spread. Because HIV/AIDS is a stigmatising condition, its impacts on rights to health, education, work, adequate standard of living, non-discrimination and other facets of life are anticipated for the seropositive and members of their families. Though assessment revealed a mix of positive and negative impacts, a predicted negative impact was associated with the health effects of the spread of HIV, as Kayelekera did not, at the time, have an HIV management policy.

As shown in Figure 4-1, project activities and contexts may change over time, and various issues may become either more or less serious. Human rights scoring (Salcito et al., 2013) is conducted at the outset and at designated points over the project lifecycle.

Figure 4-3 depicts the existing human rights conditions as pertinent to Paladin's operations (highlighted in green), components of project design that are likely to interact with that human right context (highlighted in blue) and moments of assessment (highlighted in red). The timeline concept is valuable for tracking Paladin's responsiveness to observations about its context and project performance. The initial assessment and the two rounds of monitoring are shown in Figure 4-3. Note that the ratings pertinent to the initial assessment are on the far left of the graphic.

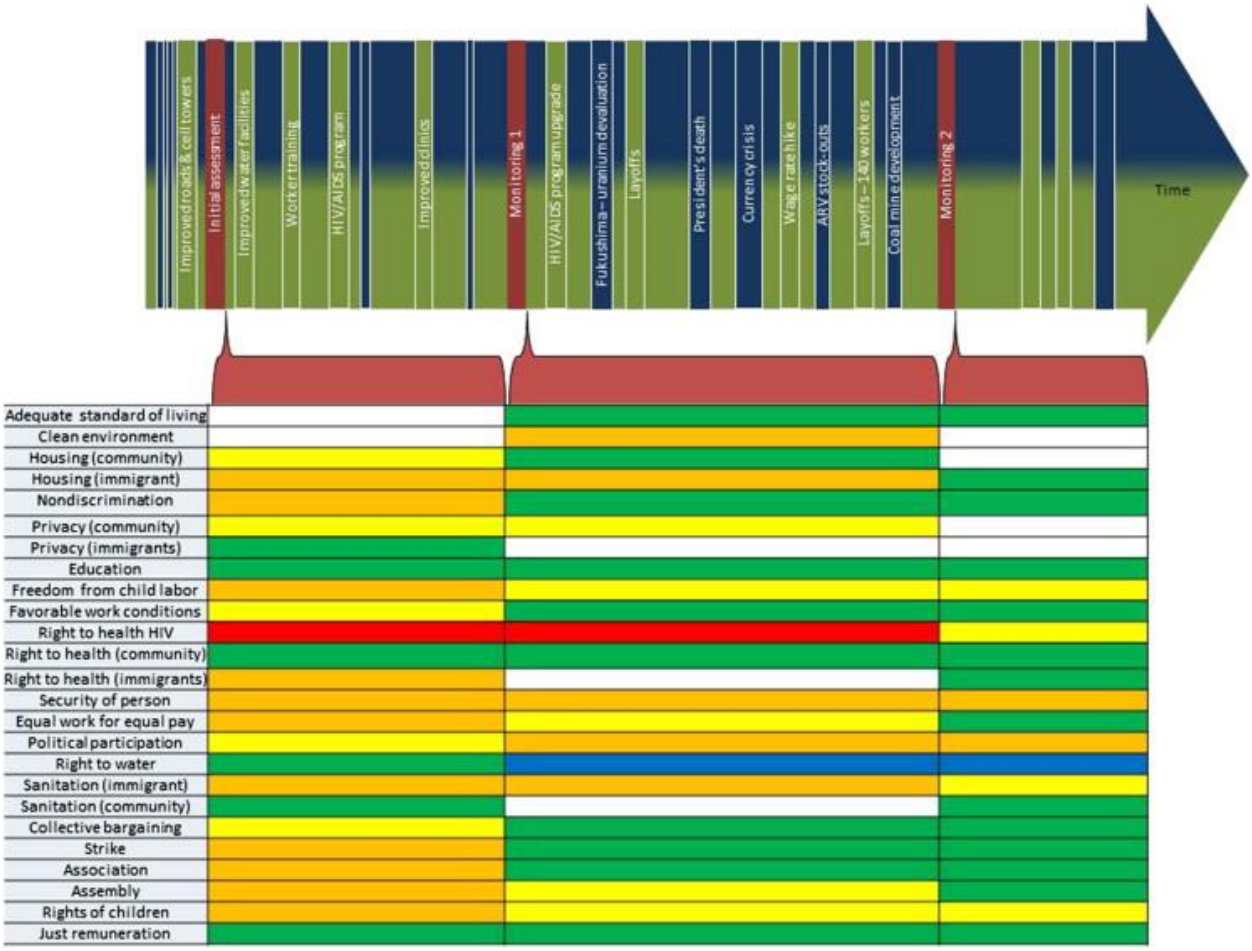

Figure 4-3 Round-2 monitoring at Kayelekera, Malawi

4.6. Assessing impact over time to facilitate change

The initial HRIA activity provided a reference point to evaluate changing context and project interactions during the first two rounds of monitoring. The initial assessment was conducted between February 2009 and January 2010, incorporating two site visits. Round-1 monitoring was conducted in October 2010, 9 months after an initial assessment report had been submitted to the company. This timing allowed for the recommendations accompanying

the initial assessment to be implemented, and it provided a time lapse of sufficient duration to track human rights trends nationwide, including political and economic shifts.

4.6.1. Contextual human rights conditions

Contextual changes were fairly minor with the exception of health. The government had improved its HIV/AIDS programme, having acquired funding from the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund, in short) for antiretroviral treatment (ART) access and distribution. A presidential election occurred peaceably.

4.6.2. Project interventions to mitigate or remediate human rights impacts

Round-1 monitoring revealed major company and project improvements on most subtopics, which improved ratings. These improvements resulted from policy changes, modified corporate practices and novel partnerships that the project had developed in the area. Strengthened ties to the district health authority improved the standard of care in the project area and produced significant improvements in the area of HIV testing, counselling and treatment. Project initiatives resulted in the direct provision of ART in the project area, through the supply of transport to hospital staff on a monthly basis.

By partnering with World Vision (http://www.worldvision.org), the project was able to broaden its impact on educational facilities in the area, supplying its own construction and staff to support school building. Local hiring had visibly improved livelihoods. For example, brick and metal-roofed houses were under construction where previously only mud and thatch houses were present. The down side to local hiring was a result of skills deficits: local brick makers used inadequate clay, and the brick school building had begun crumbling. Additionally, numerous wage-earners had invested their earnings in larger cattle herds. The presence of additional livestock had a negative effect on surface water quality; project environmental monitoring revealed elevated faecal coliform levels. The company largely prevented negative outcomes by ensuring that all residents had access to well water, which was uncontaminated by surface bacterial runoff. Women and children bathing and doing laundry in streams were educated about health risks, through posters on the newly established local clinic, and through distributed booklets.

Improved health outcomes could be firmly established with regard to immunisation rates and clinic quality. Immunisation rates rose to World Health Organization (WHO)

standards of more than 80% coverage (indeed rates “surpassed” 100% as children from neighbouring areas came to the clinic for immunisations). At the clinic, a new relationship with the national energy company resulted in electrification of the Bwiliro clinic, which enabled refrigerated medicines and cold-chain sensitive immunisations to be retained on site. It also improved visibility and thus the standard of care for patients seeking treatment at night, particularly women giving birth. Project provision of water to the Bwiliro clinic improved the ease of sanitation and working conditions of medical staff.

The rising numbers of electricians and other semi-skilled technical workers for the project had a spill over effect of ensuring that personnel would be available to maintain infrastructure systems beyond the life of the mine. Improvements in impacts were initially the focus of investigation, but interactions between context and impacts were also visible.

The project's improvement to local schools, combined with the arrival of jobseekers during construction, resulted in an influx of young children, which increased pressure on teachers prior to assessment that continued during monitoring. For example, the local primary school student body had increased from 153 pupils in 2006 to 513 in 2010. Between the initial assessment and monitoring, the primary school and additional teacher housing had been completed. A borehole on school grounds provided clean water to staff and students. Teachers were provided solar panels to power mobile phones and lights. Rising enrolments meant increasing government funding for the facility, which would theoretically ensure the sustainability of the improved school in the coming years (a population outflow would affect this and has complicated long-term implications that are beyond the scope of this paper). Student influx then became a matter of parents from surrounding villages sending their children, alone, to the school, rather than children accompanying job seekers. This had implications for the security of those students, who were found to be sleeping in the school classrooms. Security risks were particularly high for female students, who faced potential sexual intimidation.

The insecurity posed to students, and female students in particular, inspired the company to collaborate with the Ministry of Education and the local clinician to instate a policy for student care. A guardian must be present at the time of enrolment to commit to oversee lodging, food supply and other student needs. This individual can be contacted if educators or health personnel have concerns. The company occasionally supplements

student meals. The agreement is informal between company staff and the community, built on a strong relationship and mutual trust between community development personnel and clinic staff.

A major improvement in human rights ratings resulted from evolving corporate policies at Paladin. Between the initial assessment and monitoring, the company developed a strategy involving collaboration with the MoH to bring ART to site and partnering with non-governmental organisations (NGOs) and other stakeholders to provide education, counselling and testing. The company began work on a human rights policy. Human rights issues were incorporated into the 2010 annual report.

4.6.3. Project inaction towards human rights impacts

The right to food and the right to privacy were negatively impacted among rightsholders with HIV, while access to these rights improved for other rightsholder groups. As a result, we scored HIV-affected rightsholders independently of others, to isolate the effect of unmitigated HIV. Activities to bring ART to the project area were producing favourable indications, including increased testing rates, but because no baseline HIV rates were available for the community, it was not possible to determine whether the spread of the virus had been slowed. This is a universal problem with HIV monitoring at project sites owing to right to privacy concerns, which is both a rights and a legal issue.

Another major concern surrounded the right to a clean environment. After 2 years in operation, Paladin had still failed to produce a public environmental monitoring report. Exacerbating public fears about environmental conditions, round-1 monitoring coincided with a sulphur spill in the stream that runs through Kayelekera village. The odour persisted for weeks, although there was no lowering of water pH and monitoring data remained steady, residents alleged that crops were responding poorly when irrigated by malodorous water.

4.6.4. Validation of human rights impact assessment processes

The initial monitoring visit was accompanied by feedback sessions with rightsholders, who validated the majority of assessors' findings. Unemployed rightsholders felt their views had been insufficiently represented, and an additional focus group was conducted to clarify perceptions of discrimination and disenfranchisement among this group (labelled “immigrants” in the rightsholder column). Their concerns contributed to negative monitoring

ratings for the right to non-interference, one of the key rights associated with anti-corruption — their complaints, validated in external interviews, indicated that nepotism was disenfranchising nonlocal workers and allowing for the rehiring of workers fired for misconduct.

When human rights monitoring scores were generated, impacts improved for all rights except one: the right to a clean environment. An extension of the timeline for corporate impact and response, these findings fit on the timeline depicted in the middle column of Figure 4-3.

4.7. Context driving change

Round-2 monitoring was conducted in October 2013, 3 years after the previous monitoring round. In the interim, the human rights context in Kayelekera particularly, and Malawi in general, changed continuously.

4.7.1. Contextual human rights conditions

A series of contextual shocks occurred in 2011 and 2012. In March 2011, a tsunami hit Japan's nuclear reactors, causing a nuclear disaster at Fukushima that triggered a global collapse of the uranium market (Brumfiel, 2013; Massot and Chen, 2013). As a consequence, Kayelekera became a revenue-negative mine. The following month, President Mutharika evicted the United Kingdom envoy from Malawi; the United Kingdom revoked US$ 49 million in aid to the country in response, 39% of which funded the public health sector (UN Irin, 2011). The African Development Bank, the World Bank, the European Union, Germany and Norway also withdrew aid, citing corruption (Tran, 2011). The corruption scandal coincided with a forex crisis associated with a poor harvest and low tobacco prices in 2011 that significantly reduced Malawi's exports (Matchaya et al., 2013). Without forex the country could not purchase fuel (Ministry of Finance, 2011; Cammack, 2012; Holden and Lunduka, 2014), causing public transport to increase in price and side-lining emergency transport throughout the health system (MoH, 2012). The poor harvest was not met with a decline in grain exports; the state-owned grain marketer, the Agricultural Development and Marketing Corporation offered deflated prices for grain, so farmers opted instead to sell to cross-border traders (UN Irin, 2013). An in-country food shortage triggered price inflation for maize (Nyasa Times, 2013). In July 2011, public protests against rising prices and fuel shortages were quashed with

live bullets (Cammack, 2012). Mutharika's troops killed 18 and injured 41 protesters. Eight reporters were beaten (Amnesty International, 2011). Throughout the summer of 2011, the economic slowdown was accompanied by stock-outs of essential medicines, including ART, owing largely to distribution chain problems (perhaps compounded by lost aid dollars) (Schouten et al., 2011; UN Irin, 2011). Additionally, in 2011 the Global Fund rejected several proposals by the Malawi national AIDS programme, which is 90% externally funded (despite these challenges, between mid-2011 and the end of 2012, the number of pregnant women who started ART therapy increased nearly 10-fold from 1257 to 10,882, through Global Fund grants). In April 2012, President Mutharika died of a heart attack, months after ousting his vice president in a move to support his brother's bid to succeed him in office (Timla, 2013). Mutharika died in a Malawian hospital but his brother's supporters concealed this fact while manoeuvring to take over the office of president. The plot was exposed, the brother tried with treason, and the ousted Vice President, Joyce Banda, installed in office, but currency instability ensued, resulting in inflation rates peaking at nearly 45% in 2012 before slowly declining throughout 2013 (Timla, 2013; Trading Economics, 2013).

4.7.2. Project interventions to mitigate or remediate human rights impacts

Paladin reacted to the economic crisis by raising wages. Though not at pace with the country's inflating currency, the wage increases helped employees cope with increasing prices. However, the declining global market value of uranium forced the mine to reduce the workforce. Layoffs had complex negative effects on previous lifestyle improvements associated with establishment of a formal economy. Retrenchments sparked protests, because fired workers had accrued large debts from local banks, which they could not pay. Additionally, some workers had taken second wives, but they could no longer afford to support their large families.

In other cases, project activities were sufficient to mitigate the effects of adverse contextual conditions. Project efforts to ensure access to ART for workers resulted in an oversupply of ART at Bwiliro clinic, which was sufficient to cover the seropositive population for the duration of the nationwide ART stock-out.

4.7.3. Project inattention to human rights impact

Kayelekera was less proactive countering the effects of fugitive dust emissions associated with vehicular traffic on unpaved roads. Anti-dust road treatments had been eliminated for financial reasons, and dust from project vehicles was compounded by the increased traffic from a new coal mine developed adjacent to the primary school. The particle size distribution profile for fugitive dust from vehicles was not evaluated, but particle size matters; fine particles (PM_{10} and $PM_{2.5}$) are highly respirable but typically represent only 40% of total road dust, while coarser dust is less respirable but visible. Large particles were of great concern to local communities, particularly in the dry season, when clouds of dust could be readily observed, particularly by petty traders with roadside stalls and primary school staff and students, who teach and study within 100 m of the road. The invisible fine particles might not garner immediate complaints but pose more significant health hazards. Monitoring data indicate that in sheer quantity total particulate levels were approaching allowable limits in the 2013 dry season.

Inaction was also visible with regard to environmental reporting. The project had an advanced and detailed monitoring campaign for air, water and soil, but no reports were made available in local languages for residents to consult. As a result, significant fears of environmental degradation and health risks had developed, though they were unsubstantiated by data. During the economic downturn, negative press increased against the mine, alleging that Malawi was not profiting sufficiently from the project (Maele-Magombe, 2013; Morris, 2013; Sonani, 2013). Environmental complaints accompanied economic ones, but no environmental reporting was released, fuelling rumours of contamination. This outcome is not uncommon around the nuclear industry, and some psychological impacts of unsubstantiated fear have been documented among otherwise healthy refugees from around the Fukushima fallout zone (Brumfiel, 2013). Public fears of radiation impacts have resulted in public protests from China to Kazakhstan to Canada (Mehta, 2005; Massot and Chen, 2013). It has been directly linked to legislative changes in Germany, Australia and elsewhere to back away from nuclear power (Massot and Chen, 2013).

Figure 4-3 shows the extreme instability in the contextual conditions at Kayelekera between 2009 and 2013, punctuated by Paladin's efforts to mitigate the negative outcomes for rightsholders in the project area. Given the severity of contextual decline, and the capacity limits of a company facing budget shortfalls, mitigation measures sufficed to ensure the “do no harm” principle for some rightsholders but not all. Wage earners retained as employees were most protected, while children were least protected, partly owing to the increased air emissions that resulted from the new coal mine under construction next to the school that Paladin had refurbished and helped staff. Another risk to children resulted from the increased presence of criminal syndicates at the project area, whose officers paid local children to syphon fuel from company vehicles. Active efforts by the mine to eliminate fuel syphoning have reduced but not eliminated the role of children in trespassing into dangerous areas of the project.

4.8. Lessons learned

The Malawian government's failure to meet human rights standards was based at least partially on a lack of capacity, as opposed to pure lack of concern. The shocks to Paladin's human rights efforts flowed directly from the traumatic changes in Malawi's economic and political systems. Raworth (2012) questions the role of the state to maintain its human rights performance in the case of an externally triggered disaster, such as a financial crisis. We asked the yet more complicated question: what is the role of a company in that situation, particularly when that company's operations interact with state interventions? The negative human rights outcomes at Kayelekera resulted, often directly, from government human rights failures — both when national ART stock-outs affected Paladin's HIV/AIDS programme, and when the government teargased project protesters. An assessment of human rights risks and impacts earlier in project development (complemented by an HIA with detailed project-induced in-migration studies) may have improved outcomes in both of these scenarios. Had impact assessment begun prior to construction, the company would have been alerted to heavy-handed government approaches to dissent. Along similar lines, an early assessment would have exposed the myriad impacts of HIV spread in the remote project area, and mitigation measures could have been established before the disease became a palpable concern. ART stock-outs may have had a less severe effect on the Kayelekera population if disease spread had been considered before construction and comprehensive circumcision,

education, counselling and treatment programmes had been established (Potts et al., 2008). Paladin condemned the government's teargasing, and ensuing protests have been conducted peacefully, but the initial incident has set the tone for media reports for all ensuing police deployments at site.

There were key differences between human rights concerns and other project concerns. Unlike environmental impacts, human rights impacts had more complex remedial prescriptions. Paladin's sulphur spill could have changed the environmental baseline, but the remediation required was clearly a return to pre-spill environmental conditions. Furthermore, the act was universally viewed as a mistake that should be righted. From a human rights perspective, perception issues were relevant alongside actual environmental issues, as farmers reported that the value of their crops declined when they brought sulphur-smelling produce to market. This necessitated a consultative process to regain the trust of local residents and might have benefitted from a temporary increase in corporate purchases of local produce. In other words, the human rights impacts of a project action are not appropriately reversed by a return to baseline. The spill required a return to baseline environmental conditions as well as an additional measure to manage resulting crop devaluation.

The sulphur spill presented a relatively straightforward human rights management process to address an environmental impact, but interactions can be more complex. The improved income levels resulting from Paladin's living wage rates resulted in higher household expenditures. Many wage-earners improved housing and family nutrition, while others increased the size of their livestock herds. Sufficient expansion of herds increased the faecal coliform levels in local watersheds (Paladin water monitoring data, 2011), contaminating surface water for residents without access to deep wells or running water. An acceptable solution to this new challenge would not have been a return to baseline level wage rates. The company mitigated this risk by providing wells accessible for all residents. Local residents were selected as caretakers and maintenance workers for the wells. Quality and supply were monitored monthly, with additional informal visits by project staff on a weekly basis. Unmitigated, the resulting impacts on health would potentially include stresses on local health facilities and personnel, stresses on family welfare when family members become too

ill to contribute to harvesting, and impacts on education, as sickly children perform poorly in school and have high absenteeism rates.

4.9. Discussion

Although the ultimate aim in HRIA is to determine whether human rights conditions in a project are likely to be worsened by corporate activity, governments, companies and investment institutions can mitigate their own risks and enhance the welfare of the population by adopting a human rights perspective. From a company standpoint we see value in ongoing surveillance systems, which enable rapid response to changing contexts. Continuous data collection, analysis and appropriate responses can make companies nimble and proactive in addressing human rights risks. Early and sustained assessment may limit needs for later and more costly interventions. If internalised by company staff, this enables nearly real-time responses to changing conditions. To some extent Paladin did this with wage hikes, foreseeing ongoing currency instability and committing to renegotiate wages with workers based on the direction of inflation in later months. If this tactic were also used to foresee community threats from environmental risks, demographic changes and political developments, this would enhance capacity to respond to crises at local, national and regional levels.

Where governments are not supportive of human rights aims, HRIA monitoring can raise valuable questions about the adequacy of reactive corporate interventions. Governments are increasingly being accused of violating human rights in the promotion of project development. The Indonesian government's use of military force against separatist groups to clear land for oil development in Aceh is an extreme example of this. More recently, the government of Peru has faced similar allegations in its recommissioning of controversial mines, overriding the human rights protests of local residents, while perhaps protecting various rights for temporarily unemployed mineworkers (Kozak, 2013) (on the impacts of “no project” scenarios; see (Goldman, 2000)). When governments act in opposition to human rights norms and standards, there are few entities authorised to question their decisions — foreign companies are seldom on the short-list. As such, assessment of human rights contexts becomes very challenging; companies must at times assess the baseline and evolving context negatively without offending the host country government that is responsible for permitting a project to go forward. Companies need to understand the human rights baseline just to

know how much work will be needed to meet the low threshold of “do no harm.” This puts companies in the complex position of delaying their own project development, often against shareholder and government will, in the name of managing and mitigating existing human rights challenges.

Governments that are acting in good faith to protect and promote human rights can benefit from the production and updating of corporate human rights reporting. Governments are duty-bound by international instruments to protect and promote human rights in the context of private project development within their borders. Longitudinal HRIA could alert governments to contextual conditions that are affecting corporate human rights performance, potentially enabling them to address human rights challenges before they progress.

When a government actively works to protect rights, it is a comparatively constructive partner for rights respectful companies. Theoretically, companies can help increase government capacity to promote rights, simply through royalty and tax payments. More commonly, corporate presence can help build carefully vetted partnerships with NGOs and foreign aid agencies to support rights-responsible initiatives that ensure that, within the project area, no rights are negatively affected.

When a government does not protect, promote and fulfil the rights of its citizens, companies may face the challenge of respecting human rights in opposition to local policy, practice and law. This is challenging and poorly defined territory (Deva and Bilchitz, 2013). The risk of corporate complicity increases in states where governments commit human rights abuses (OHCHR, 2008). As risks of complicity increase, so does the corporate responsibility to avoid what Ruggie termed “silent complicity” whereby a company's presence enhances a government's ability to violate the rights of its citizens, even if the company cannot be held legally liable for the negative human rights outcomes (e.g. through tax revenues which are then used to purchase weapons that repress opposition groups). In some cases entering a country links operations to rights abuses (e.g. where roads to project sites are built by forced labour, and where acquisition of land is managed by a government that forcibly evicts populations). In such cases, although legal liability is difficult to determine, non-legal definitions of complicity prevail and the corporate duty remains to “do no harm”, which requires rejecting government policies (OHCHR, 2008). This is likely to require careful

negotiations with host state governments and a high level of political finesse. It is also likely to require costly investments by a company, expended in the name of respecting human rights and safeguarding the corporate reputation. Processes already exist for certain circumstances where the risk of complicity is high, notably the Kimberly Process for diamond certification and the Voluntary Principles on Security and Human Rights for managing the human rights risks posed by security forces in the extractive sector (OHCHR, 2008).

In both scenarios – where government is endeavouring to promote human rights and where it is not – HRIA should be made public. In the former case, transparency allows the input of rightsholders and stakeholders to enhance corporate, government and investor understandings of human rights conditions. In the latter case, if government actions negatively affect human rights in ways that reflect poorly on corporate social performance, public HRIA could demonstrate the ways the company is endeavouring to overcome contextual challenges. Indeed, EIAs, SIAs and HIASs should all be released in the public domain. Understanding and allocating responsibility for worsening conditions does not obviate the need for novel interventions, but it allows the company space to demonstrate to critics that it knows the problem and show how it intends to make steps towards mitigating its associated impacts. In either scenario, HRIA should be public, because it concerns rightsholders, who have a right to know how their lives are being impacted by external forces. Online publication of assessments reaches the broader community, but findings should be presented in oral and/or visual format to rightsholders themselves where low Internet connectivity or literacy rates make websites inaccessible — portable projectors have been used successfully to this end (Prasad, 2012; Salcito et al., 2013).

Transparency also has a role to play in addressing complexity. At Kayelekera, it was clear that government actions against protesters violated human rights. In other cases, no such clarity exists. A government shutdown of media outlets can negatively impact the right to freedom of expression or it can prevent hate speech and preserve peace and security of person. Whether opting to restrict free expression or permit it, the government making the decision does not view itself as guilty of a rights violation and, as the arbiter of justice, is rarely questioned (short of international criminal tribunal charges). This affects a company's role ensuring that its operations “do no harm”. In eastern Burma, press restrictions have contributed to a paucity of reporting on forced evictions to clear land for plantations (Crispin,

2013). As such, companies investing in eastern Burma can document their efforts to avoid complicity by documenting their recognition of the challenge and publishing their procedures for procuring land in ways that respect the rights of former land users. In contrast, in western Burma the government does nothing to restrict ethnic Rakhine newspapers that publish vitriolic tirades against other ethnic groups (notably the Rohingya people). In the face of the government's tacit acceptance of this racism, violence between Rakhine and Rohingya has resulted in hundreds of deaths and thousands of displacements in the west of the country. Companies operating in Rakhine state, as such, must document their processes to eliminate racism and discrimination within their own workforces and demonstrate non-discriminatory outcomes to insulate itself from allegations of complicity.Development banks and companies have begun to recognise the financial risk associated with potential human rights violations, beginning with a company's loss of “social license to operate” (IFC, 2010; AngloGold Ashanti, 2011). In part in recognition of this, the world's largest financial institutions, the members of the Equator Principles, have added a human rights component to their project evaluation standards. The IFC has also made small steps towards incorporating human rights analysis into project financing decisions, though less robustly than private banks. Investors are empowered by human rights information to know what risks exist and how they are mitigated. Longitudinal assessment can track improvements in corporate human rights performance and can track contextual changes that render those activities excessive or insufficient. Further, knowing that the context, not performance, had changed enabled the company to explain its position. However, communicating this nuance requires proactive and ongoing engagement. It is difficult to communicate such information, particularly when tensions are high during a crisis.

5. MULTINATIONAL CORPORATIONS AND INFECTIOUS DISEASE: EMBRACING HUMAN RIGHTS MANAGEMENT TECHNIQUES

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5.1. Abstract

Background: Global health institutions have called for governments, health practitioners and others to employ a human rights-based approach to infectious diseases. The motivation for a human rights approach is clear: poverty and inequality create conditions for infectious diseases to thrive, and the diseases, in turn, interact with social-ecological systems to promulgate poverty, inequity and indignity. Governments and intergovernmental organisations should be concerned with the control and elimination of these diseases, as widespread infections delay economic growth and contribute to higher healthcare costs and slower processes for realising universal human rights. These social determinants and economic outcomes associated with infectious diseases should interest multinational companies, partly because they have bearing on corporate productivity, and increasingly because new global norms impose on companies a responsibility to respect human rights, including the right to health.

Methods: We reviewed historical and recent developments at the interface of infectious diseases, human rights and multinational corporations. Our investigation was supplemented with field-level insights at corporate capital projects in areas of high endemicity of infectious diseases, which embraced rights-based disease control strategies.

Results: Experience and literature provide a longstanding business case and an emerging social responsibility case for corporations to apply a human rights approach to health programmes at global operations. Indeed, in an increasingly globalised and interconnected world, multinational corporations have an interest, and an important role to play, in advancing rights-based control strategies for infectious diseases.

Conclusions: There are new opportunities for governments and international health agencies to enlist corporate business actors in disease control and elimination strategies. UN guidance from 2011 is widely embraced by companies, governments and civil society. It provides a roadmap for engaging business enterprises in rights-based disease management strategies to mitigate disease transmission rates and improve human welfare outcomes.

Keywords: infectious diseases; human rights; systems-based interventions; multinational corporations; corporate social responsibility

5.2. Background

Infectious diseases have been closely linked with business interests throughout history. The spread of infectious diseases along trade routes facilitated the proliferation of plague in Europe in the 1300s and various other epidemics in the ensuing centuries, disrupting social interactions and commerce (Bos et al., 2011). With the industrialisation of the shipping industry at the turn of the 20th century, jobs, communication, wealth, goods and infectious diseases spread through ports with renewed force (Isaäcson, 1989; Porter, 2009). Trade through New York City's port brought in more than half of the national federal budget, but it also brought typhus, yellow fever and cholera epidemics to the United States of America in the 1890s (Markel, 1999). Through the port, the economy grew, while infectious diseases spread through slums and immigrant enclaves, striking the poor hardest with harsh, socially and economically debilitating quarantines (Markel, 1999). Then – as now – the plight of those affected by disease was not merely physical ill-health, but the social, economic, political and environmental disempowerment that accompany illness.

A cadre of modern-day "infectious diseases of poverty" has been identified, which primarily persist in low- and middle-income countries, where foreign investment is growing the fastest. They include the infectious diseases mentioned above, as well as malaria, tuberculosis, HIV/AIDS and many other vector-borne, bacterial, helminthic and viral diseases (Hotez et al., 2006; Utzinger et al., 2012). High rates of infectious disease and polyparisitism are well documented as both an indicator and a promulgator of poverty. Although the wealthy can also be affected by them, these diseases thrive in conditions of scarcity – of food, shelter, clean water, improved sanitation, income and education – and trap populations in continued, entrenched poverty (Jha et al., 2002; Ball, 2009; Hotez et al., 2009). In many cases, this entrenchment is compounded by corruption and failures of governance. Companies can be complicit in the spread of these diseases, but they can also be powerful players in controlling them.

5.3. Infectious diseases and human rights

5.3.1. A governance framework

Infectious diseases can be understood through a human rights framework, when the framework is properly and effectively applied. The economic dimensions of disease, associated with conditions of scarcity mentioned above, alongside social-ecological systems, are analysed in human rights terms under the umbrella of economic, social and cultural rights. Meanwhile, the institutional dimensions of disease spread, such as corruption, health system failures, political weakness and institutional ineptitude, colonise the space of civil and political rights (Braveman and Gruskin, 2003). The human rights framework is intended to strengthen the relationship between human health and human dignity, as experienced through protections and entitlements, codified in international declarations and instruments.

These instruments – referred to collectively as the International Bill of Human Rights – also depend upon "duty bearers" meeting their allocated responsibilities (UN General Assembly, 1996). Duty bearers are entities charged with ensuring that all rightsholders enjoy these rights. In this capacity they try to remediate the conditions that result in the entrenched, vicious cycle of diseases and poverty from which rightsholders suffer.

The power to spread infectious diseases where they are prevalent, and the power to prevent them, is held by the bodies controlling socioeconomic, environmental and political contexts: governments, intergovernmental organisations and business enterprises. Governments have historically been designated primary duty bearers, though they have not always succeeded in fulfilling their duties (Isah et al., 2008; Aylward and Alwan, 2014). Recognising that some states lack the capacity, or will, to fulfil the right to health, the International Bill of Human Rights accords an additional responsibility to other state parties, through "international assistance and co-operation" where a need is demonstrated (UN General Assembly, 1966a; UN General Assembly, 1966b; UN General Assembly, 1996). The role of business enterprises has not, historically, been so clearly stated.

In 2011, the United Nations (UN) Human Rights Council unanimously endorsed Guiding Principles on Business and Human Rights (Guiding Principles in short). The Guiding Principles call upon companies to "respect" human rights (OHCHR, 2011). This is not a new responsibility; "every organ of society" has been called upon to "promote respect" for human rights since 1948 (UN General Assembly, 1948). However, it is a new and concrete articulation,

clarifying for corporate actors the meaning of "respect" within the scope of their operations. Although human rights language is relatively new to companies, it has gained traction. Roughly half of the world's largest public multinational corporations have embraced some dimension of human rights responsibility, many in response to the Guiding Principles. The major petroleum and mining associations have developed human rights stances supporting the Guiding Principles, and the Food and Agriculture Organization (FAO) has made the language of the Guiding Principles central to good practice on agriculture projects (FAO and Committee on World Food Security, 2012; International Council on Mining and Minerals (ICMM), 2011; IPIECA, 2012). The corporate acceptance of human rights responsibilities is on the rise, documented through the proliferation of human rights policies and the growing demand for human rights reporting (Ruggie, 2013). A step in fulfilling the responsibility to respect human rights is the conduct of "human rights due diligence," which ensures that companies know how their operations may affect the lives of their workforce and surrounding communities, through environmental and social impacts, health effects, economic shifts, political affiliations and labour rights. The designated scope of corporate responsibility with regard to diseases is markedly more limited than that of government, formally restricted only to areas where companies have impacts. Yet the actions of companies should not be isolated from the initiatives of global public health practitioners, and in practice companies often do far more than host states with regard to public health (Whiteside and Loewenson, 1998; Thomason and Hancock, 2011).

This paper proposes a method for broadening multinational corporations' efforts to control, monitor and eliminate infectious diseases where they affect societies and businesses, using the Guiding Principles human rights framework. First, it presents the relationship between human rights and infectious diseases of poverty. Next, it examines corporations as human rights "duty bearers" where they operate, identifying the potential impacts they have on the spread of disease and the various ways infectious diseases affect their business interests. As an outlook, our piece proposes an approach for integrating business enterprises into ongoing initiatives for preventing, controlling, monitoring and eliminating infectious diseases, using systems-based approaches that holistically examine the conditions that promote disease spread. This approach benefits from the backing of the business community's support of the UN Guiding Principles (OHCHR, 2011).

5.3.2. An analytical framework

Outside of the corporate realm, health practitioners have struggled to convert the aspirational ideals of human rights into actionable tools and outcomes (Institute of Medicine, 2012). Instead, the human rights failings of states have acted as barriers to interventions. Good governance – codified in human rights instruments as the "right to public participation" – and access to affordable, quality, culturally appropriate healthcare – codified as the "right to health" – are vital for many successful disease control interventions. "Security of person," meaning freedom from fearing for one's safety from violence, and an informed and engaged public (which is achieved by educating citizens in line with the "right to education") help empower people to seek treatment, or at the very least to attend school where treatment is often provided. Sometimes environmental conditions must be targeted where disease vectors persist to reduce reinfection (as for onchocerciasis control activities in Africa) (Mackenzie et al., 2012; Prichard et al., 2012), which is a process of promoting the "right to a clean and hygienic environment." However, a mixture of factors including budgetary limitations, ineptitude or state-driven conflict can create a milieu in which the achievement of both human rights protections and positive human health outcomes is inhibited. Health practitioners are rarely positioned to unilaterally affect change in these arenas.

Multi-pronged, integrated, intersectoral programmes have generated palpable public health gains in several interventions, as for integrated management of childhood illness (IMCI) (Armstrong Schellenberg et al., 2004; Wang et al., 2009). Where integrated health programmes have been augmented with the human rights framework, additional value may be added. For example, the establishment of technical guidance on human rights-based approaches to maternal and child care has enabled health practitioners to address systemic governmental and international failures that lead to negative human rights outcomes, while also identifying structural conditions that disempower women, politically, socially and economically (Yamin, 2013).

Figure 5-1 connects socioeconomic, cultural and political conditions to the relevant human rights affected, demonstrating the intimate connections between both the human rights and health outcomes resulting from external forces. The column labelled "Outcomes of ill-health" is drawn directly from the World Health Organization (WHO) technical guidance and supplemented with a key consideration recognised in the literature on neglected tropical

diseases: corruption and governance failures (Hotez et al., 2006). The column labelled "Relevant human rights affected" was constructed through a Delphi method, deriving rights from the International Bill of Human Rights (UN General Assembly, 1996).

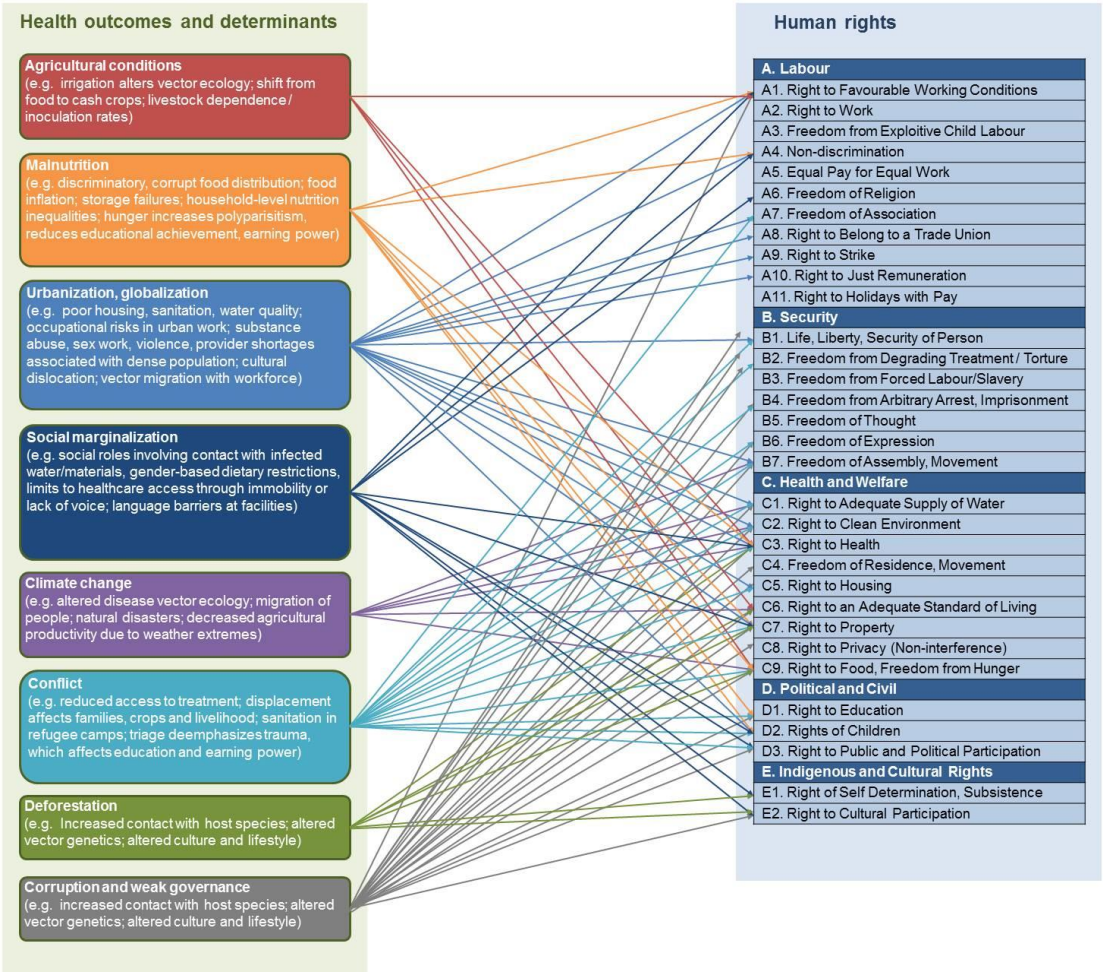

Figure 5-1 Overlapping relationships between human rights and health determinants and outcomes

Infectious diseases are a measurable outcome of, and a contributor to, a wide variety of unrealised and unprotected human rights, as visualised in Figure 5-1 and thoroughly reported elsewhere. Illness affects social engagement ("right to public participation"), academic performance ("right to education") (Fine, 1982; Castro and Farmer, 2005; Perera et al., 2007), long-term earning power ("right to an adequate standard of living") (Jukes et al., 2002; Isah et al., 2008; Weiss, 2013), and, for HIV and other stigmatising diseases, personal safety ("the right to security of person") (Meel, 2003; Yeager, 2003; Rohleder, 2010).

In addition, negative human rights conditions perpetuate infectious disease spread through failures of governance (Namuigi and Phuanukoonnon, 2005; Phuanukoonnon et al., 2013). Government corruption can reduce available resources for public health initiatives.

Widespread graft can press international donors to withdraw aid, further reducing resources for achieving the highest attainable standard of health for citizens. Where logistics, corruption and supply chain management result in socioeconomic disparities in coverage, the right to public participation is violated alongside the right to health, even if the inequitable distribution of coverage is inadvertent (UK National Audit Office, 2009) . The "right to public participation and equal access to public service" can be violated by the syphoning of funds from public coffers.

In conflict settings, governments can contribute to conditions of insecurity, militarising transportation routes or limiting access to treatment for certain sub-populations. The role of state security forces as they interact with existing social fissures and resource disparities can make access to treatment impossible, as has been the case in Nigeria, South Sudan, Democratic Republic of the Congo and, most recently, Syria (Beyrer et al., 2007; Isah et al., 2008; Cousins, 2013; Aylward and Alwan, 2014).

Within the scope of the right to health, infectious diseases have compounding effects. For example, an infection might weaken immune responses and lower nutritive intake, resulting in higher morbidity from a variety of communicable and non-communicable diseases (Kamal and El Sayed Khalifa, 2006). Affected sub-populations have lower access to health knowledge, treatment and services, which heightens the risk of co-infection with other infectious diseases of poverty (Sachs and Malaney, 2002). Furthermore, the spread of infectious diseases is multiplicative as transmission rates rise (Bleakley, 2007; Sachs, 2009).

5.4. Methods

Ethical clearance was sought from the ethics commission of Basel Stadt, where the Swiss Tropical and Public Health Institute is located (Ethikkommission beider Basel reference number 304/13), as well as the National Research Council of Malawi, via the National Health Sciences Research Committee (NHSRC Reference number 1215).

5.4.1. Past efforts and present duties: multinational corporations as duty bearers

The role of companies, in terms of both health concerns and human rights concerns, differs from that of global health agencies in obvious and crucial ways. For health agencies, the promotion of global public health is central to their mission, and human rights is an advocacy argument, reminding parties of their commitments to strive for the highest

attainable standards of care for all individuals, regardless of race, gender, religion, socioeconomic status or other marginalising characteristic (Horton, 2013). For businesses, health and human rights have had an evolving role in decision-making, and neither is usually considered central to business operations. As such, a clear delineation of the corporate duty to respect human rights is useful in a discussion of corporate involvement combatting infectious diseases.

Companies have been investing in infectious disease interventions for centuries, because the productivity gains associated with reducing transmission outweighed the cost of control measures proximal to where they were operating. However, the cost analysis has not always worked out to favour human rights. In one of the United States of America's greatest industrial health disasters, employers of the Gauley Bridge construction site exposed thousands of workers to silica dust, resulting in over 1,500 deaths from silicosis, pneumonia and tuberculosis, none of which the implementing company, Rinehart & Dennis, or its contracting company, Union Carbide, prevented or treated (Cherniak, 1989).

5.4.2. Past efforts: the business case

Laggards like Rinehart & Dennis persist today but they are not the focus of this paper, because they are not the companies that set trends for the future. Instead, we are interested in the growing number of companies that are aiming to do better. Some are acting in so-called enlightened self-interest, finding a profit motive for doing good. Others state an intention to explicitly benefit public welfare through their operations. Corporate motives are difficult to identify, but the outcomes of their actions can be evaluated to establish best practices for the future. This is important, as the globalisation of business is on the rise.

With roughly 80,000 multinational corporations averaging 10 foreign affiliates, multinational companies constitute approximately 11% of global gross domestic product (GDP) (Li and Gaur, 2014). Today's corporate impacts on global systems are historically unprecedented, associated with large-scale agriculture, land clearance, urban expansion and industrialisation (Butler, 2012). Companies developing infrastructure-intensive operations where infectious diseases are widespread can exacerbate transmission simply through their core business operations – building dams and transportation corridors, hiring and moving around construction teams, housing workers and other activities. Yet, the public health

challenges companies face, and the remedies they pursue in the process of global expansion, have a long history.

Corporate actors operating in the tropics were early contributors to public health, spending millions in recognition that a healthy workforce was a productive one. Multinational mining, engineering and agribusiness firms instituted environmental management programmes to control malaria, yellow fever and other infectious diseases near their operations throughout the early 1900s, sometimes decades before government public health programmes caught up in Latin America, the Middle East, Asia and Africa (Daggy and Page, 1956; Franz, 1968; Keiser et al., 2005). In one example, Firestone Plantations Company conducted extended surveys and treatment of populations affected by human African trypanosomiasis in Liberia during the 1940s. The company collaborated with WHO and the national government in a mass-treatment programme to eliminate yaws between 1957 and 1959, simultaneous with a smallpox control programme, and assisted WHO to conduct a pulmonary tuberculosis survey in 1962.

With the biomedical surge of the 1960s, pharmaceutical companies became partners with non-governmental organisations (NGOs), governments and extractive industries to control and eliminate lymphatic filariasis, onchocerciasis, trachoma, malaria and HIV/AIDS (Keiser et al., 2005). Some partners have profited from these interventions, some have taken on significant expense and some may have balanced the two (Coffeng et al., 2013; Mackenzie et al., 2012; WHO, 2012a; Kleinschmidt et al., 2006). Merck's Mectizan Donation Programme to treat and prevent onchocerciacis (river blindness) may have fit each of these descriptions over its 27 years of operation. Ivermectin was and is one of the firm's most profitable drugs, used on livestock and pets to control heartworm. When Merck discovered its human utility, it sought buyers but found none, so it offered to donate the drug (under the name Mectizan) indefinitely to any country that could not afford it. By 2004, the programme had cost Merck over US$ 200 million, but in exchange, the company received tax write-offs, positive press and the commitment of partner organisations to prevent human-directed treatments from being administered to animals, which would undermine veterinary profits (Coyne and Berk, 2001; Vagelos and Galambos, 2006). In another example, in managing HIV/AIDS in sub-Saharan Africa, one mining company estimated that at its peak, the epidemic would add 8-17% to payroll costs, and another began training two to three workers for a single job,

assuming at least one would die of AIDS (World Economic Forum, 2006). To control the costs of lost labour, and perhaps also to support public welfare, mining companies intensified their investment in public health, partnering with a variety of organisations to provide health personnel with strategic access to working populations, and provide workers with access to treatment (Krieger et al., 2004). Over time, these initiatives have broadened to address comorbidities with tuberculosis and other illnesses (Fielding et al., 2011).

The collaborative approaches, across industries, aimed at tackling various infectious diseases in tandem, have led the way to increasingly holistic approaches to disease control, accounting for the broader socioeconomic and political conditions that affect projects and worker welfare. Where such broader contexts have been ignored, results have been mixed. As the Firestone Plantation Company learned over decades in Liberia, public health is not the only contextual concern that can affect productivity, nor can public health be addressed strictly through health interventions. Worker welfare proved itself to be more comprehensive than the absence of illness as early as 1949 when Firestone workers first went on a wage strike. By the time the company's infectious disease programmes were firmly established and the workforce (and dependents) had achieved near universal health care access, workers had begun recognising labour issues beyond the inadequate housing that fostered disease spread (McBride, 2002). A 1963 strike of 20,000 Firestone workers shut down all 45 divisions of the plantation's operations. Workers demanded higher wages, improved housing, shorter working hours and better work conditions – essential human rights in a context where wages were insufficient to buy rice, housing had been unrepaired for decades and workdays reached 14 hours (Mayson and Sawyer, 1979; UN, 2006; Schechter, 2012). Labour disputes persisted until Liberia's civil war and beyond. In 2005 the company, by then owned by Bridgestone, faced an Alien Tort Claims lawsuit filed by the workforce against Firestone's use of forced labour, child labour, cruel and unjust treatment and negligent supervision creating an unsafe workplace (Carter, 2007). Also by then, a legal regime had been established in Liberia to protect workers' rights.

The corporate-government agreements managing social, environmental and health impacts were initially specific and voluntarily negotiated. Many have become generalised and gained the force of law. Since the 1970s, through the passage of national environmental protection acts, companies have been required to mitigate their impacts on the human and

natural environment when their activities are likely to cause harm (Portney and Stavins, 2000). Though in early decades analysis of the "human environment" was often minimised, both stakeholder pressure (particularly on multi-lateral funding agencies such as the World Bank's private sector lending arm, the International Finance Corporation, the Asian Development Bank and the European Bank for Reconstruction and Development) and overt legal challenges (in the United States of America) gave a substantial boost to the field of health impact assessment in the 1990s, specifically to fill the "health" gaps in environmental and social analyses (Bhatia and Wernham, 2008).

There are two main lessons to be drawn from Firestone's experience. First, corporate impacts on communities affect corporate revenues. Land rights, labour rights, civil rights and social and environmental impacts of project development can increase a project proponent's risk of shutdowns and liabilities (Warhurst, 1998). Second, addressing those impacts requires holistic interventions, and a good deed in one area of corporate activity does not cancel out harm elsewhere.

5.4.3. Present duties: the human rights and social responsibility case

Between 2008 and 2011, acknowledgement of corporate impacts was further refined and rephrased in human rights terms, reinforcing the role of companies as "organs of society," responsible for respecting human rights in their activities (OHCHR, 2011). Under unanimously endorsed UN guidance, corporations are expected to identify, prevent and remediate their human rights impacts while they pursue their core business activities. The direct effect of corporate activities on transmission of infectious diseases makes it a corporate concern, because a failure to reverse those effects represents a lack of "respect" for the right to health and a number of accompanying rights affected by infection. This poses challenges for companies, but also presents an opportunity for them to adopt more effective disease management strategies and benefit from the collaboration of international health agencies and national MoHs. Governments and intergovernmental organisations can contribute to corporate programmes and benefit from them; the successes companies achieve within their walls or fence lines can be imparted and scaled up by governments through effective knowledge exchange and communication.

These are ideological underpinnings of the Guiding Principles, which are the current, *de facto* authority on corporate interactions with rightsholders worldwide (OHCHR, 2011).

The Guiding Principles call on companies to respect human rights by ensuring that their operations do not violate or contribute to violations of human rights. Corporate responsibilities are also derived from the International Covenant on Economic, Social and Cultural Rights (Article 2), which calls on the international community to provide technical and financial support to governments attempting to fulfil rights but lacking resources.

The corporate impetus to holistically manage infectious diseases stems increasingly from an impact prevention and remediation (or "do no harm") principle derived from these human rights responsibilities and a strengthening normative and legal framework, alongside the longstanding cost-reduction prospect for reducing absenteeism. Companies are included in the category of international actors, who are to avoid violating rights and not hinder governments that attempt to protect and promote them (Maine and Yamin, 1999; Clapham and Rubio, 2002; Yamin, 2013). What that means in practice is largely procedural: companies need to understand baseline conditions, evaluate impacts, and take actions to mitigate impacts (Figure 5-2). Processes for evaluating human rights impacts are increasingly well-developed and in many ways linked to health impact assessment processes (Salcito et al., 2013). Corporate activities inadvertently affect the spread of many infectious diseases, through the engineering of water storage mechanisms, the consolidation of populations in centralised areas, and the introduction of hazards that interact with infectious diseases. Dams disrupt hydrology and water-filtration processes, facilitating the spread of water-borne bacterial and parasitic diseases (Steinmann et al., 2006). The assembly of construction teams and other labour forces into densely populated communities or high-capacity dormitories increases risks of communicable disease transmission (Al-Tuhami et al., 2001). Where workers relocate to a job site, they may bring endemic diseases from their home villages (Cortes et al., 2003; Butler, 2012). Worksite lifestyles may increase disease spread upon workers' return to their communities during leave, including sexually transmitted diseases, yellow fever and tuberculosis (Jochelson et al., 1991; Butler, 2012).

Corporate projects that require the resettlement of populations living atop or adjacent to project sites have myriad and complex human rights impacts. Social dislocation can affect personal security and the rights of children. The stress of relocation often results in increased infectious disease rates, decreased educational performance by resettled children and a loss of livelihood and income as families rebuild their homes, fields and business ties. The

introduction of toxins, toxicants and particulates into air is another major contributor of corporate activity to negatively impact infectious disease (and chronic disease) outcomes (Peipins et al., 2003; Balfour-Kaipa, 2012; Schneider, 2014). Alongside the Gauley Bridge incident, mentioned above, the problematic occupational exposure history of South African mine workers to silicosis, as it fomented a national tuberculosis crisis, is another example (Packard, 1989).

Even the direct positive impacts of a project can result in negative health and human rights outcomes that require remediation under the "do no harm" principle. For instance, the improvement in size and reliability of food supplies, often facilitated by mechanised farming or wage labour, enables increased human and livestock population density, which increases animal-to-human and human-to-human transmission risks of infections. Likewise, as large-scale industry increases service delivery and access to a money economy to previously isolated subsistence communities, environmental impacts and economic transitions have effects on the rights to a clean environment, food, health, adequate standard of living and, for children, the right to a family life. Mechanised farming may also promote the transition to non-food crops, which, on the one hand may improve access to markets and farming inputs, and on the other may affect water supply, deforestation and, over years, result in declining yields, reduced standards of living and increased presence of disease vectors (Benfica, 2006; Guhl et al., 2009; Lecours et al., 2012; Jones et al., 2013).

In conflict settings, core business activities can indirectly affect disease spread, through processes and procedures that directly affect human rights. This is most apparent in situations where companies develop projects in conflict or post-conflict zones, in which even securing the project periphery can increase public insecurity, to the exclusion of community welfare. One of the most thoroughly documented cases of this is the militarisation of Ogoniland in Nigeria to secure territories for Royal Dutch Shell's oilfields. The company's pipelines have experienced numerous breaches since operations began in 1958, resulting in degradation of farmlands and fishing grounds, which has affected nutrition in the area. Additionally, the ethnic minority Ogoni who have protested the environmental harms have been violently suppressed by ethnic majority troops from southern Nigeria. Shell's own security personnel have not been directly linked to violence, but Shell imported weapons for the Nigerian military (Millen and Holtz, 2000; Monshipouri et al., 2003). The insecurity and

dislocation have had wide-reaching public health effects (Forsythe, 2012). In another example, corporate security forces protecting mines in Sierra Leone contributed to atrocities during the civil war. The violence has been tied to myriad lingering negative health impacts (Salama et al., 1999).

5.5. Results and discussion: implications on the ground

5.5.1. Limitations of a human rights framework without enforcement capabilities

A human rights approach to operating in conflict settings has nominally been applied by many extractive companies, through their participation on the Voluntary Principles on Security and Human Rights. This mechanism has embodied two of the major drawbacks of the human rights framework. Namely, that it is voluntary, and that it prioritises certain rights, to the neglect of others.

Without express, contractual or legal advances, the human rights regime is seen by some as "toothless"(Feerick, 2013). Companies are not well acquainted with the human rights framework and, with little guidance, many have ignored it. Stiglitz and others refer to this current system as "global governance without global government" (Stiglitz, 2003; Meier and Fox, 2008), whereby a framework exists for sharing duties, but no implementing agency can ensure that each duty bearer plays its part. Companies in the past have tended to pick and choose among the rights they deem relevant (Bernstein and Greenwald, 2009).

However, cherry-picking rights poses risks. The confluence of human rights duties and infectious disease management is convenient but also complicated. Implemented partially or improperly, the human rights approach can be ineffective, or at worst, counterproductive (Horton, 2013). One arena where the human rights approach has garnered legitimate criticism in the public health (and private business) sphere is in the HIV/AIDS pandemic. For migrant workers seeking private sector jobs in Oman, for example, a negative HIV test certificate is required for entry, to the detriment of the right to privacy, work, non-discrimination and security of person (Kozarsky et al., 2008). Conversely, the public health sector's focus on reversing stigma and protecting privacy rights became a factor in the global spread of HIV. Vital and exacting standards for protecting the seropositive from stigma, discrimination and the psychologically damaging effects of a positive diagnosis of a then-untreatable disease did much to protect vulnerable groups when medicine had little to offer HIV patients. However,

as treatment improved, de-stigmatisation progressed (though, notably, not for all at-risk groups, such as homosexual males in Africa), and the privacy standards remained, while the human rights risks of not knowing one's HIV status began proliferating. HIV had converted into a complex chronic illness requiring comprehensive long-term management, but management was hindered by the very privacy standards that offered the seropositive their greatest initial protection (Bayer and Fairchild, 2006). In sub-Saharan Africa, the result has been sweeping impacts on socioeconomic rights for families impoverished by illness and fragmented by death (Baschetti, 2003; King and King, 2007).

A narrow focus on a single rightsholder group has been similarly problematic. Perhaps the most historically powerful example of this is embodied in the "environmental justice" movement in the United States of America, which chronicled the systematic disregard for the health of minority populations living in proximity to industrial sites at the same time that occupational health and safety regulations were ensuring that (non-minority) employees were better protected from those same hazards (Sexton, 2000; Corburn, 2004). The result of this racially-based disregard was a series of lawsuits culminating in a legal movement and a (far from complete or perfect) new global sensitivity. It is because the human rights lens takes the long- and short-term, direct and indirect, and single and cumulative impacts into consideration that it offers value. Neglect of either particular rights or particular rightsholders poses problems. As such, the full suite of rights and rightsholders should be considered systematically.

5.5.2. Blending corporate "do no harm" with state "duty to protect": the state role in the Guiding Principles

Implementing a human rights framework to exclude certain duty bearers is problematic. Again, the Guiding Principles provide direction to integrate inter-governmental organisations, government bodies and business enterprises in the protection of human rights, systematically and holistically. It lays out a system of global governance incorporating the roles of governments, international financial institutions, civil society and corporations to create a network of responsible parties with interacting but not overlapping duties. Examples above generally present states as useful partners with limited means, or as barriers to change. They can do more. Fox and Meier (2009) have proposed that states could pass laws codifying the duties of international financial players to include respect for human rights (Fox and

Meier, 2009). The Guiding Principles, too, instruct states to "consider the full range of permissible preventative and remedial measures, including policies, legislation, regulations and adjudication" (OHCHR, 2011). Within the scope of direct foreign investment, some states have already begun doing this. In 2013 the Government of Honduras signed a Memorandum of Understanding (MoU) with BG International, a hydrocarbon exploration and extraction company, incorporating respect for human rights as a core commitment of the partnership. The MoU was published, temporarily, through the Extractive Industries Transparency Initiative (EITI), potentially providing guidance for other states and extractive companies.

To be fully effective, such laws, contracts and regulations should conform to the criteria for "respect" that include the active duty of investigating impacts. First, companies should have a policy detailing their position on human rights for all rightsholders affected by operations, including workers and neighbouring communities. Second, they should develop "human rights due diligence" processes, documenting the steps they have taken to ensure that their activities do not violate or contribute to the violation of human rights. Finally, they should develop mechanisms, complementary to those of states, to ensure that victims of rights violations have access to remedy. By requiring these actions of companies, and evaluating the outputs produced by companies, governments can increase their understanding of corporate impacts, understand the epidemiological implications, and collaborate with companies to find solutions (OHCHR, 2011).

The comprehensive human rights approach has advantages over direct approaches to health, or even the right to health, as past efforts to target health directly have been limited by the assumption that health belongs within the scope of medicine, subject to the budget limitations of the MoH (Fox and Meier, 2009). A human rights approach, which incorporates the full suite of rights, recognises the interrelationship between health and social determinants of health, requiring parties to address the non-linear relationships between impacts and outcomes. Private sector health and infectious diseases initiatives deserve praise for their successes (Whiteside and Loewenson, 1998; Jobin, 2003), but cautionary tales from rights-neglectful initiatives like Firestone's should help steer companies in towards holistic and rights-respectful approaches.

5.5.3. A role for international organisations within the Guiding Principles

The Guiding Principles also call for greater policy coherence at the international level, setting out a role for intergovernmental institutions that aligns with the human rights obligations of their member states. For the WHO, international financial institutions and trade associations, these obligations are the foundational human rights instruments, to which all or most states are members. The strong and broad support that the Guiding Principles enjoy empower policymakers to implement their recommendations, including adopting processes to ensure that corporate activities "respect" human rights and intergovernmental institutions find smart ways to collaborate with companies that are already on the ground in areas to address endemic diseases simultaneously with longstanding poverty.

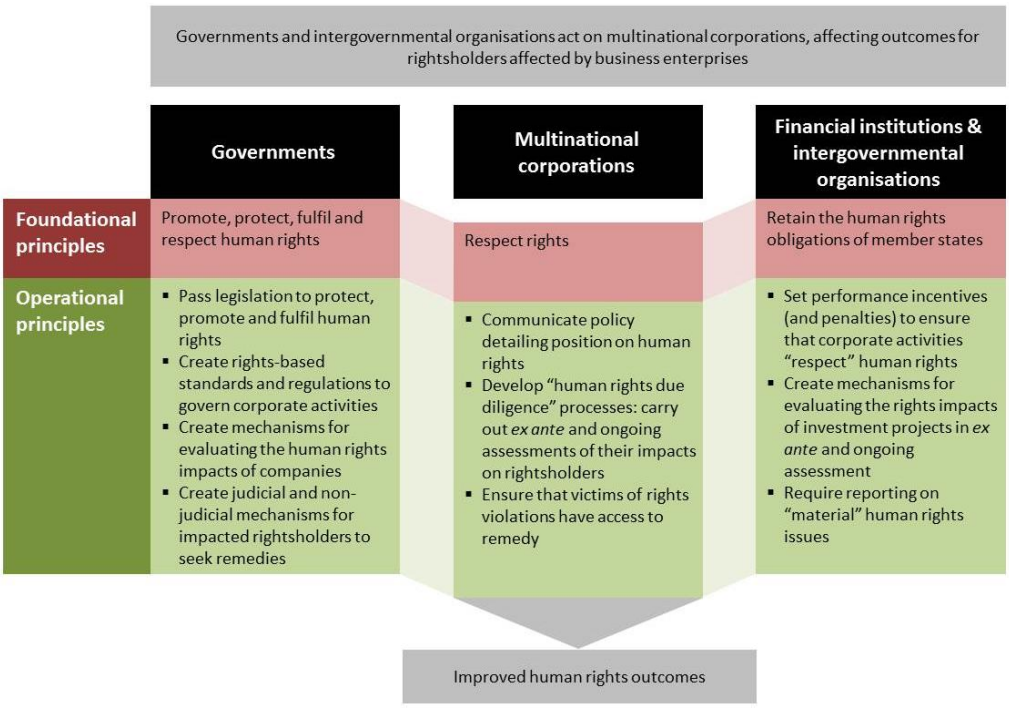

Figure 5-2 Interactions among duty bearers

Delving deeper into "human rights due diligence," companies are expected to carry out *ex ante* and ongoing assessments of their impacts on rightsholders. MoH, in collaboration with WHO, the Global Fund to Fight AIDS, Tuberculosis and Malaria, the Centers for Disease Control and Prevention (CDC) and other health agencies keep records of epidemics, incidence rates and prevalence rates, which comprises baseline conditions for companies investing in new projects in these locations. These data might be of low quality or reliability, but they can

allow skilled and experienced assessors to make qualitative conclusions about risks. Leading companies are already commissioning human rights impact assessments, which (done properly) analyse such data. At a Uranium mine in northern Malawi owned by an Australian company, Paladin Energy, the initial paucity of local data prompted the company to begin tracking HIV testing, treatment and counselling and bolstering the Malawian government's statistics. ExxonMobil is currently running a much broader infectious disease monitoring programme at its operations in Papua New Guinea, using improved national data to track changes in the project area and to design interventions. Such alliances can be costly in some cases but have proven effective (Post Courrier, 2014; Thomason and Hancock, 2011). Although ExxonMobil is not currently using its health findings to inform its human rights approach, Paladin is. The tracking Paladin conducted at its Malawi mine enabled the company to benchmark access to treatment in the project compared to the rest of the nation. The most recent human rights monitoring report revealed that Paladin's programmes insulated local communities from a national antiretroviral treatment stock-out, positively impacting the right to health while the government was unable to fulfil its duty. A dynamic and iterative approach to understanding the causes and outcomes of health interventions will enable all duty bearers to tailor interventions to local conditions.

5.6. Conclusion

The impacts of infrastructure projects differ across regions, contexts and industries (OECD, 1996; Songco, 2002; Bates et al., 2007). For this reason, the human rights approach considers the direct and indirect interactions between a corporate project and its operating context. This holistic understanding not only enables companies to identify and manage risks, but to maximise positive impacts.

Vertical, disease-specific interventions do not suffice to protect business interests or human rights, partly because they cannot pre-emptively disrupt the cycle of disease and poverty that characterises infectious diseases (Magnussen et al., 2004). A human rights approach examines the full suite of interconnected rights as it applies to the full range of rightsholders and duty bearers. The human rights lens identifies the risks and their associated appropriate remediation measures as well as the sweeping positive impacts that must also be considered in project development. Major petroleum companies have recognised the value of comprehensive, holistic interventions.

The very clear relationship between occupational illnesses, chronic diseases and infectious diseases necessitate that they be tackled together through a holistic approach (Kolbe-Alexander et al., 2012; 2013). Zoonotic diseases, too, rest under this umbrella, with the OneHealth strategy already presenting a model for integrating the economic, social and health drivers and outcomes of holistic interventions (Zinsstag et al., 2009). Although this paper focuses on infectious diseases, leading health initiatives have already begun expanding the health lens to include non-communicable diseases and chronic illnesses that can result as much from the *benefits* and risks of globalisation (Remais et al., 2013; Abebe et al., 2014). There is a growing recognition that increased standards of living and availability of processed foods and beverages at locations where globalised business changes local diets is affecting coronary heart disease rates, diabetes myelitis and complications of obesity (Unwin and Alberti, 2006).

Fortunately, many corporate impacts are inherently positive, and promote a "virtuous cycle." Improving education, nutrition, knowledge and empowerment creates positive feedback loops that can neutralise or reverse the cycle of illness and disempowerment that are characteristic for infectious diseases of poverty. These inputs are credited with much of the improvement in public health and life expectancy in Europe since the end of World War II (Krieger and Birn, 1998; Szreter, 1999). In our interconnected world, research priorities are shared across industries and disciplinary fields (Brijnath et al., 2014). In part because corporate investment in communities often includes contributions to education, nutrition, equality and access to information, some companies have seen striking success in their public health interventions. In the Amazon, forest clearance is correlated to elevated malaria incidence, with the exception of corporate-sponsored clearance programmes, which allocate resources to environmental controls and public education campaigns (Castro and Fisher, 2012). This is a positive indication of the corporate cognisance of systems-thinking – incorporating preventive measures into activities that would otherwise pose health risks (Sachs and Malaney, 2002). Leading companies educate communities and supply insecticide-treated nets, control vegetation and drain swamplands to reduce transmission of mosquito-borne infections and successfully manage schistosomiasis and other infectious diseases. In the course of a human rights impact assessment (HRIA) between 2008 and 2013, Paladin Energy identified gaps in the Government of Malawi's HIV/AIDS prevention programme to

identify treatment and control failures in their project area and fill the gap through collaborative efforts with the MoH and a variety of civil society groups (Paladin, 2009b; Salcito et al., 2013).

Through the Guiding Principles, policymakers have new tools to benefit from the presence of private sector actors in rural and resource constrained settings, as well as a duty to ensure that these actors recognise their impacts and manage them. Systematising interventions, and integrating them into *ex ante* analyses and monitoring programmes at corporate project sites, including mines, dams, oilfields, plantations and manufacturing sites, can better protect the public health of communities and to manage financial risks to companies. Infectious diseases should be tackled together (Molyneux et al., 2005). They include most zoonotic diseases that affect livelihoods and economic growth in the framework of human and animal health (WHO, 2012b). One Health interventions broaden the lens of human illness to recognise complex systemic interactions (Zinsstag et al., 2005; 2009). Furthermore, infectious diseases considered in this analysis are one aspect in the broader context of health problems, which include environmental determinants and risk factors for NCDs. The lens for examining these complex interactions should be refined to enable consideration of the role of human rights. The human rights approach is naturally conducive to holistic analysis, and it also brings together the various duty bearers and acknowledges the diverse rightsholders affected. Corporate risk matters – projects are expensive in low-income countries, and this is where infectious diseases of poverty have their strongest hold. Companies can ensure that they are preventing negative human rights impacts while maximising workforce health and efficiency by tackling these diseases within the human rights contexts where they proliferate.

Competing interests

KS and MW have been involved in assessments at Paladin's Kayelekera Uranium Mine in Malawi in a non-profit capacity, funded by NomoGaia rather than Paladin. BHS and GRK have worked as consultants at the ExxonMobil PNG LNG project, which is referenced in this manuscript. MSW was involved in the referenced health assessments in the Republic of Guinea. MGW and JU declare that they have no competing interests.

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6. STATE OF PLAY: CORPORATE HUMAN RIGHTS COMMITMENTS AND THE PSYCHOLOGY OF BUSINESS ACCEPTANCE OF HUMAN RIGHTS DUTIES

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6.1. Abstract

Between 2012 and 2013, we analysed and coded the human rights policies of the largest corporations in six of the world's most globalised industries: finance, mining, oil and gas, food and beverage, apparel and agribusiness. Using the language of the UN Guiding Principles on Business and Human Rights, we developed a benchmarking and scoring mechanism to evaluate the level of responsibility companies had accepted to (1) respect human rights, (2) conduct human rights due diligence, and (3) provide remedies for human rights violations associated with their activities. Statistical analysis using both standard regression analysis and ordinal logistic regression revealed that companies domiciled in the United States score poorly, nearly on par with sub-Saharan Africa, while companies based in Europe and Commonwealth Countries demonstrate the highest adoption rate of human rights duties. Additionally, extractive industries produce, overall, the strongest human rights policies, while apparel companies are clear laggards. Furthermore, membership in socially responsible industry groups is not strongly correlated to higher human rights scores, with the exception of a financial association called the Thun Group. These findings are analysed in the context of the external influences that align most closely with shifts in corporate policies. The paper considers explanations for the disparities, which have policy implications for states and industry associations.

Keywords: corporate social responsibility; human rights due diligence; human rights policy; UN Protect, Respect and Remedy Framework; UN Guiding Principles on Business and Human Rights.

6.2. Background: human rights and business

"Human rights" is a term that has created confusion in the corporate sector. It can be an emotional or political epithet to refer to fundamental human values. It is also used in a precise sense as a term of art referring to a set of rights explicitly recognised in international instruments. There is a select group of human rights instruments understood to be directly applicable to companies. These documents are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the eight Fundamental Conventions of the International Labour Organization (OHCHR, 2011). Taken together, these documents represent an expansive list of rights, ranging from freedom of expression to the right to a fair trial, from the right to health to the right to education, from non-discrimination to the right to a clean environment. They are summarised along with their source articles in Table 2-1.

The already strong focus on voluntary initiatives governing business and human rights has intensified in the wake of a series of recent judicial restrictions on tort procedures for hearing complaints against companies (Henner, 2009; Fisher, 2013; Goldhaber, 2013; Moyn, 2013; Supreme Court of the United States, 2013; Kassam, 2014). The most effective such initiative, the United Nations Guiding Principles on Business and Human Rights (the Guiding Principles), is currently at the core of corporate human rights management. The Guiding Principles were established after six years of multi-stakeholder consultation to achieve consensus on corporate duties toward human rights.

The ascendancy of the Guiding Principles was not entirely foreseeable, following on the heels of several weaker UN initiatives to incorporate businesses into the human rights framework. Between the late 1970s and early 2000s the UN established a series of sub-commissions to examine corporate abuses of human rights. The final such effort developed a normative framework for placing human rights obligations on private businesses wherever those businesses were powerful enough to shoulder the burden. The *Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (the *Norms*), as the 2004 effort was named, created enormous controversy. Though embraced by human rights advocates, businesses, which had been excluded from the drafting process, argued that the *Norms* were an unwelcome imposition. The Human Rights Commission (now replaced by the Human Rights Council) put forth that the creation of a new

normative mechanism for allocating the duty to protect, promote and fulfil human rights was outside of the mandate of the working group and the authority of the Commission (Ruggie, 2007). It rejected the *Norms* in 2005 (UN Sub-Commission on the Promotion and Protection of Human Rights, 2003).

The same year of the *Norms'* demise, then-UN Secretary General Kofi Annan appointed Prof. John Ruggie of Harvard's Kennedy School as Special Representative to the Secretary General for human rights and transnational corporations. Consultative deliberation and careful, conservative diction characterised Ruggie's work. The language in his 2008 preliminary report (the "Framework") was noncontroversial and understated, ensuring corporate buy-in to a conversation that governments and civil society had historically dominated. The primary duty allocated to business was to "respect" human rights. Ruggie clarified this duty three years later with the submission of his Guiding Principles (OHCHR, 2011). The Guiding Principles were unanimously approved by the UN Human Rights Council in July 2011 (OHCHR, 2011).

The UN consensus was validated by resounding support from governments, companies and non-government organisations. Businesses readily endorsed the responsibilities allocated to them in the Guiding Principles, a fact Ruggie attributed to the consultative process that empowered them to help define their role (Ruggie, 2013). Because the Guiding Principles enjoy such strong and broad backing, they have become the tool for advancing corporate respect for human rights worldwide. In monitoring corporate uptake of the Guiding Principles, important trends become apparent, with implications for regional and industry-level human rights outcomes. However, the mere voicing of support is not the same as proactive adoption of the Guiding Principles. On the contrary, the Guiding Principles themselves make clear what governments and companies need to do to demonstrate their acceptance of human rights duties. We investigated the ways businesses are and are not internalising the Guiding Principles.

6.3. The UN Guiding Principles

The Guiding Principles begin by distinguishing the human rights duties of corporations from those of governments. Governments retain the duty to *protect*, *promote* and *fulfil* human rights. These duties include provision of access to "positive" rights, such as education and healthcare, and the protection from infringement of "negative" rights, such as freedom

of expression or tenure of property (Shue, 1996). Additionally, governments must refrain from violating the rights of their own citizens by, for example, ensuring due process of law and controlling police brutality.

Under the Guiding Principles, corporations, by contrast, have only the duty to *respect* human rights. This means that corporations may not "cause, profit from, or be complicit in" the violation of human rights (OHCHR, 2011). To ensure that operations respect human rights, corporations have three specific responsibilities: (1) to publicly state a commitment to the duty to respect, (2) to conduct human rights due diligence and (3) to provide access to remedy when rights are violated as a direct or indirect result of company activities.

Accepting the Guiding Principles is voluntary, and so companies in practice accept those responsibilities separately, picking and choosing among them. While the supporters of the Guiding Principles may, rightly, claim that they are an integrated whole, they are not always adopted as a whole. We take the position that a partial commitment is not a nullity, but is a meaningful step which should be noted and considered. It represents a movement, if not a full-scale shift, in corporate psychology. As such, clear definitions are needed to effectively measure, monitor and analyse adoption that extends beyond a basic binary categorisation. The definitions proposed below evaluate a company's separate commitments to respect human rights, to conduct due diligence and to provide access to remedy.

6.3.1. Public commitment to the duty to respect

The duty to respect is the main theoretical advance in the Guiding Principles. It articulates a corporate role within the human rights regime, separate and distinct from the role of states. Corporate human rights policies that employ clear language of respect reflect an understanding of the allocation of human rights responsibilities among duty bearers. Not all corporate human rights policies are clear however. Here is the language of JX Nippon Mining and Metals:

> "The Group aims to create an organisation where employees' human rights, personalities, and individuality are respected. Since fiscal 2008, the Company has participated in the United Nations Global Compact, an international initiative that advocates 10 Universal Principles, including human rights and labour. Also, the Group's Code of Conduct states "respect for employees' personality, human rights and individuality" in Article 4, in

> order to increase awareness about the Group's attitude of respecting human rights in both domestic and overseas affiliated companies."(JX Nippon, 2011)

Since only employee rights are considered, the company has not committed to respect the full suite of human rights, as applicable to all potentially impacted rightsholders. The policy does not fulfil the duty to respect.

In contrast, Repsol, an integrated oil and gas company based in Spain and operating worldwide, articulates its duty to respect as a direct commitment to the Guiding Principles:

> "In addition to complying with all current applicable legislation in the territories where we operate, Repsol undertakes to respect internationally recognised human rights, including those set forth in the Carta Internacional de Derechos Humanos and the principles related to the rights established in the Declaration of the International Labour Organisation, regarding Fundamental Principles and Rights at Work, and the eight Fundamental Conventions that develop them. In this context, the term "respect" refers to the fact that Repsol will prevent its activities or decisions from causing negative consequences on human rights and, if they occur, will endeavour to repair the damage. Repsol will also do everything in its power to prevent or mitigate negative consequences on human rights directly related to the activities and decisions of its business relationships of which it has knowledge."(Repsol, 2012)

Although the duty to respect may be considered voluntary, once the duty has been accepted, a company can be held to that duty by interested stakeholders. Because due diligence and remedy processes flow from a commitment to respect rights, it is the fundamental element from which due diligence and remedy derive their meaning.

6.3.2. Due diligence

To know and show that they respect human rights, businesses have a duty of investigation and knowledge. They must take affirmative steps to find out how their operations affect human rights. This is called "human rights due diligence" (OHCHR, 2011). Due diligence is intended to support the duty to respect. It involves the ongoing assessment and monitoring of the impacts resulting from corporate action (Harrison, 2011). This includes

direct impacts of a company's operations (including the movement of personnel) and the indirect effects in its supply and value chains.

Microsoft's human rights policy clearly states a commitment to conduct due diligence: "We assess the human rights impacts of all our operations on an ongoing basis. To best respect human rights, we regularly review and update our relevant policies, processes and management systems" (Microsoft, 2013). This due diligence process examines operations, policies and systems in an ongoing manner.

In contrast, PVH Corp commits only to assess labour impacts through its statement: "PVH is a member of the FLA and adheres to its due diligence process and to our requirements to establish effective grievance procedures. PVH has country risk policies and assessment mechanisms in place" (PVH, 2011). This commitment is partial and avoids the use of a human rights lens to examine operations and policies. However, PVH also committed to a wholesale "commitment to and alignment with the United Nations Guiding Principles for Business and Human Rights." As such, though excludes mention of due diligence, it is credited for covering all elements of the Guiding Principles.

Due diligence informs action and is a necessary component of the duty to respect. It also begins the process of formally analysing a corporation's interactions with human rights, impelling the company to confront the effects of is actions. While it is theoretically possible that the duty to respect may be fulfilled without due diligence, in practice it is very unlikely. Also, without due diligence, there would be no way to know that the duty to respect is being met (Harrison, 2012). It creates a knowledge base that can be used to inform decision making and value judgments.

6.3.3. Access to remedy

Where impacts are negative, businesses have a duty to mitigate them using means acceptable to rightsholders. Companies are expected to create and promote systems of private complaint and redress that provide an alternative to legal redress. Such systems, often known as "grievance procedures," can include resolution by agreement or, if both parties consent, by an outside arbitrator. If negative impacts are significant enough to result in human rights *violations*, companies are required to provide and participate in non-judicial grievance mechanisms which potentially result in rulings *against themselves.* As a corollary, the mechanisms must also be authorised to require remediation of whatever violations the

company is found to have committed, which may affect business activities and revenues. This is called "access to remedy." Companies have found the development of holistic grievance mechanisms challenging (Rees, 2011). Coca-Cola has begun the process of establishing access to remedy through its bottlers, stating that,

> "... all are required to implement a process for remediation of any adverse human rights impacts they cause or contribute to. Our efforts to promote respect for human rights across the Coca-Cola system and throughout our supply chain are being recognized."(Coca Cola, 2012)

This is a firm statement that remediation will apply to all human rights impacts, and that the full supply chain will be included in the process. Nordstrom issues a much more limited commitment: "Our team has addressed a broad range of remediation projects, including production and efficiency, wage improvement, overtime reduction, management systems and worker retention and safety" (Nordstrom, 2012). The exclusion of non-employee grievances as well as a variety of human rights pertinent to the workforce renders this a non-commitment to access to remedy.

Access to remedy is an important element of the Guiding Principles and of any human rights regime; a right without a remedy is a practical nullity. However, the Guiding Principles' description of access to remedy is neither specific nor robust. It is soft, aspirational and general, and its suggestions would be difficult to police and rate in practice. Furthermore, a commitment to provide remedies for human rights impacts without any extant process for identifying those impacts is inherently weak; unidentified human rights impacts are very difficult to remedy. A corporate grievance mechanism that is constructed in the absence of a human rights framework cannot easily be employed to address human rights grievances, and, as such, cannot easily be seen to meet the standard for access to remedy set in the Guiding Principles.

6.4. Challenges in evaluating human rights commitments

The Guiding Principles recognise the importance of a company's human rights policy as a first step in accepting the duty to respect.[3] Taken together, due diligence and access to

3 See, e.g., Guiding Principle 16. This policy commitment "is the first essential step for embedding respect for human rights into the values of the enterprise."

remedy ensure the ultimate effectiveness of the duty to respect. However, the Guiding Principles themselves do not create a mechanism or procedure by which a company can be formally considered to have accepted them (Frankental, 2012). There is no document to sign or group to join; there is no separate body or method that definitively determines if a particular company has actually adopted the Guiding Principles. This makes it difficult to accurately track trends in adoption. If we wish to understand corporate acceptance of the responsibilities outlined in the Guiding Principles, a method must be created for determining whether, and to what extent, a particular company has adopted the Guiding Principles.

To fairly represent a company's adoption of the Guiding Principles, categories of commitment must be established, and benchmarks for the completeness of a company's commitment to that category need to be set forth. The benchmarking process is important, because corporate language addressing human rights is often vague and legalistic. Once the company's level of commitment has been established, its human rights policy can be scored using a weighted system elaborated below.

6.4.1. Categories of commitment

We categorised commitments into the following: (i) complete acceptance of the Guiding Principles, (ii) acceptance of the duty to respect, (iii) acceptance of the commitment to conduct human rights due diligence and (iv) acceptance of the duty to provide access to remedy for human rights violations. Companies can commit to none, some or all of these. Commitment to all three latter categories is treated as the equivalent of complete acceptance of the Guiding Principles. Anything less represents a partial or incomplete commitment to the Guiding Principles.

6.4.2. Benchmarks

A corporate commitment to each component of the Guiding Principles is binary. Either a company accepts the duty to respect, or it does not. While some ambiguity is unavoidable, it is reduced if the standard for acceptance is clear and applied uniformly. In considering corporate policies, the simplest case is when the Guiding Principles are referred to by name and adopted as a whole. By “adoption” we mean a public statement agreeing with the values stated in, and the commitment to act in accordance with, the Guiding Principles.[4]

Where adoption is less clear, we employ a combination of word usage analysis and close reading to differentiate firm commitments from vague references. "Commitment" and "responsibility" in direct reference to "respect” are among the key terms. Close reading is employed to check for overly limiting caveats, for example where a company "commits to respect the rights of employees,” but no mention is made of other rightsholders. Terms that overlook distinctions between government and corporate human rights duties are taken as an indication that a corporation has not adopted core elements of the Guiding Principles. Such terms include commitments to "uphold", "subscribe to" and "support" human rights, which have no clear meaning in the business and human rights field. Public statements embracing voluntary duties must be clear to be effective. Companies that desire to accept some or all the elements of the Guiding Principles, but do so in overly vague or defensive language, do not adequately express acceptance. The companies were provided opportunities to react to our ratings. Where appropriate, scores were revised as a result. The commitments to elements of the Guiding Principles reported below were recorded with confidence.

[4] Because the Guiding Principles are still relatively new, the policies often refer to the Framework, which was the precursor to the Guiding Principles. It contained the Protect, Respect and Remedy structure which is also the framework for the Guiding Principles.

6.5. Methodology

6.5.1. Data

Our statistical dataset was composed of 241 companies from 48 countries, chosen for their prominence in an industry with recognisable corporate social responsibility (CSR) concerns and their for their industry affiliations.[5] Most of the companies analysed (60.6%) are members of one of four industry groups: Equator Principles (banks), Thun Group (banks), the International Petroleum Industry Environmental Conservation Association (oil and gas) and the International Council on Mining and Minerals (mining). These associations were chosen because of their CSR influence in sectors that have potentially large human rights impacts worldwide. No equivalent groups exist for apparel and food/beverage industries. The information and communications technology (ICT) sector's Electronic Industry Citizenship Coalition (EICC) and Global Network Initiative (GNI) may be considered in future research, but they were excluded from this analysis. GNI is limited to telecommunications companies, which is too narrow for our ICT category; EICC membership limits human rights commitments to the workforce (EICC, 2012), rather than the full suite of rightsholders, and thus was excluded. In order to expand our dataset to include more industries we also included the 20 largest companies ranked in the Forbes 2000 list in the fields of apparel, technology, and food and beverage, mining, oil and gas and finance.[6] To validate the use of the Forbes 2000 list, we also used revenue as a measure of company size, gathered from annual reports and other sources. This is because not all Forbes 2000 companies published revenue data (some were subsidiaries, some were government-owned, and some were listed with no explanation for the lack of data). Five companies that had no public revenue data were excluded from analysis.

In addition to industry type, association affiliation, size, and acceptance criterion, data was sorted into eight regional categories modified from World Bank regions (U.S., Canada, Asia, Australia, Europe, Latin America, Middle East and North Africa, and Sub Saharan Africa). Owing to the concentration of corporate wealth in the northern hemisphere, 63% of companies analysed were based in Europe and North America.

5 5 companies from our dataset of 225 were not included in our regression analysis due to a lack of revenue data.

6 There is significant, but not complete, overlap between industry affiliation and top-20 status.

6.5.2. Scoring individual companies

Ordinal and numeric scoring has established value in combined qualitative and quantitative analysis for documenting patterns (Sandelowski, 2001). In this context, it is helpful to compare companies' commitments, to correlate level of commitment to external factors and to track commitment of individual companies or groups over time. A simple, intuitive and meaningful scoring system has been built out of the elements and the definitions of acceptance described above. Our scoring system categorises levels of acceptance of the Guiding Principles as complete, absent or partial. Partial acceptance is further categorised according to which components of respect (i.e. duty to respect, due diligence, access to remedy) are accepted.

Scoring partial acceptance of the Guiding Principles poses methodological challenges. There is no basis to assume that the three parts of the Guiding Principles are of equal weight; however, weighting components in a scoring system carries risks of arbitrariness. Justification for the scale employed is supplied by the necessity of the component and its specificity of definition. The duty to respect is the foundational principle of the corporate role in human rights (OHCHR, 2011) and is also the most firmly established of the components. Without it, the additional components lack meaning and thus merit lower weighting. As such, we weigh it heavily. Due diligence is the process by which a company demonstrates its respect for human rights. It contributes to the company's ability to remedy violations (by identifying them) and to demonstrate respect. While practically and theoretically important, access to remedy is only broadly defined in the Guiding Principles with no real clarity on what commitments need to be made.

We tested a variety of weightings, valuing respect, due diligence and access to remedy at, respectively, 80/10/10, 70/20/10, and 50/30/20. A sensitivity analysis revealed that these variations ultimately had little impact on final company ratings, so a moderate weighting was employed. This is partly because uptake of respect was highest in companies, followed by due diligence, followed by Remedy. Our weighting is as follows:

Duty to respect ..... 60 points

Due diligence ..... 30 points

Access to remedy ..... 10 points

Guiding Principles as a whole ..... 100 points

Any weighting of the elements will be inexact. The ratings show comparative level of acceptance and so comparisons among groups of companies can be made. Each company's policy was scrutinised by a minimum of two independent researchers who separately determined which of the three components of the Guiding Principles were covered. Where there was disagreement a third researcher was called in and consensus was sought. Policy scores ranged from 0 to 100 as a numeric sum of the components of the Guiding Principles included. Two sample scores are provided below to demonstrate the process.

Table 6-1 Calculating ratings based on components adopted of Guiding Principles

Component of Guiding Principles	Rabobank Group	Femsa
Duty to respect (60)	60	60
Due diligence (30)	30	0
Access to remedy (10)	10	10
Guiding Principles as a whole (100)	0	0
Total	10	70

Although scores range from 0 to 100, they are ordinal rather than continuous, and, further, not all ordinal scores are possible. Considering all combinations of corporate commitment, the only possible scores are: 0, 10, 30, 40, 60, 70, 90 and 100. These scores, generated for each company, have implications for statistical analysis, as elaborated below.

6.5.3. Verification and validation

Every effort was made to clarify the expressed meaning of each company's human rights policy. On numerous occasions, researchers discussed specific policy statements to determine their sufficiency against the standard of acceptance. Professional judgment has limitations as a benchmarking process, but it is appropriate for early-stage, exploratory research. Consensus among three independent researchers was required for all contested cases. This is an accepted means for establishing rigor (Denzin and Lincoln, 2000).

Professional judgment was supplemented with direct validation by the companies under analysis. All companies were contacted to allow them to comment on the scores issued on their policy statements. Companies that objected to our scoring were asked for documents that could change their scores. Companies that requested alternative means of

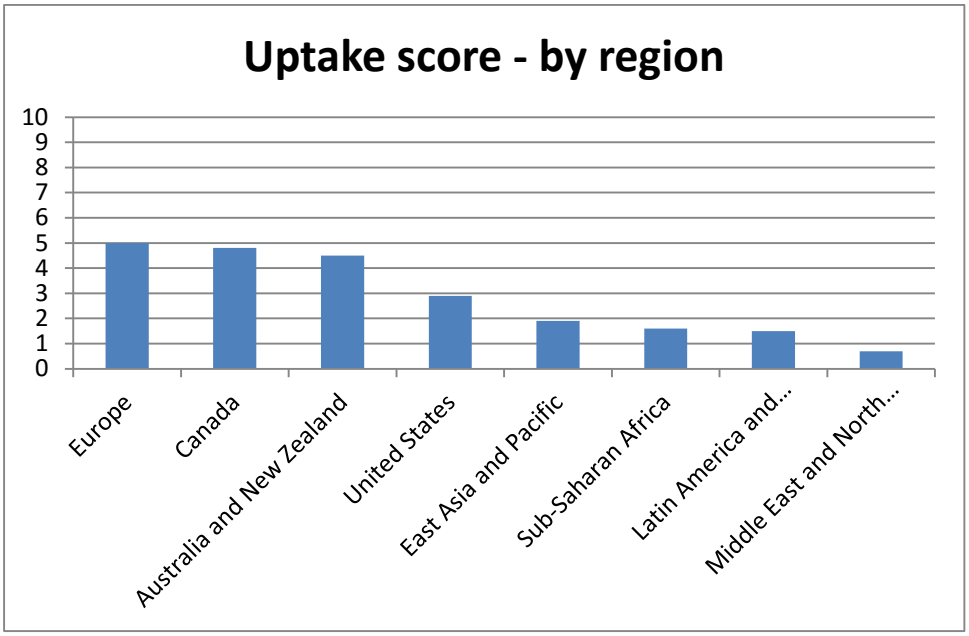
communication (telephone, hard-copy mail) were contacted via these media. Because public statements were the source of acceptance or non-acceptance, private communications to us, even ones emphatically claiming acceptance of the Guiding Principles, were not considered adequate to override public statements.

6.6. Data analysis

6.6.1. Raw scores for industries and regions

In analysing our data, we contrasted company policy commitments across industries and geographic region. We also examined the rates of non-, partial and full adoption of responsibilities across the whole data set. Over half of analysed companies (55%) have taken no action to accept the Guiding Principles. Companies that fully accept the duty to respect represent 12% of the sample. There is a wide range of partial adopters – 20% have established a policy commitment consistent with the duty to respect, and an additional 8% supplement that commitment with a requirement for due diligence. Only two companies (representing less than 1% of the sample) commit to provide access to remedy without committing to the duty to respect. A slightly higher number commit to due diligence without formally committing to other components (7, or 3%).

Raw scores show Europe, UK, Canada and Australia as leaders in Guiding Principles uptake. Sub-Saharan Africa, the Middle East North Africa Region (MENA), Latin America and East Asia Pacific region all score below 20 (see Figure 6-1).



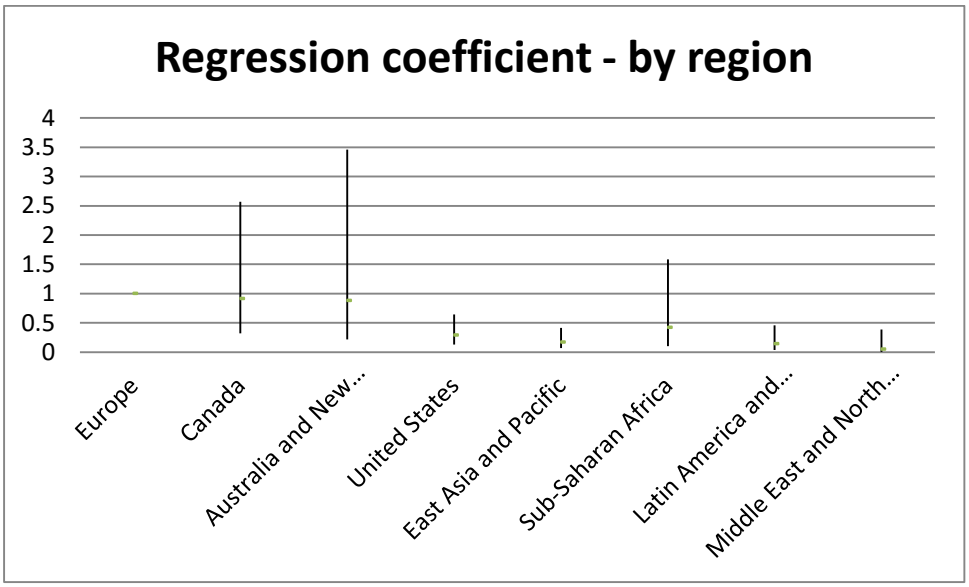


Figure 6-1 Corporate human rights responsibility adoption scores, disaggregated by geographical location

Figure 6-2 depicts an industry-level breakdown, which makes plain the disparity between the U.S. and European and Commonwealth countries: the U.S. is outperformed in every industry. The disparity is most glaring in the finance sector, where European banks outscore their U.S. counterparts by more than two to one (28 to 62, respectively). The only industry where U.S. companies appear comparable to their European counterparts is oil and gas. However, three Russian oil majors, all of which have scores of zero, are included in Europe's score. If they were excluded, uptake of human rights duties in the European oil and gas sector would set the sector score above 80.

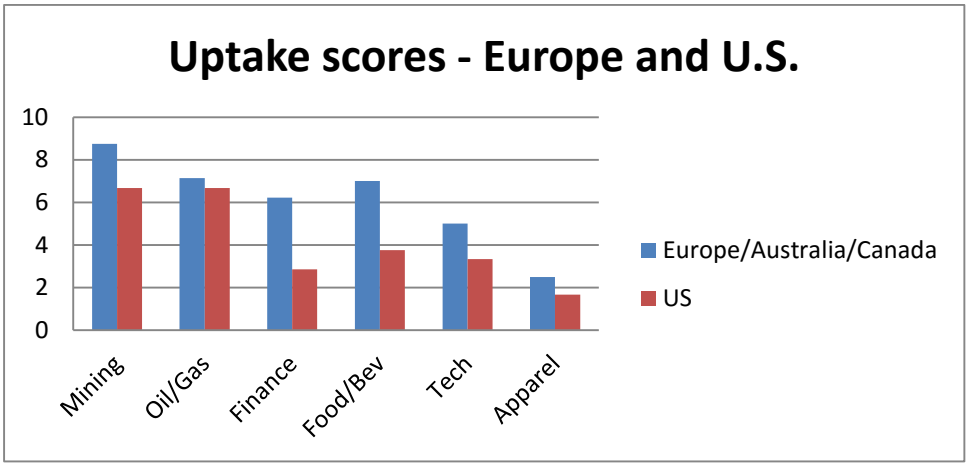


Figure 6-2 Comparison of U.S. and European/Commonwealth business and human rights scores

6.6.2. Statistical analysis

Once the raw scores were established, they were analysed using an ordinal logistic regression[7] employing the following model: [8]

$$\ln\left(\frac{P(y \geq j|\boldsymbol{x})}{1-P(y \geq j|\boldsymbol{x})}\right) = \alpha_{\mathrm{j}} + \beta_1 X_1 + \beta_2 X_2 + \beta_3 X_3 + \beta_4 X_4 + \varepsilon$$

Where X_1-X_4 are the independent variables, and Ɛ is an error term assumed to have mean 0, conditional on the X variables.

Raw scores were sorted into 4 groups, by the level of completeness of their commitment to human rights due diligence: minimal commitment (0-10, group 1), partial commitment without language of respect (30-40, Group 2), partial commitment with respect language (60-70, Group 3), and full commitment (90-100, group 4). The variable j represents the scoring category and takes values from 1 to 3. The dependent variable was the logit of the score grouping. The independent variables for this regression were: company size, as measured by the natural log of company sales, location with Europe as the reference category, and industry with mining was the reference category. Some model specifications

[7] Alternate model specifications included OLS regression, using a continues variable of total score as the dependent variable produced similar results.

8 Apparel, Finance, FoodandBeverage, OilandNatGas, Technology, are dummy variables for industry where mining is the base category. United States, Asia, LatinAmerica, Australia, Canada, MiddleEastNA, and SSAfrica are dummy variables for location with Europe as the base category. The natural log of revenue was used as a measure of company size. Membership in an Industry group was found not to be a significant variable in explaining scoring, and therefore was not included in the final model.

included a measure for membership in an industry group. We also estimated an OLS regression model of the form:

$$Y = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \beta_3 X_3 + \beta_4 X_4 + \varepsilon$$

Where the dependent variable was the score the company received using our scoring methodology. The independent variables are the same as in the ordinal logit model. Our results were broadly similar across both model specifications, although the ordinal logit generally had less precision.

6.7. Results

Findings from linear and logistic regression were closely aligned and insensitive to model misspecification. As such, though logistic regression is the more appropriate model for the data, results are depicted in Figs. 1 through 3 in linear terms, for clarity's sake. The results described here represent both linear and logistic analyses – overlap was high between the two analyses.

All of our model specifications reinforced the finding that where the company was domiciled was a stronger predictor of policy adaptation than the company's industry. Specifically, we found that companies domiciled in the United States, Asia, MENA, and Latin America scored significantly lower than companies domiciled in Europe. Additionally, there were no statistically significant differences between companies domiciled in Canada or Australia, and those domiciled in Europe. Our estimates for companies based in sub-Saharan Africa were less precise and under some specifications not statistically significant, however their overall trend was to have significantly lower policy adoption compared to European companies. In general, companies from Europe, Canada and Australia outperformed the rest of the world. The lowest preforming companies were based in the Middle East/North Africa and Asia. Companies based in the United States and sub-Saharan Africa formed the middle group, although due to a lack of certainty about the estimate for sub-Saharan Africa it is difficult to place it exactly. Regressions examining interaction effects are available upon request.[9]

[9] Interaction regressions were run for European and Commonwealth Countries as they interact with the oil and financial industries, as well as for the role of being domiciled in the US as it interacts with the oil and financial industries.

Across all model specifications, company size (as measured in the natural log of total sales) was associated with a higher level of policy adoption. While the effect was significant its magnitude was relatively small.

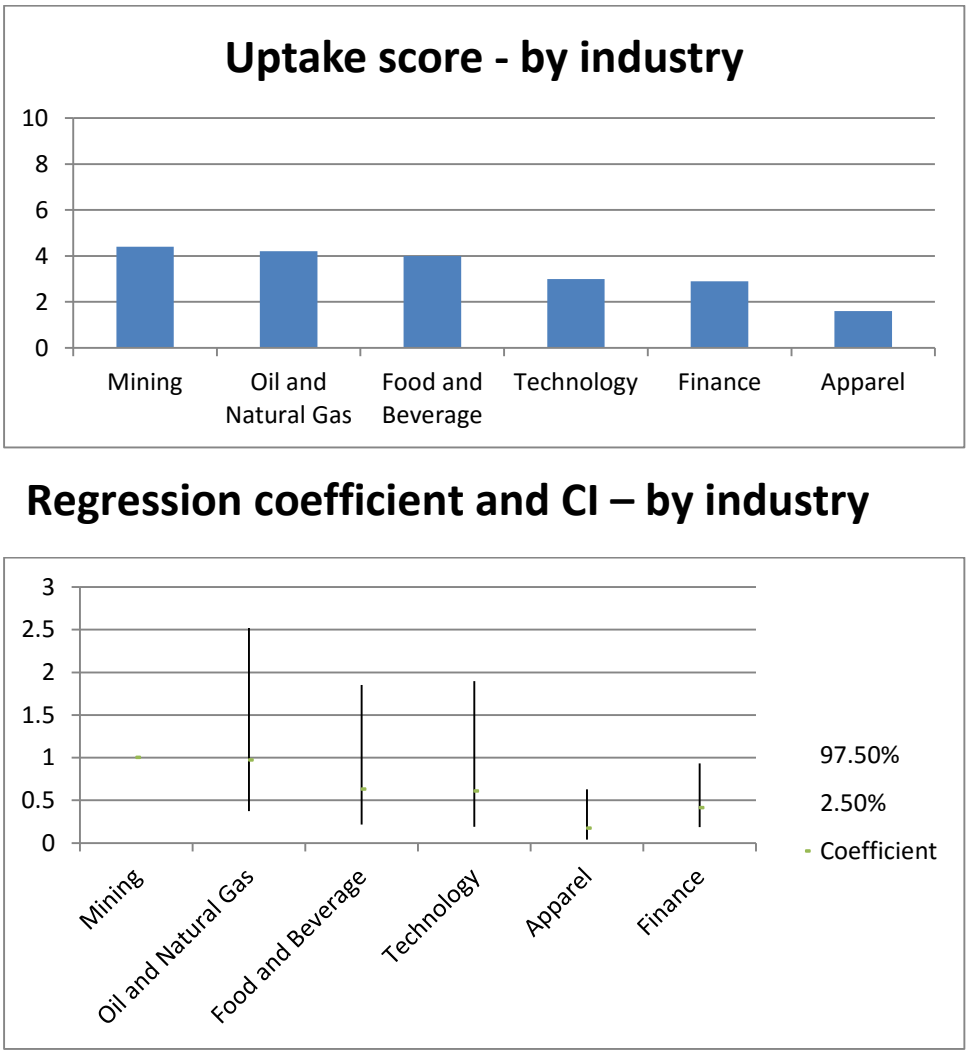


Figure 6-3 Corporate human rights responsibility adoption scores, by industry

The effects of industry were not as strong as the effects of location. In specifications that did not include variables for industry group, only apparel and finance were significantly different than the base category of mining. While the coefficients for the other industries were universally negative (or <1, in the case of the logit model) the effect was not strong enough to result in statistically significant differences. The raw scoring for industries is depicted in Figure 6-3, followed by the coefficients and confidence intervals from linear regression analysis.

Lastly we included measures of company membership to industry groups (ICMM, IPIECA, Equator Principles, and Thun). This was done in two ways: first, by including a dummy variable that indicated membership in any of these groups; second, by including a dummy variable for membership in a specific group. These controls did not significantly alter the significance of regional variables, but they did make a sizeable difference to industry specific variables. In the specification containing the general group membership dummy variable, the coefficient on group membership was positive, but insignificant. Under this specification, apparel was no longer significantly different from mining. This effect was even more pronounced for food and beverage companies, which had a slightly positive coefficient (OR>1) in the second specification. The final specification replaced the general industry group dummy with dummy variables that indicated if a company was a member of a specific industry group. With the exception of Thun, a group of banks with a focus on the Guiding Principles membership in these groups was not significant. Under this specification none of the industry groups were statistically different from mining, but regional differences remained significant.

6.8. Discussion

6.8.1. A reputational impetus for uptake

When verifying our scoring with company personnel, no company claimed our analysis overstated its commitment to human rights. In three cases companies pointed us to a relevant public statement that we had not already considered, resulting in upwardly amended scoring. In a small number of cases companies rejected our scoring as too low but provided no additional documentation to demonstrate acceptance of the Guiding Principles. Of the companies included in our analysis, none overtly rejected the legitimacy of the Guiding Principles as a framework for analysing human rights policies. Frankental (2012) has argued that this may be a result of the strong evidential basis bolstering the framework, in effect that a corporate duty to respect human rights is not only intuitive but also based on the way past corporate complicity in human rights violations (or disrespect for human rights) has been perceived and rejected by the public sphere . This may indicate that there is a reputational risk associated with openly opposing the corporate duty to respect human rights. Some company responses indicated that the absence or timidity of a policy reflected internal conflict over acceptance and implementation of the Guiding Principles. Banks, in particular,

expressed confusion about the applicability of the access to remedy responsibilities, given their distance from rightsholders as merely the project financers, rather than their borrowers who were the active, direct duty bearers affecting human rights.

6.8.2. Regional mentalities and the strength of the commonwealth

Our initial regional categorisation used World Bank boundaries. Australia and New Zealand were included in a Southeast Asia and Pacific category. North America was consolidated. However, country-level data revealed that Canada performed more like Europe than the U.S. Likewise, Australian uptake of the Guiding Principles more closely resembled Europe than any Asian country. As a result, we modified these groupings in our analysis.

In all statistical analyses, U.S. industries demonstrate an overall low adherence to international human rights standards. We think this would come as a surprise to many Americans, who believe that the country's founding values embody human rights (Ignatieff, 2005). This assumption that human rights are embedded in American culture may result in diffidence toward international human rights treaties. In essence, American businesses may be saying "we already do this" (Kahn, 2005). Another reigning theory explaining the U.S. government's reticence toward international treaties may also apply to U.S. businesses. This theory puts forth that the exceptionalism of U.S. institutions, including the Constitution, must be protected from outside interference. Along this line of thought, operating according to U.S. laws, accountable to U.S. courts, is the highest and most appropriate standard for action (Ruggie, 2005).

6.8.3. The role of industry

The correlation between industry sector and adoption of the Guiding Principles merits further investigation. Our sample size was too small to statistically analyse the significance of industry sectors within Europe. The high rates of uptake in the oil and gas and mining sectors may reflect the high level of engagement these companies have had with human rights complaints from project area inhabitants in recent years. Another factor may be the in-depth involvement these companies had with the UN Special Representative on business and human rights in the development of the Guiding Principles, a factor which may also explain the low uptake of the Guiding Principles among technology companies.

The low uptake in the apparel sector is noteworthy, as many public human rights violations in apparel industry sweatshops appeared as early as the 1990s. The Rana Plaza factory collapse in Bangladesh in April 2013 exposed ongoing human rights violations in the supply chains of dozens of European and U.S. brands, but at this early stage it has had no impact on uptake of human rights standards.[10] Hamm has argued that the complexity of value change in the apparel industry undercuts the effectiveness of voluntary codes of conduct (Hamm, 2012). The opacity of the chain of responsibility may result in governance gaps that obscure the points of entry for duty-bearers to conduct due diligence and provide remedies. Islam and McPhail, in contrast, tracked major increases in the uptake of human rights language in the apparel industry in the years after the ILO Fundamental Conventions were ratified (1990-2007) (Islam and McPhail, 2011). Indeed, many apparel companies *do* have human right policies specific to the labour rights enumerated by the ILO (e.g. freedom from child labour). However, it seems that this early action has resulted in an industry-wide sense that the apparel sector's work is done and that new initiatives and mechanisms are not applicable.

6.9. Policy implications

The conduct of global business enterprises is shaped by three forces: law, public pressure and corporate governance (Ruggie, 2014). The adoption of policy statements, which is the centrepiece of this paper falls into the third sphere. Law and public pressure represent other forms of governance, which also have important roles to play in the promotion of human rights standards within business operations. Our data analysis sheds light on some of the strengths and weaknesses of these governance systems as they are currently employed. Where they have been effective, these processes can be replicated.

6.9.1. Governments must lead the way

Government signals of interest, including those that fall well short of regulation, offer the most promising opportunities for increasing corporate responsibility for human rights. Geography serves as the primary predictor of Guiding Principles adherence, and governments in the highest-performing regions have instituted rights-respectful policy initiatives that

10 There have, however, been corporate and government level efforts to improve conditions for Bangladeshi textile workers, focusing on building and fire safety.

correlate to human rights policy uptake. The EU and UK, where corporate policies present the strongest commitment to the Guiding Principles, have both passed guidance and action plans in recent years to manage corporate impacts on human rights. The EU has also developed specific guidance for the oil and gas sector. In turn, European oil and gas companies demonstrate the world's highest rates of adherence to the Guiding Principles. In Canada, where in 2009 the government developed a strategy for improving the human rights performance of mining companies operating abroad, all of the country's largest and ICMM-member companies meet, at a minimum, the duty to respect standard in their policy language. In the wake of the global financial crisis, political pressure mounted on the European financial sector and several European banks (the Thun group) voluntarily expanded their human rights commitments. The European Investment Bank issued a 2011 commitment not to invest in projects that negatively impact human rights. In February 2013, the European parliament proposed a resolution on the impact of the financial and economic crisis on human rights, and the banks are already prepared for any outcome of this resolution.

Meanwhile, no such policy shifts are apparent at the government or corporate level in the United States. The most apparent discrepancy between U.S. and European approaches is in the financial sector, where the U.S. lags in human rights uptake. U.S. government has taken no position on the impacts of financial sector activities on human rights, and in turn, U.S. bank policies have remained largely unmodified. The vocal criticisms of academics and activists have had little effect. Yet the U.S. government is not powerless to modify corporate or public behaviours, even in the absence of regulatory change. For example, in managing CO_2 emissions, states within the U.S. that have adopted energy efficiencies at the state and city level (financial incentives, government greening and eco-friendly research and development) have spinoff effects on the energy efficiency approaches of their constituents and constituent businesses. Evidence suggests that stronger engagement with the corporate sector by the governments of lagging regions can facilitate adoption of corporate human rights duties for companies domiciled in these regions.

6.9.2. Consumers are not driving corporate change

The strong correlation between home-state human rights approaches and corporate policies provides an impetus for governments to help companies respect rights. The much weaker correlation between industry and corporate human rights policy has more nuanced

implications. Extractive industries, often considered by activists to be the most egregious corporate violators of human rights, have demonstrated the highest uptake of international human rights language. Apparel industries, which have a long track record of facing public scrutiny for alienating workforces, remain reluctant to embrace human rights duties. It appears that public opinion neither drives an industry to change nor changes as an industry's human rights approach evolves. This finding should not undermine the importance of public opinion. Fisman, Heal and Nair have found that companies in competitive industries where general uptake of corporate social responsibility standards are low use social and environmental stewardship to differentiate themselves. In turn, they profit significantly compared to competitors (Fisman et al., 2009). The implication may, instead, be that the public sphere is sufficiently acquainted with the business and human rights framework as a guide for corporate practice.

A key conclusion, which aligns with a large body of existing literature(Boulstridge and Carrigan, 2000; Vogel, 2005; Devinney et al., 2010), is that consumers cannot be expected to drive the human rights agenda for companies or industries. Although consumers can be educated on human rights concerns in the supply chains of supplier goods, and this can sometimes affect buying choice, there are other factors involved in purchasing that outweigh socially-responsible consuming. Consumers' buying behaviours do not necessarily align with their attitudes toward responsible corporate behaviours, and consumer product industries, it appears, have internalised this, as demonstrated by the low level of human rights policy uptake.

6.9.3. An opportunity for industry associations

When we ran analyses to isolate the effect of membership in industry associations, our findings were nuanced. In analyses that did not target industry associations, they seemed to have no impact on human rights policy statements of their member companies. However, when the effects of membership were isolated, a relationship *did* emerge. The dummy variable to control for membership in ICMM eliminated the significant difference between apparel and mining; this suggests that at least some of the difference between these industries is explained by membership in ICMM. The same results were found when controlling for ICMM membership in an analysis against the food/beverage industry. In other words, without the effect of ICMM, mining companies within the sample have human rights

policy scores roughly equivalent to food and beverage companies. Controlling for group membership evokes further questions about regional disparities or other confounding influences among companies not in an industry group, which were not considered for this paper. We do find evidence that industry groups have some role to play in explaining the differences between industries, but they do not fully explain the differences between regions. The exact mechanisms behind these differences remains a subject for future research.

6.10. Conclusion

The differentiation between laggard and leader regions and industries is not as clear as the data set suggests, because only the biggest, leading companies were selected for analysis. That within this group over half of companies had taken no action to incorporate the UN Guiding Principles into policies and management systems suggest that movement towards improved human rights consideration and practice remains slow. Interest has increased; for example, 1900 participants attended the UN Forum on Business and Human Rights in Geneva in December 2013, roughly double the meeting's attendance in 2012. However, turning interest into action will involve further effort.

A significant opportunity for encouraging the adoption of corporate human rights standards arises in the ongoing World Bank review of its social and environmental safeguard mechanisms. The World Bank funds development projects and programmes implemented by states and by private contractors. If World Bank funding were tied to human rights standards, governments and companies would experience an increased prerogative to accept human rights duties.

Ongoing monitoring will be important to track the continuing trajectory of the Guiding Principles as the foundational principle of the corporate duty to respect human rights. Stated commitments are the first step in a long process of assessing, understanding, mitigating and reporting on human rights impacts.

7. DISCUSSION: STRATEGIC ADVANCES AND LESSONS LEARNED

7.1. Introduction

There is momentum behind the movement to incorporate business into the human rights regime generally, and in particular to promote human rights due diligence. This has been fuelled by a variety of events and initiatives. Community-based project shutdowns have led extractive and industrial projects to more closely consider human rights. At the time of writing, Minera Yanacocha's Conga mine remains on a delayed development schedule, three years after community protests demonstrated the intensity of fear regarding access to water. Vedanta Resources' Orissa mine was blocked after three years of protests by local tribes (Bedi, 2013). The South African platinum industry was frozen for four months in 2014 as workers downed their tools and demanded wage hikes and working condition improvements (Qobo, 2014). Consumer-initiated social responsibility initiatives have triggered Apple and other technology companies to begin investigating human rights (Ruggie, 2013). The food and beverage industry has experienced and responded to similar consumer activism, with Nestlé producing human rights due diligence at seven sites in 2013 (Nestle, 2013). Law – like the US Department of State Burma reporting (US Department of State, 2013) and, to some extent, Dodd-Frank reporting requirements on conflict minerals (2010) – is pushing investors to contemplate human rights in complex contexts. Although less often mentioned in corporate social responsibility (CSR) reports and company press releases, companies have also quietly begun investigating human rights risks in operating contexts, looking to better understand how their operations could be complicit in state-sponsored rights abuses. As these investigations remain confidential, it is impossible to say whether they are contributing to human rights risk management.

Regardless of what triggers a company to conduct human rights due diligence, it is important that the fundamental aim of HRIA remains consistent: to identify the potential and actual impacts experienced by rightsholders, to ensure that none are negative after mitigation measures are taken and as ongoing monitoring is conducted. That entails changing corporate (and rightsholder) perspectives, enabling corporate management to understand the perspectives of rightsholders, and empowering rightsholders to understand the management

and actions of the corporate project, so that the subtle interactions between communities and companies are mutually understood and beneficial. It also entails changing corporate (and rightsholder) behaviours, so that grievances are quickly recognised and managed, dialog is ongoing and long-term solutions replace quick fixes or slowly-building resentments.

These findings derive from the work of NomoGaia, a non-profit think tank that builds and tests tools for corporate human rights due diligence. NomoGaia developed and validated a methodology for HRIA. Though others exist, NomoGaia's is the only one published in the peer-reviewed literature. However, this perspective is not unique to NomoGaia. It has been expressed by assessors in the consulting, non-profit and legal disciplines. It has also been voiced by the corporate community, including Paladin Uranium, BHP Billiton and Nestlé (Paladin, 2009b; Global Compact, 2013; Nestle, 2013).

Yet it has not been recognised by the majority of multinational corporations. Among the world's 225 largest publicly traded companies, 53 (24%) professed to conduct "human rights due diligence" to ensure that their operations respect human rights. However, only four of those large companies (1.8%) have published any documentation of assessments, evaluations or audits of human rights. Three smaller companies have published human rights assessments – two in tourism (TwentyFifty, 2013; Kuoni, 2014) and one in mining (Lipsett, 2014).

7.1.1. History and existing case studies

Corporate human rights due diligence is a new field that has developed only in the past decade, beginning, arguably, in 2004, when BP published the executive summary of an *ex-ante* HRIA of its planned liquid natural gas (LNG) operations in Papua, Indonesia (BP, 2004). Former Special Representative to the Secretary General on business and human rights John Ruggie heavily emphasised the active responsibility of companies to conduct "due diligence" to ensure that operations do not violate, or contribute to violations of, human rights (OHCHR, 2011; Ruggie, 2014). However, he made few contributions to the pursuit of a methodology (Harrison, 2012). In 2006, noting a delay in the standardisation of corporate human rights impact assessment, he turned to two established institutions to produce and pilot a methodology. Neither one followed through. The Danish Institute for Human Rights created a proprietary tool, which they state has been implemented on "hundreds" of companies, but under strict confidentiality rules, such that no components of the assessments have been

made public (Hertz et al., 2008; Smith, 2008; On Common Ground, 2010; Rio Tinto, 2013; TwentyFifty, 2013; Lipsett, 2014; Oxfam, 2014). The International Finance Corporation (IFC), working in collaboration with the International Business Leaders Forum, could not fully pilot its tool, although initial steps were taken to run three pilots at the corporate, rather than project, level. The IFC eventually dismissed the HRIA staff members and ended the programme.

A variety of independent initiatives sprung up in the vacuum. Practitioners came to include civil society groups, think tanks, law firms, consultancies and in-house members of CSR, legal, human resources and other departments. The field was flooded with companies apparently demonstrating their acceptance of new human rights responsibilities.

The streamlining of HRIA methodologies, where it has occurred, has been organic, and lessons on HRIA have not accrued steadily or universally. For example, the same year that Nestlé produced its HRIA white paper, recognizing that HRIA "is not an audit," (Kemp et al., 2012; Nestle, 2013) a partnership between an auditing firm and an NGO produced a draft document of corporate human rights auditing guidelines (SHIFT, 2013a).

7.2. Compiling existing, public HRIA

Project-level corporate human rights due diligence has reached a point at which lessons can be drawn from existing experience. This chapter aims to aggregate those learnings, to identify common practices and research needs.

No formal, systematic review can be conducted in this field, where grey literature dominates publications. As such, the candidate relied on a combination of contact networks, personal collections and targeted online searches to scan the literature. Google searches for "human rights impact assessment" and "human rights assessment" were employed. Additionally, the Business and Human Rights Resource Center (business-humanrights.org) database was scanned for all examples and mentions of HRIA. Personal collections were reviewed for HRIA case studies that are no longer or were never available online. In addition to quantitative review of literature, qualitative research also contributed to findings. Through 12 formal interviews with HRIA practitioners over 12 months, as well as numerous informal conversations and correspondences, contact networks provided iterative insight into the experiences and findings associated with both public and private HRIA.

Inclusion and exclusion criteria for HRIA analysed in this chapter build on a number of principles. First, government HRIA is distinct from corporate, project-level HRIA, and government HRIA are excluded. Second, the human rights reports that US companies have submitted to the US State Department in association with Responsible Investment in Myanmar reporting requirements are not HRIA. These reports list the due diligence processes companies put in place (Nolan, 2014), but not the impacts they foresee, monitor or mitigate. Third, HRIA is "evidence-based," reliant on the robustness of data inputs to generate worthwhile conclusions (Landman, 2004; Bakker et al., 2009). Adequacy of evidence is based on inclusion of certain elements. The World Bank, in collaboration with the Nordic Trust Fund, developed a short-list of evidence-oriented elements of corporate HRIA that is generally accepted and noncontroversial. This list includes: (i) the employment of a normative human rights framework; (ii) public participation, requiring direct engagement with affected rightsholders; (iii) non-discriminatory processes and outcomes for conducting the assessment and implementing mitigation measures; (iv) transparency of process and findings; (v) accountability of the duty-bearers investigating impacts; and (vi) interdisciplinary research enabling intersectoral analysis of impacts (Felner, 2013). Because these essential elements are subject to interpretation, we created narrower and more measurable inclusion benchmarks, depicted in Table 7-1.

Table 7-1 Inclusion and exclusion criteria

	Essential elements	**Evidence-based inclusion criteria**
1	The employment of a normative human rights framework	Findings are presented with reference to core human rights instruments (e.g. Universal Declaration)
2	Public participation	Fieldwork that incorporates interviews with low-level employees and marginalised community members
3	Non-discriminatory processes and outcomes for conducting the assessment and implementing mitigation measures	Does not violate human rights in process or outcome
4	*Transparency*	*Publication of HRIA*
5	*Accountability of the duty-bearers investigating impacts*	*Post-assessment monitoring for implementation of recommendations and continued assessment of risks*
6	Interdisciplinary research	Incorporation of quantitative data from health, education, environment and engineering experts (as appropriate)

Two “essential elements” were eliminated from exclusion criteria, in order to retain a sufficiently large set of HRIA for analysis. “Transparency” was not an exclusion criterion, partly because so few HRIAs are public, and partly because key lessons are to be drawn from the outcomes associated with opaque human rights evaluation processes and public ones. Additionally, “accountability of the duty-bearers” was not an exclusion criterion, because only HRIA from NomoGaia include monitoring. Such a restriction would create an excessively limited data set.

Once inclusion and exclusion criteria were applied to corporate HRIAs, 16 HRIA or HRIA summaries had been excluded, and 16 had been retained. The aggregated HRIA were analysed for process, content and form. Implementing organisation (e.g. NGO, consultant, in-house), timing of assessment (e.g. pre-project, mid-operations), time of initial assessment, and duration of assessment/monitoring were charted, depicted in Table 7-2. The majority of information regarding process was drawn from interviews.

The full collection of HRIA conducted by Canadian governmental organisation Rights and Democracy was excluded. Rights and Democracy was one of the earliest actors involved in corporate HRIA, producing its initial five assessments in 2007, predating the UN Framework for business and human rights. These assessments, conducted in collaboration with third-party local NGOs, lacked technical input on engineering and environmental monitoring. Local practitioners had difficulty obtaining meetings with company personnel (and in some cases did not try). As such, they tended to prioritise perceptions alone, resulting in recommendations that the assessed companies found unhelpful or irrelevant (Rights and Democracy (R&D), 2008). Along similar lines, the excluded 2013 HRIA of Sagittarius Mines, conducted by Misereor, lacked corporate input, did not incorporate technical information from project operations and was rejected by the operating company (Sagittarius Mines, 2013). Two NewFields assessments were excluded, conducted by NomoGaia personnel working as consultants, because clients commissioned only desktop studies. Four NomoGaia studies were excluded, because either the projects have been halted or they are too preliminary for technical data to be available. Finally, a Rio Tinto compendium of human rights analysis produced in 2013 was excluded. Although it described processes for conducting HRIA, there is no evidence that site-level assessments were conducted or that human rights evaluation directly dictated necessary project change. Rather, this document seemed to

retroactively link existing initiatives to the human rights framework, which does not follow any assessment protocols or ensure that all rights are considered.

HRIA that were retained included seven from NomoGaia, two from LKL consulting; one from Kuoni; one from NewFields; one from On Common Ground; one from TwentyFifty; and one from a financial and legal team comprising Foley Hoag LLP law office and Calvert Investments. Additionally, one compendium of HRIA, produced by Nestlé was included. Nestlé did not produce full HRIA or HRIA summaries. However, its white paper accrued human rights findings in line with the inclusion principles above.

Table 7-2 Compendium of HRIA included in analysis, by identifying features

Project name	Year	Implementer	Org. Type	Industry	Timing	Monitor	Implemen-tation	Predicted risks	Outcomes
BP Tangguh LNG, Papua, Indonesia	2004	Foley Hoag/ Calvert	Law firm	Oil/gas	Pre-construction		Unknown	None	None
Paladin Kayelekera Uranium Mine	2009 - 2013	NomoGaia	NGO	Mining	Construction	X3, 5 years	Yes	HIV rates were likely to rise	Implemented HIV/AIDS programme; set human rights policy
Green Resources Uchindile Plantation	2009 - 2014	NomoGaia	NGO	Agri-culture	Transition to harvesting	X3, 5 years	Partial	Low wages and poor working conditions	Arson of over 100 acres; company commenced human rights reporting
Marlin HRA	2010	On Common Ground	Consultant	Mining	Mid-operation	No	Partial	No predictions	Increased dialog between company, community, government
Dole el Muelle Pineapples	2010 - 2012	NomoGaia	NGO	Agri-culture	Mid-operation	X1, 2 years	Partial	Plant water quality and local marginalisatio n	Water treatment facility installed (no action on community)
Tullow Uganda Oil Explor/ Develop.	2011 - 2012	NomoGaia	NGO	Oil & gas	Pre-production	No	Unknown	Land acquisition; military security for oilfields	Improved land acquisition process. Commissioned HRIA - Kenya
[African metal mine]	2012	NewFields	Consultant	Mining	Mid-project, pre-expansion	No	No	Not public	None
Mary River Mine	2013	LKL	Consultant	Mining	Pre-construction	No		Ongoing	Ongoing
Kuoni Kenya	2013	TwentyFifty	Consultant	Tourism	Post-construction	No	Unknown	Forced labour, sex trafficking	Not yet known
Nestle	2010 - 2013	Nestle/ Danish Inst.	In House	Food & beverage	Mid-projects	No	Unknown	Various	Not yet known
Kuoni India	2014	Kuoni	In House	Tourism	Mid-project	Unknow n	Unknown	Labour, women's rights, children's rights (focus on business risks, not rights risks)	Not yet known
Myanmar Power Plant Risk Assessment	2014	NomoGaia	NGO	Energy	Pre-project	Planned	Not yet known	Exacerbating ethnic tensions; deepening rural disempowerm ent	Not yet known
Nevsun Bihasa Mine Summary	2014	LKL	Consultant	Mining	Mid-project	Planned	Not yet known	Inadequate wages, worker stress, gender disparity, child/adult sexual exploitation	Not yet known
Disi Water Conveyance	2011	NomoGaia	NGO	Water	Pre-construction	N/A	N/A	Not yet known	Not yet known
Exbol Jewelry	2013	NomoGaia	NGO	Manufac-turing	Mid-project	N/A	N/A	Labour rights, adequate standard of living, clean environment	Project was out-competed by Chinese labour; factory work dwindled

7.3. Areas of convergence in HRIA practice

Companies consistently learn, and often improve, from their own HRIA. Practitioners have noted that the greatest value-added from HRIA may be in perspective gained (Bakker et al., 2009). In Eritrea, LKL Consulting found that human rights issues had been framed by NGOs critical of the mine's approach to forced labour with a particular contractor at Nevsun's Bisha Mine. Rightsholder engagement revealed that the labour risks were present in a variety of industries within supply chain. The assessment process broadened the scope of the company's supply chain management. Further, the initial focus on labour had overlooked the major community issues in the project area, associated with environment, water and local development in an arid, low-income country with limited resources for rural communities. Recognition of the challenges faced by community members helped the company to think through principled ways of dialoguing and partnering with the government to ensure positive outcomes for rightsholders within the workforce and the community.

NomoGaia had similar findings at several sites. For example, in Malawi at Paladin's Kayelekera Uranium mine, HRIA revealed that a longstanding procurement problem, once thought resolved, had resurfaced in a different part of the mine's vegetable supply chain. Monitoring and proactive investigation of previous human rights risks identified an issue that affected rightsholders had become reluctant to voice.

Technical expertise enables practitioners to develop objective benchmarks in assessment that also evaluate local perceptions. An aim is to identify where perceptions and realities diverge, and to ensure that assessors recommend courses of action that actually solve problems, rather than tackle phantoms. For example, objective documentation of rightsholders' belief that a river near Kayelekera had been contaminated after a sulphur spill, alongside documentation of water quality monitoring data that revealed no pollution, allowed assessors to recommend public monitoring and transparent reporting to build trust, rather than recommend that the company improve water quality.

In a similar case, Dole Fresh Fruit, which has the industry's highest labour and environment standards for pineapple cultivation and packing, believed it had identified and managed all major issues at its Costa Rican operations, but the community had unvoiced concerns about water quality. HRIA revealed that process water testing did not fully safeguard the right to water and recommended further testing. A year later Costa Rican law modified

process water standards, compelling the company to modify practices, which now align with human rights standards and community interests. Given Costa Rica's advanced legal protections for citizens and the environment, HRIA was less urgently needed than in countries with weaker governance, but the company still benefited from a year's forewarning before legal changes occurred.

Because the issues (and as the above case shows, laws) relevant to human rights change over time, one reasonable way to track whether a business is negatively impacting human rights is to have rightsholders verify outcomes. An iterative process of engaging rightsholders to establish the adequacy of policies, processes and outcomes has been central to NomoGaia's approach to HRIA. Over six years, they have generated an increasingly complete and coherent list of indicators for evaluating large footprint, capital intensive projects like mines, oilfields and dams. Not all indicators are always evaluated, and some are periodically supplemented on a case-by-case basis, but they contribute fundamentally to a broad analysis. At the project level, human rights impact assessments compile environmental, social, political, health, education and labour indicators to generate human rights ratings, which are then subjected to evaluation by direct engagement with affected rightsholders. The view from the ground enabled NomoGaia to look back up the corporate structure to evaluate whether the policies and processes endorsed by the company are (i) effectively promulgated, and (ii) sufficient to ensure respect for human rights. Nevsun, in collaboration with the international community and the Government of Eritrea, was developing such a monitoring process at the time of writing, which will involve benchmarking and reassessment over the next 18 months. It is spearheading international reengagement with a government that was previously reluctant to modify its operational approaches to labour rights.

Because policies and processes are only as good as the outcomes they generate (Ramalingam, 2014), and because outcomes result from interplay between context and business activities, there is no universal benchmark for the adequacy of a process, and therefore of a process indicator. For example, when operating in areas where HIV prevalence rates are high, companies should establish specific HIV/AIDS processes to avoid increasing transmission and to avoid exacerbating the discrimination faced by seropositive people. An HIV process which consists solely of ensuring that HIV status will not be a factor for hiring might be adequate in a location where access to counselling, testing and treatment is readily

available. In areas where such services do not exist, an infection can cause debilitation and death, and thus a much more robust process will be needed. This was the case at Kayelekera, described in Chapter 1.

The challenge in institutionalising HRIA while ensuring that actual human rights due diligence is completed comes to the fore in measurement approaches. Non-practitioners have made calls to audit human rights due diligence (SHIFT, 2013a), and develop key performance indicators for business and human rights (De Felice, 2015). Process and policy indicators, which evaluate the mechanisms companies put in place to hold their operations to human rights standards, are attractive because they can be relatively easy to verify and report. But this attraction can be counterproductive if they are not, in fact, indicators of actual human rights violations. For example, during our initial HRIA of the Uchindile tree farm described in detail in Chapter 2 Green Resources had policies guaranteeing workers clean and secure housing with drinking water, latrines, electricity and meals. Water tanks, solar panels, toilets and beds were visible in dormitories. However, the water tank was empty, the workers were sleeping three-to-a-bed and sharing two toilets among 75 workers, the roof leaked and solar panels did not function. The policy indicator guaranteeing favourable housing conditions hid the reality experienced by workers.

After completing its first seven assessments, Nestlé wrote categorically that "HRIA is not an audit." Lloyd Lipsett, the author and investigator on numerous HRIAs, agrees. He emphasises the importance of open-ended examination of issues to allow rightsholder experiences to guide assessment. As BHP Billiton's social manager has put it, one of HRIA's greatest values is its ability to reveal that "you don't know what you don't know" (Global Compact, 2013).

Transparency is perhaps the most elusive of the recognised "core components of HRIA." All practitioners interviewed call for greater transparency but have found corporate clients to be a barrier to publication of findings. While Swiss-based food and beverage company Nestlé's human rights due diligence report stated that, "Speaking openly about your problems makes them easier to solve," few companies embrace transparency in their human rights due diligence. This includes Yahoo and Microsoft among technology companies, Barrick and BHP Billiton among mining companies, and Dutch financial company ABN Amro (Harrison, 2011; 2013). Ironically, BHP Billiton, one of the world's largest mining companies, has even

published a methodology for HRIA that includes reporting, defined as "capturing assessment findings and recommendations in a way that is accessible and user friendly" (Global Compact, 2013), without having ever published an HRIA report.

Transparency is both a vital and complicated topic for HRIA. While it is essential to demonstrating respect for human rights, discretion is needed in limited circumstances. Particularly in conflict-affected countries, HRIA must be conducted and published sensitively, to avoid alienating key players before progress is achieved (Goodhand, 2000; Beyrer and Kass, 2002; Amon et al., 2012).

The combination of a soft touch with sensitive governments and a patient approach with corporations as they implement mitigation measures is challenging, but publicly tracking progress in human rights outcomes is still feasible. Assessors can retroactively publish negative findings once they have been mitigated or widely publicised. When NomoGaia found major human rights risks at early-phase exploration in Tullow's Uganda operations, findings were withheld while the company developed management solutions. Meanwhile, civil society also identified the risks, and a broad publication of the issues muted controversy around the publication of the human rights risk assessment. In other cases, once foreseen risks, unmitigated, have resulted in negative foreseen outcomes, publication may also be appropriate. At Green Resources, initial corporate inaction spurred publication of an HRIA, which, during monitoring, revealed improvements in rights conditions in ensuing years.

In other locations, this discretion has been overdone, to the detriment of the HRIA process. NewFields HRIAs that were not published did not directly result in improved communications with rightsholders or improved conditions. Companies appear to require external pressure to act on human rights findings.

7.4. Areas of divergence in HRIA practice

Although assessors agree that international human rights instruments create the normative framework for HRIA (Felner, 2013), human rights are not necessarily the organising principle of HRIA. For example, NomoGaia, LKL Consulting, and NewFields organise findings and develop recommendations to align with the particular human rights impacted, On Common Ground's Goldcorp Marlin Mine human rights assessment and TwentyFifty's Kuoni Kenya assessments are organised according to thematic 'issues.'

An additional point of divergence is on the cost of HRIA. Nestlé, the Danish Institute for Human Rights and the World Bank, among others, have described HRIA as resource intensive (Danish Institute for Human Rights, 2006; Felner, 2013; Nestle, 2013). It is difficult to know precisely what this means, as no companies have, to date, published the cost of HRIA. Part of the cost question centres around whether HRIA requires legal expertise. While international human rights instruments are part of international law, companies are not legally bound to uphold them (Ruggie, 2014). Yet companies often view human rights risks in relation to their legal liabilities. TwentyFifty describes facing significant pushback from a corporate team at a project in India whose central management commissioned an HRIA. Local management perceived the commissioning of an HRIA as an indication that they had done something wrong and were under investigation. Where legal personnel are included in a human rights assessment team, costs can rise, as international lawyers make expensive consultants. However, depending on the legal role and time commitments, this expense can be managed. Some HRIA have restricted the legal role to the production of a desk-based "letter to the Chief Executive Officer," based on the direct findings of field-based assessors (personal correspondences, 2014). Under the protection of client confidentiality, these documents can express the urgency of particular mitigation actions, and they can be drafted relatively quickly once assessment is complete.

As a non-profit organisation, NomoGaia reports annually on its expenses and, while its volunteer team includes lawyers, none of its HRIA are legal documents. Although NomoGaia's assessments exclude the cost of practitioners and of technical inputs (technical experts donate time, literature and other resources), the other expenses associated with HRIA are publicly available through non-profit Form 990 filings (www.irs.gov). NomoGaia's average HRIA site visit cost for a single non-local assessor was just over US$ 3,000. As NomoGaia's methodology requires a minimum of two site visits per assessment, and two assessors are preferred for the second site visit, the average technical cost of an HRIA, including airfare, local contractors, lodging, in-country transportation, and appropriate clearances, is roughly US$ 10,000. The added cost of work time for a team of two assessors with a combination of human rights and technical (industry-relevant) expertise would elevate the cost markedly, but not necessarily more than US$ 40-80,000, unless the site were particularly sprawling, remote or densely populated. In industries where companies pay millions of dollars for EIA and

additional hundreds of thousands each year for environmental monitoring, the cost of human rights impact assessment and monitoring seems comparatively small.

Meanwhile, companies rarely budget US$ 50-100,000 for human rights risks before they materialise. Companies have attempted to scale down HRIA budgets once bids are made, or they restrict field days to cut costs. The disjoint between the perceived cost and value of HRIA narrows the space for effective investigation. Assessors describe scope of work (SoW) documents that permit fieldwork only in the capital city, when project development is slated for a remote area of a country. Others have received SoWs that restrict the topics of investigation to pre-established issues deemed important by the company. There are some benefits to narrowing investigation and "starting small," as one TwentyFifty consultant has phrased it. For example, these low-cost efforts can reveal the value of human rights investigation to a company, leading them to desire more comprehensive assessments. In other cases, however, these limitations can be damaging. For example, BHP Billiton touted a high functioning grievance mechanism, but HRIA exposed that the mechanism was not being used for certain major community concerns, leaving issues unresolved (Global Compact, 2013). Companies that aggressively limit scope commission HRIA that risk undermining practitioners' accepted tenets of good practice, such as the necessity of fieldwork and of human rights investigation as holistic.

Because the UN Guiding Principles does not specify how companies should conduct human rights due diligence, industries are carving out roles and defining responsibilities as they see appropriate. In some cases this has been beneficial to the human rights movement, to corporate risk management and to potentially affected rightsholders. The Thun Group of banks has dedicated several months to defining human rights due diligence within the financial realm, considering the varying implications for individual lending, project finance, general credit and other functions. They have considered the limits they face in providing 'access to remedy,' when rightsholders are far removed from their offices, and when they lose all leverage as soon as loans are repaid (Thun Group, 2013).

Other industries have incorporated human rights into due diligence processes as a subcomponent of existing mechanisms. The International Petroleum Industry Environmental Conservation Association (IPIECA) has engaged actively with the human rights community but produced guidance for its own members for "integrating human rights into environmental,

social and health impact assessments (ESHIA)" (IPIECA, 2013). Many oil and gas companies have adopted that language, suggesting that more holistic human rights due diligence will be undertaken only when a challenging context necessitates it. In theory this language produces an initial evaluation process to make sure that due diligence is commensurate with need.

In practice, in some cases it has politicised human rights due diligence unnecessarily. To determine that a stand-alone human rights evaluation is needed requires companies to pass a judgment on the operating context – and host government. States are rarely receptive to such judgments (Lopez and Stohl, 1992; Hafner-Burton, 2008), which means that companies feel compelled to forego or restrict analysis, or to conduct their human rights investigations clandestinely, in violation of the tenet of transparency. These companies miss a valuable opportunity to take umbrage under a more general policy that would require HRIA in any operating context, albeit a quicker, more limited process in some operating contexts. BHP Billiton reports having taken advantage of this option in some of its Australian and African exploration-phase investments (Global Compact, 2013). MMG has, similarly, started its feasibility- and exploration- phase evaluations with low-cost human rights risk assessments. This approach obviates the assumption that HRIA is politically charged.

The integration of human rights into existing management practices has also lumped human rights risk with other operational risk, failing to acknowledge the complexity of interactions between human rights and corporate activity (Campbell, 2002). Corporate risk mechanisms look at how existing risks could affect companies. Human rights risk mechanisms augment that perspective with considerations of (i) how corporate operations can affect contextual risk indicators, and (ii) how shifting relationships can affect risks to rightsholders.

As elaborated above, companies commission desktop assessments and dictate limitations on scope that make it impossible for assessors to examine human rights risk comprehensively. Simultaneously, companies struggle to vet the HRIA they commission, lacking familiarity with human rights instruments and standards of adequacy that practitioners are increasingly adopting.

7.5. Challenges in proving the added value of HRIA

Companies that have published HRIA are often proud of their achievements. Paladin mentions its HRIA in an annual report. Nevsun has modified how headquarters interacts with the Eritrean workforce, contractors and community. Nevsun has expressed pride in its HRIA

and in the accompanying learning process and understanding, but it cannot easily translate its learning into guidance for other companies. By publishing its HRIA, it is empowering other companies to learn by doing and to benchmark their outcomes against those of Nevsun. Yet the lessons learned by one company are not necessarily effectively imparted to others. Many companies are now issuing policy statements in human rights terms, but practitioners find that these documents may ring hollow until on-the-ground assessment is conducted. When human rights is dissociated from rightsholders, it risks losing its urgency. Class-style training on human rights due diligence cannot demonstrate the effectiveness of an HRIA.

Sometimes an HRIA itself cannot demonstrate the effectiveness of an HRIA. It can be difficult to prove that the mitigation measure 'prevented' a risk from becoming a reality. Effective management strategies can be but a successful human rights due diligence programme has nothing to show for its implementation. As such, HRIA faces an ongoing challenge of proving its relevance.

7.6. Looking forward: involving governments

While companies mull whether HRIA is cost effective, desirable or important, other actors are positioned to move the business and human rights agenda forward. The Guiding Principles are explicit that governments could simplify corporate processes for commissioning and acting upon human rights assessments by mandating that HRIA be conducted (OHCHR, 2011). Governments could also mandate that they be published. A broader public compendium of corporate HRIA would obviate the debate over whether human rights findings should be made public, while simultaneously creating a body of knowledge about HRIA that could be built upon to more firmly establish best practices. This approach has already been effective for the identification and mitigation of environmental impacts (Blumm and Brown, 1990; Caldwell, 1998), and it has made environmental policies the most copied legislation in the world (NEPA, 1969; Rodgers, 1993). HRIA with recommendations that cannot be implemented or processes that excluded rightsholder engagement would cease to hold muster. The Government of Ghana is contemplating such a move, by considering adding human rights standards to its industrial environmental self-reporting protocols. This presents a promising step forward and should be watched closely by practitioners.

Competing interests

As the executive director of NomoGaia, I have been the author or co-author of several assessments included in this analysis. As a practitioner, my natural aim has been to produce the best possible HRIA. While this paper aims to neutrally consider the current state of HRIA practice, there is a risk of bias in evaluating HRIA that do not follow the NomoGaia process.

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8. CONCLUSION

The preceding chapters aimed to present a comprehensive depiction of corporate HRIA in practice. It is an ambitious goal, given the enormity of the global private sector. Our field research and our findings, combined with our time spent in the business and human rights community, have provided us with opportunities to witness the challenges faced by a wide array of stakeholders and rightsholders.

HRIA is improving. HRIA practitioners share a commitment to directly engage rightsholders, promote transparency to ensure that rightsholders, as well as shareholders, are apprised of the risks and remedies associated with corporate investment projects. Practitioners are developing proficiencies in key industries to accompany their human rights expertise, positioning them to understand the interplay between engineering, management, human resources, monitoring and the conditions experienced by workers, communities and marginalised sub-populations.

The business and human rights movement still faces risks, however. A debate has been triggered at the UN over whether the Guiding Principles should be codified in a binding treaty on business and human rights. Practitioners have expressed mixed sentiments on the benefits of binding law. The author of the Guiding Principles himself, among others, has put forth that a treaty might convert HRIA from an exploration of risk-mitigation and community engagement to a compliance issue before it has been fully and properly established (Backer, 2014; Ruggie, 2014). Complexity is the root of human rights and business interactions, and binding standards are blunt tool for parsing detail (Ramalingam, 2014).

There is also a risk of the human rights assessment community fragmenting as different assessors embrace different tools as 'the' tools of choice. Another key is small and medium businesses. Many currently fear that HRIA is too resource intensive for their operations (Aaronson and Higham, 2013). Yet, among published HRIA, many of the most impactful have been conducted on or commissioned by mid-sized companies.

Small and medium enterprises are nimble, open to change and frugal. They are interested in avoiding violations to save money and to build a corporate sense of purpose. In an economy where the mega corporations are vulnerable to economic downturns, these mid-sized companies are valuable partners for human rights advocates. Keeping them engaged is

key to the success of the business and human rights movement, and helping to involve them in human rights due diligence will require the support of governments, civil society and practitioners alike.

Outlook

Governments, in particular, should lead this effort, and some are. Six countries (all in Europe) have produced national action plans on business and human rights (Business & Human Rights Resource Center, N.D.). Canada, the United States and Tanzania are among the countries whose national action plans are in drafting. The United Kingdom (UK), the first country to adopt a national action plan for business and human rights, lays out a clear expectation that UK companies "treat as a legal compliance issue" the risk of causing or contributing to gross human rights abuses and "adopt appropriate due diligence policies to identify, prevent and mitigate human rights risks" as well as monitor their risk mitigation. However, its transparency expectation is limited to "policies, activities and impacts" reported in annual reports. Lacking good examples of corporate human rights due diligence, this plan and the others like it do not set clear guidelines for quality control (Government of UK, 2013). Language from the UK is a strong start, but it has not resulted in the publication of any comprehensive human rights due diligence, in the UK or elsewhere.

Some countries retain a limited scope of considered rights when they discuss business. For example, the US government has placed most of business and human rights under the management of the bureau of Democracy, Labor and Rights (DLR), while the human rights responsibilities of financial institutions remains under the oversight of the Department of Treasury. At DLR, the human rights focus is most particularly on internet freedom, democratisation and labour rights. This leaves little space for consideration of human rights as indivisible and interconnected.

Meanwhile, government involvement in field-based HRIA has been largely positive. The governments of Eritrea, Guatemala, Malawi and Tanzania have read HRIA findings. In several cases they have used those findings to collaborate with companies to improve conditions. In no cases has a company been sued for the contents of its HRIA. This is an encouraging sign of shared human rights effort. It should be promoted. The alternatives to government involvement are likely to be more oriented toward compliance than iterative, dialogical investigation, which, at present, would be pre-emptive. Two initiative in particular

stand out: efforts to create audit mechanisms for human rights due diligence, and efforts to develop a binding UN treaty on business and human rights. The early success of either initiative could convert HRIA into a check-box exercise before it has a chance to fully develop.

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10. CURRICULUM VITAE

PERSONAL DATA

Full name:	Kendyl Ruth Salcito
Nationality:	American (USA)
Address:	1083 South Clarkson Street Denver, CO 80209 USA
Email:	kendylsalcito@gmail.com
Telephone:	+1.303.514.1522
Languages:	French (reading, fluent; writing and speaking, proficient) Spanish (speaking, reading, conversational; writing, beginner) Thai (speaking, beginner)
Present employer:	Swiss Tropical and Public Health Institute / NewFields LLC

EXPERIENCE SUMMARY

Kendyl Salcito specialised in corporate human rights due diligence. Her expertise in business and human rights took root during her days as an investigative reporter in Burma, Indonesia and Canada and was honed as Director and then Executive Director at NomoGaia. NomoGaia is a think tank that develops and implements practical human rights tools for corporate actors, including a blended qualitative-quantitative methodology for human rights impact assessment. This methodology has been published in the peer-reviewed literature and rigorously and successfully tested on capital projects in Africa, Latin America, the Middle-East and South Asia.

Since 2007 she has gained recognition as a leading practitioner of corporate human rights impact assessment (HRIA) for multinational corporations and foreign investors whose operations intersect with local communities in complex ways. She has advised industry groups, non-profit groups and government entities on corporate human rights performance and contributed to the development of the UN's Guiding Principles for Human Rights and Business. She has worked as a consultant to Newfields LLC in the Human Rights Assessment Group since 2008.

Kendyl holds a BA in History from Princeton University and an MA in Journalism from the University of British Columbia. Her reporting has won numerous awards including the Newspaper Guild's David S. Barr Award for social justice reporting. She has been associated with the research organization CO_2 Scorecard since 2009 as a policy analyst and climate change reporter, for which she has been cited in the New York Times, Washington Post, Associated Press and elsewhere. Her PhD in Epidemiology and Public Health from the Swiss Tropical and Public Health Institute (Dissertation topic *Rights incorporated: integrating human rights impact assessment into global business practices*) is expected September 2014.

Human Rights Impact and Risk Assessments

- *Major Mining Company* Potential Mine Development — Caribbean Country
- *Disi Water Conveyance Project* funded by EIB/OPIC — Amman, Jordan
- *Thaton power station refurbishment* funded by World Bank — Mon State, Myanmar
- *Major Mining Company* Potential Mine Expansion — Southeast Asian Country

- *Major Oil/Gas Operator* Risk Assessment Potential Operations (Lead Author) Myanmar
- *Mining Project* Major multinational company (Lead Author) MENA Country
- *Paladin Energy* Kayelekera Uranium Mine (Lead Author) Karonga, Malawi
- *Green Resources* Uchindile Tree Farm (Lead Author) Iringa, Tanzania
- *Dole Fresh Fruit* El Muelle Pineapple Plantation (Lead Author) San Carlos, Costa Rica
- *OZ Minerals* Martabe Gold Mine Sumatra, Indonesia
- *Tullow Oil* Block Two Development – Risk Assessment (Lead Author) Hoima, Uganda
- *GAMA/GE* Disi Water Conveyance Project - Ongoing Amman, Jordan
- *Citadel Capital* Egyptian Refining Company Oil Refinery – Postponed Cairo, Egypt

Human Rights Assessment Tools and Research

- Develop human rights impact and risk assessment tools for corporate capital projects
- Develop human rights impact and risk assessment tools for financial sector investments
- Design, plan, manage and conduct human rights impact assessments
- Provide input to national, NGO, and corporate stakeholders on business & human rights
- Write and edit releases on public monitoring and evaluation for climate change, health & rights
- Report on human trafficking, poverty, health issues, gay rights, political protests, interviewed political imprisonment, press freedom and climate change

PROFESSIONAL EXPERIENCE

2010 - Present Executive Director, **NomoGaia**, Denver, CO
2008 - Present Human Rights Assessor, **Newfields** LLC, Denver, CO / Global
2011 - Present Environmental Policy Writer and Editor, **CO_2Scorecard,** Washington, DC
2008 - 2010 Director, **NomoGaia**, Denver, CO
2007 Researcher, Reporter, **Newsweek,** New York, NY / Rangoon (Yangon), Burma
2006 - 2007 Staff Writer, **The Tyee**, Vancouver, BC
2005 - 2007 Acting Editor/Writer, **Journalism Ethics for the Global Citizen**, Vancouver, BC
2004 - 2005 Program Director/Non-profit Coordinator, **CMRCA**, Chiang Mai, Thailand

RECENT PUBLICATIONS

2015 Experience and lessons from health impact assessment for human rights impact assessment. BMC International Health and Human Rights. Volume 15:24. http://www.biomedcentral.com/1472-698X/15/24

2015 Corporate human rights commitments and the psychology of human rights duties: a multi-industry analysis. International Journal of Human Rights. Volume 19;6: 673-696. http://dx.doi.org/10.1080/13642987.2015.1029284

2014 Multinational corporations and infectious disease: embracing human rights management techniques. Journal of Infectious Diseases of Poverty. Volume 4; 39. http://dx.doi:10.1186/2049-9957-3-39

2014 Assessing corporate project impacts in changeable contexts: A human rights perspective. Environmental Impact Assessment Review. Volume 47; 36-46. http://dx.doi.org/10.1016/j.eiar.2014.03.004

2013 Business and Human Rights: Due Diligence Comes of Age. Economia & Management Volume 6, 2013. http://economiaemanagement.corriere.it/dynuni/dyn/La%20Rivista/Articoli/2013/EM1306-MONDO.jhtml

2013 Assessing human rights impacts in corporate development projects. Environmental Impact Assessment Review. Volume 42; 39-50. http://dx.doi.org/10.1016/j.eiar.2013.03.002

RECENT PRESENTATIONS AND LECTURES

2015 **Expert Panel on Pregnancy-Related Depression** – Developing effective messaging for low-income mothers affected by PRD (Denver, Colorado)

2015 **University of Denver Sie Center for International Security and Diplomacy** – Workshop on multi-stakeholder initiatives

2014 **UNICEF, Mining Association of Canada** – Workshop on rights-respectful engagement of children and youth (Toronto, Canada)

2014 **American University School of International Service (SIS)** – Practicum on human rights impacts of infrastructure projects, examining water conveyance mechanisms in Jordan (in collaboration with Professor John Richardson)

2014 **Tanzanian Commission on Human Rights and Good Governance (CHRAGG)** training on conducting corporate human rights impact assessment.

2014 **U.S. Department of State** – Government Procurement & Human Rights Workshop

2013 **U.S. Congress** – Human Rights and the World Bank - a U.S. House of Representatives Tom Lantos Human Rights Commission event

University of Denver – Human Rights Impact Assessment as applied in Myanmar (Professor Tricia Olsen, undergraduate class Business Ethics & Social Responsibility)

2013 **UNICEF**, integrating the Children's Rights in Business Principles into HRIA

2013 **World Bank** – Integrating field-based human rights due diligence into the Land Governance Assessment Framework (LGAF)

2013 **University of Colorado School of Public Health** – Community Health Assessment, North Aurora (lectures, presentations and a publication of findings)

2012 **World Bank and United Nations** Seminar on Human Rights Impact Assessments and Other Forms of Analysis in Development Policy and Operations – Human Rights Impact Assessment: Key Components and Value Added

2012 **World Bank –** Large Scale Land Acquisitions: a Human Rights Framework for Mitigating Impacts

EDUCATION:

Swiss Tropical and Public Health Institute, PhD Candidate – Epidemiology September 2014

Dissertation: *Human Rights Impact Assessments: An Integrated Approach to Corporate Impacts in Capital-Intensive Projects*

Johns Hopkins Bloomberg School of Public Health August 2011

Basic Epidemiology, Biostatistics, and data gathering coursework

University of British Columbia, Master of Journalism June 2007

Thesis: *Tall Tailings: Truth and Friction in the Buyat Mining Scandal* – investigating and analysing the human rights allegations against Newmont Mining.

Princeton University, Bachelor of Arts June 2004

Université de Nantes, Cours d'Histoire 2002

CERTIFICATES:

United Nations, Basic and Advanced Security Test – Certificates 1 and 2 January 2014