



Human Rights Risk Assessment: A Practitioners Guide

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

Acronyms

BTEX	Refers to the chemicals benzene, toluene, ethylbenzene and xylene – petroleum product compounds
CSO	Civil Society Organization
EPO	Equatorial Palm Oil
HRDD	Human Rights Due Diligence
HRIA	Human Rights Impact Assessment
HRRR	Human Rights Risk Assessment
NGO	Non-Governmental Organization
PCBs	Polychlorinated biphenyl, used as a dielectric fluid on old power plants
TPH	Total Petroleum Hydrocarbons

Summary

Human Rights Due Diligence (HRDD) is an umbrella term for a range of investigative techniques employed by companies to identify ways their operations may adversely affect human rights.

Different tools are appropriate for different industries, contexts and business relationships. The one presented here, Human Rights Risk Assessment (HRRRA) is designed to evaluate risks to human rights posed by business relationships with:

- Suppliers
- Borrowers
- Subsidiaries

HRRRA's main characteristics are:

- It is less time & cost-intensive than full HRIA
- It is more in-depth and accurate than desk-based reviews of policies and literature
- It is best suited for operations of moderate size, located in challenging contexts
- It can serve as a stand-alone assessment or as an early element of an HRIA, depending on the assessment's findings and the client's needs

This guide overviews the methodology for HRRRA and offers guidance for companies seeking to commission one on matters such as:

- Selecting a competent consultant
- Scoping the HRRRA appropriately
- Using the findings to safeguard both the company and human rights
- Evaluating the quality and adequacy of the HRRRA provided by a consultant

An Introduction to Human Rights Risk Assessment

This publication is meant explain Human Rights Risk Assessment and serve as a “how to” guide. It assumes that the reader is familiar with human rights generally and with the business and human rights literature, which has the UN Guiding Principles on Business and Human Rights (the “UN Guiding Principles”) at its core.ⁱ This Guide also assumes that the reader is a social research professional with an interest in performing human rights risk assessment, or someone with a deep interest in how they are performed and how they work.

What is a Human Rights Risk Assessment?

Human Rights Risk Assessment (“HRRRA”) is an investigation and analysis that determines the human rights risks presented by a business operation. The object of the analysis is a single business operation, such as a factory, mine, plantation or pipeline. “Risk” refers both to the likelihood that human rights will be negatively affected and the magnitude of the human rights impact.

For HRRAs, the organizing principle, and the standards used, are the internationally recognized human rights themselves.ⁱⁱ Using human rights as a guide opens up powerful insights into what really matters to people – what drives them to violently protest a project, or embrace it. Making use of the accumulated wisdom embedded in human rights is called “using the *human rights lens*,” which is useful for both investigation and for analysis. HRRAs use the human rights lens.

How (and Why) is it Distinct from Other Corporate Risk Management Procedures

Scholars have proposed that companies might integrate HRDD into existing corporate risk management processes, to reduce the risk of redundancy and to ensure that human rights findings are internalized by a company and incorporated into decision making protocols.ⁱⁱⁱ The HRRRA methodology presented here does, indeed, build on knowledge accrued through existing risk identification and management processes used by companies.

However, human rights is a lens for viewing potential risks, not a protocol. As such, it is necessarily a stand-alone process at the outset, but its findings can be incorporated into risk management structures once risks have been flagged. Instead, it reviews existing risk management structures from the novel perspective of potential rightsholders. This fills a gap in corporate internalization of social risk, which has hindered corporate social and human rights risk identification in the past.^{iv}

Who does an HRRRA Assist?

An HRRRA is useful whenever there is a need to know the human rights risks related to a business operation. The HRRRA can be performed by consultants or internal staff on behalf of a company, a government, a community, an NGO or other interested party. It can also be performed by research and public policy institutions on behalf of an interested public. This guide focuses on HRRRAs commissioned by companies.^v The reason for this is that corporate actors have both a vested interest in understanding human rights risks, which generate business risks, and also a strong tendency towards opacity.^{vi} Corporate risk assessment processes are generally confidential documents, and corporate human rights investigation is considered particularly sensitive. As such, there is a striking dearth of publicly available literature and case studies on corporate human rights risk identification from the corporate viewpoint. Activist and NGO reports of corporate human rights risks are increasingly common in the public domain, triggering corporate action through external, public pressure. In contrast, this Guide aims to present a style of HRRRA that triggers corporate action through internal processes.

In nearly all situations, there are three actors involved in the commissioning and reviewing of HRIA: (1) a **“Company,”** which owns or operates (2) an **“Operation,”** which is the subject of scrutiny, and (3) an **“Interested Party,”** which has cause to scrutinize that operation. This is the case both for corporate-driven HRRRAs and for community- or government-driven HRRRAs. The HRRRA is addressed to the Interested Party.

Sometimes a company needs to know the human rights risks of its own operation or another company’s, for example when:

- A company is conducting due diligence for the acquisition of, or merger with, a target company;
- A bank is considering making a loan to a borrower, particularly a project finance loan;
- An insurance company is underwriting a policy, particularly of political risk insurance;
- A company is deciding whether to certify a supplier as an approved member of its supply chain;
- An investor is seeking further information on a company’s operations; or
- A corporate headquarters is commencing basic human rights due diligence on the operations of its own company.
- A private bank, multilateral or national development financial institution or national credit agency needs to determine whether to make a loan or provide political risk insurance.

A company’s human rights due diligence process should be commensurate with the planned activity. In all of the cases above, companies should consider whether a full-scale HRIA is necessary, a desk-based review is sufficient, or an intermediate approach is appropriate.

How the HRRRA is Used

An HRRRA is specifically focused on identifying particularly salient, adverse effects. Interested Parties commission HRRRAs to meet their corporate responsibilities and fulfill their policies, which are not identical across industries, investments and supply chains.

The HRRRA report is used by the Interested Party as an input into its decision processes. The HRRRA is strictly a human rights analysis and does not make recommendations about business decisions, such as whether a company should be certified as a supplier or whether a project should receive a loan. Similarly, non-corporate HRRRAs do that recommend policy actions or whether to oppose a corporate project. It is up to the Interested Party to evaluate the HRRRA’s conclusion as they are relevant to its decision, based on its own values, judgment and risk tolerance.

In some cases, the results of the HRRAs will be so clear that the business decision is easy. An HRRAs may identify grave human rights concerns that imperil the Interested Party's reputation. In contrast, an entirely exculpatory HRRAs will indicate that, from a human rights standpoint, the project should clearly move forward. The Interested Party can then act in accordance with those findings and with its analysis as a whole. In many cases the results of the HRRAs will be mixed, for example the human rights risks identified, but their magnitude limited.

Sometimes the HRRAs will not be the end of the process. An HRRAs can be presented to the Company, which may have the time and incentive^{vii} to make an effort to fix the problems identified, materially reduce the human rights risk, and then reapply for the loan after the risk has been mitigated. In those cases, the human rights assessor may be kept on to assist the Company with the remedial actions or asked to return to reassess the Operation after changes have been made. For a non-corporate HRRAs, the final report may lead the decision to do a more in-depth analysis, such as a human rights impact assessment or to return to monitor the situation in the future.

Who Performs HRRAs?

As noted above, HRRAs is performed by an individual external to the operation under assessment. Corporate HRRAs is usually performed by an outside consultant. This is because few companies have in-house personnel with the specific expertise needed to effectively apply the human rights lens. Also, the analysis must be objective – unbiased and uninfluenced by loyalty to the Company or its personnel. In cases where a company actually has human rights expertise on staff, it is still appropriate to use an outside consultant for HRRAs, because internal corporate pressures might undermine internal reports, while the reports of an outside party can be more effectively leveraged by in-house social and human rights personnel. Non-corporate HRRAs can be performed by a consultant from a firm, or may be performed by a researcher from a public or non-profit institution. In any case, the expert assessor should be independent from the Interested Party. We will refer below to the experts performing the HRRAs as the “**Assessors.**”

The Assessors are selected by the Interested Party. Depending on the specifics of the situation, in a corporate-driven HRRAs, the Company may have the right to consent to the Assessors being hired, paying for the HRRAs while the Interested Party contracts and directs the Assessors. The assessors are given direction as to the needs and goals of the Interested Party for the assessment. However, it is important to give the Assessors leeway to uncover human rights problems that may not be known or suspected. One of the benefits of the human rights lens is that it allows for human rights problems to be uncovered, even if they have not otherwise been reported or have not yet matured into organized complaints.

Content of the HRRAs Report

The HRRAs report is intended to be relative short, understandable and readily usable by the Interested Party. It is not to be a lengthy dissertation on the operation's human rights situation. Human rights are complex, and excessive detail creates the potential for long documents inaccessible to the lay, reader, no matter how educated, knowledgeable and patient. An HRRAs is not a comprehensive analysis of all human rights impacts, positive and negative. Such a report would be a Human Rights Impact Assessment (“HRIA”). The HRRAs is an order of magnitude shorter than an HRIA. The HRRAs is designed to be practical and targeted--it is not concerned with minutiae or the merely hypothetical. Its goal is to identify clearly and distinctly salient rights risks with a significant probability of occurring. It is a meaningful, evidence-driven *summary* of conclusions of risk.

The HRRAs Report contains a brief description of the Operation and its political, social and economic context. Human rights risks related to a company can occur when a government has failed to respect, protect or fulfill human rights. The existence of such governance gaps are explained.

Human rights risks are reported in detail where they are found to be salient. Reporting identifies the **human rights** at risk, and the corresponding **rightsholders** at risk. The **impact** of the harm arising from the risk is reported, taking into consideration the number of people affected and the degree to which their rights are impacted. The **likelihood** that

the rights will be violated, impeded or curtailed is also reported as a dimension of risk. The cause of the risk and its connection to the Operation are explained.

The HRRAs include risks whose likelihood is certain. These would include actual, ongoing human rights impacts in operations that are up and running, for which no prediction need take place. They also include situations when the national and local context of a planned Operation has attributes that will interact with the operation to generate inevitable human rights risks, such as an ongoing violent conflict with a distinct social group, or an ongoing public health crisis such as an HIV epidemic. HRRAs are designed to identify human rights risks quickly and efficiently. As such, it is not a comprehensive, final or definitive human rights analysis. While, in some situations an HRRAs may contribute to Human Rights Due Diligence as defined by the UN Guiding Principles, it is not designed or intended to completely satisfy that requirement. Human Rights Due Diligence is an ongoing process and, depending on the operation and its context, may require in-depth analysis and operational responses. The HRRAs may be able to initiate or assist Human Rights Due Diligence, but it does not replace it.

Screening: Determining if an HRRAs is Necessary and Appropriate

Prior to commissioning an HRRAs, an Interested Party should have carried out an initial screening process to determine if a human rights investigation is needed for a particular Operation. The content of these processes vary widely. Interested Parties represent an array of business (and societal) interests operating across a range of industries. Manufacturers source from suppliers that provide goods and materials from around the world, which cannot all be vetted at the same level. A manufacturer with a large supplier base may have various questionnaire processes for potential suppliers. Likewise, financial institutions make loans and investments to hundreds or thousands of entities a year, not all of which require

careful vetting. Many banks have a system in which there is a determination if a particular loan or credit creates significant social, political or environmental risks.^{viii} Others look at the strength of the political and economic systems where the Operation is located, as well as political risks associated with the borrower and its owners. An investor, especially a “socially responsible” investor, or a potential acquirer may respond to complaints about a Company’s Operation. Any of these processes amount to a screening process which can conclude that an Operation needs further scrutiny and that this should include a human rights analysis.

While screening processes vary across industries and operations, there are a few fundamental threshold questions which are always relevant when deciding whether an Operation requires an HRRAs. These include:

- Have we evaluated the country context for risks and identified issues of concern?
- Have we evaluated the company for past issues and identified issues of concern?
- Has the industry in question been flagged for issues of concern?

In some cases, a corporate project may be unsuitable for an HRRAs based on the breadth of its scope or the inherent human rights challenges of its context. The consultant can contribute to this analysis once an operation is flagged by an initial screen, determining whether it:

Figure 1 - Phases of HRRAs

- Has a small enough footprint that it can be meaningfully evaluated in 3-5 days of fieldwork (e.g. a factory not a mobile network), and
- Can be visited by assessors without the need for security which would interfere with their work.

For operations with region-wide or nation-wide footprints, sector-wide impact assessments may be a more appropriate entry-point for human rights due diligence. For contexts with conflict risks and other recent histories of gross human rights violations, full human rights impact assessments are more suitable.

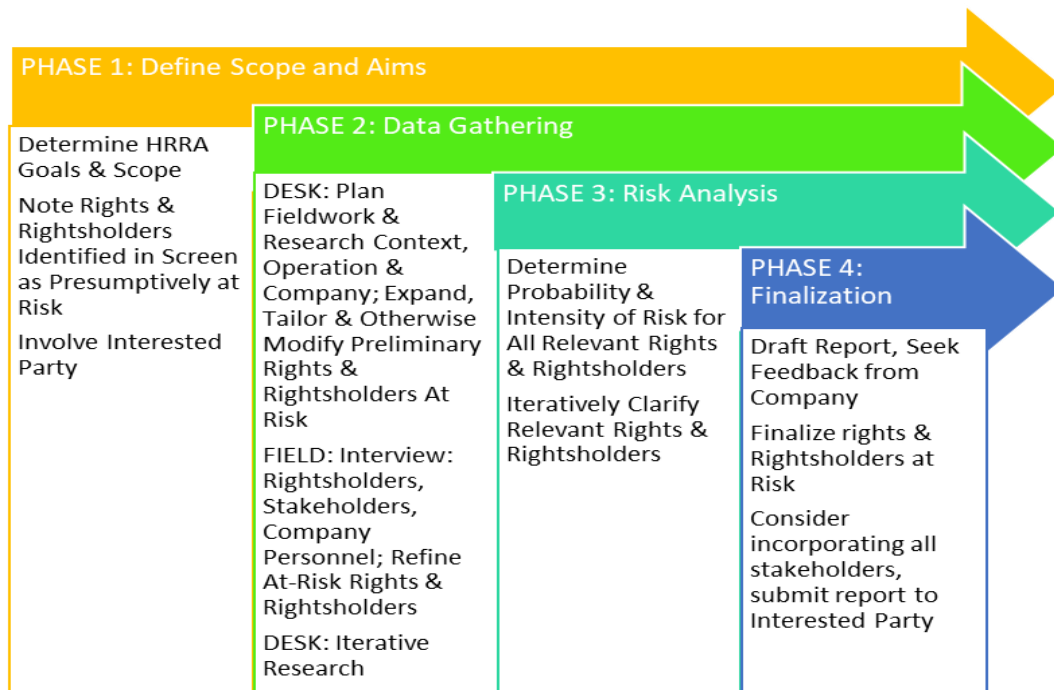


Figure 2 - Phases of HRRRA

HRRRA Methodology

The following is a description of the methodology to be used in preparing an HRRRA. This methodology is a guideline which, naturally and unavoidably, must be tailored to the individual case. This methodology is general, but the example HRRAs summarized in Section III and available online demonstrate its use in practice (www.nomogaia.org/work). HRRRA is performed in the basic phases laid out in the Figure 1.

Phase1: Defining the Scope of the HRRRA

Defining the timing, scope and aims of an HRRRA is essential for targeting the most salient human rights risks of an operation. Interested Parties usually have preexisting concerns about particular human rights issues (child labor in cocoa supply chains, for example), which trigger a decision to conduct an HRRRA. These existing priorities supplement, but do not supplant assessors' fact-finding processes for identifying risks. The Interested Party and Assessor should reach agreement regarding the foreseen breadth of the study.

What is the physical, institutional and human scope of the HRRRA?

Consensus on the breadth of the study will, first of all, include the physical limits of the research. An open pit mine has its own operational footprint, which exists within its area of control (fence line). It also uses transportation corridors for supply and shipments. Additionally, mine workers may be bused in from various other communities. An excessively broad scope for HRRRA dilutes the process and may reduce its value, but an excessively narrow scope can create tunnel vision that limits the assessor's ability to fully see the relevant rights. A legitimate scope for the HRRRA balances those two risks. The Assessor should engage with company management after reviewing essential project documents (maps of the operation, of communities, of worker camps, and summaries of operational activities) to gain a sense of the project parameters.^{ix} This is a crucial decision for an HRRRA. The goal is usually to include the most vital issues and to make the analysis feasible and meaningful.

A second consideration will be the institutional connections (or “business relationships”) which should be considered. This will include the depth of investigation into a Company’s suppliers, production chain, joint ownerships and other business relationships. The factory’s suppliers may present the most salient issues, or they may be best left to other analyses. Political connections and support may taint the entire operation and need be considered, or they can be a distracting sideshow that will waste the efforts of the Assessor. Human Rights Risk Assessors have experience with a diverse range of human rights risks in a broad array of contexts. Their expert judgment will be needed to differentiate the meaningful issues from the distractions.

These rough scoping decisions often work well, but human rights investigation is invariably unpredictable. It is possible that the Assessor will discover that the scoping decisions eliminated issues critical to the HRRRA. In such circumstances, the scoping decisions should be revised if possible, or the deficiency in the HRRRA is noted for management in a subsequent phase of human rights due diligence.

When during the Operations Life Cycle should an HRRRA be performed?

HRRRA can provide meaningful analysis at any point in the life cycle of the business operation under consideration. While impact assessments are normally performed *ex ante*, at the planning and permitting stage, HRRRA can provide value to the Interested Party during planning, in mid operation, and even during closure and remediation. In the midst of operations, HRRRA serves a monitoring function. If an operation is preparing for closure, or an Interested Party is considering ending or altering the relationship, *ex-post* HRRRA can identify risks associated with those changes (as long as the changes are clearly outlined by the relevant parties).

An HRRRA is feasible as soon as a company has an on-the-ground presence at the planned operation or a footprint has been designated (whichever comes first). HRRAs conducted before the essential features of the project are clearly mapped (e.g. during the exploration phase of a potential oil and gas operation) are more speculative than those conducted once project designs are established. However, the

prognostic nature of such early HRRAs can be valuable. Any interactions the company has had with surrounding populations, including through intermediaries (such as impact assessment teams, government military forces, or previous property holders) have bearing on the trajectory of the project’s development and potential human rights risks. In some cases, a company might have no interaction with a local community, but its plans for siting an operation are sufficient to trigger an HRRRA. For example, for a planned factory, knowing the general location where it will be sited may be sufficient to determine human rights risks, even if the exact plot and its final layout have not been determined.

When the features are still speculative the usefulness of an HRRRA is normally reduced, unless an operation is planned to have a phased implementation approach. For example, an oil and gas development in the exploration phase usually does not give sufficient indication of the ultimate location of the production fields and infrastructure, but in certain high-risks contexts (for example, South Sudan, Uganda or Myanmar) it could present sufficient risks as an exploration site to merit an HRRRA. Likewise, a proposed port facility may have negligible human rights impacts as a small feature in an already industrialized zone, however, if there are plans for major expansion, an HRRRA might be merited at the early phase, before a full-scale HRIA might become appropriate.

What are the aims of the HRRRA?

The aim of the HRRRA should be to fulfill the needs of the Interested Party, namely, to function as an input to the Interested Party’s decision-making process. It is essential that the Assessors and the Interested Party clarify this before the HRRRA is begun. It is a waste to have an HRRRA which is valid, well performed, and unused.

When an HRRRA precedes a relationship between an Interested Party and a company, the HRRRA may be an important input into the go or no-go decision on the relationship. This type of HRRRA can be further scoped to focus on pre-identified business risks that are associated with human rights risks. For example, a Company that holds intellectual property desired by

an acquiring company but that also owns a factory in Bangladesh may merit refinement of deal terms if the factory becomes the responsibility of the Interested Party. Some Interested Parties with extremely strong supply chain controls use HRRAs to identify risks that would be beyond their ability to control. For example, Unilever has very strong labor management practices that protect wages, collective bargaining, worker health and harassment risks in their supply chain. However, endemic, industry-wide corruption or local conflict may be beyond the control of management strategies. Other Interested Parties that have a hands-off approach to the company in question will use an HRA to identify the full range of human rights risks associated with the operation.

For non-corporate HRRAs, the goal of the Interested Party may be to follow up on reports of human rights abuses or to determine if long-term, in-depth research is merited.

Phase 2: Data Gathering

Desktop Research: Reviewing the Literature

Scope and aims established, assessors gather an array of data to benchmark local conditions, corporate policies, and past practices against human rights standards. There are three broad sources of risk for a corporate operation: (1) risks inherent in a context, which are difficult to avoid when operating in an affected zone, (2) risks inherent in an industry, which require active management, and (3) risks of weak or misguided management within a company, which ill-equip it to identify or manage risks.

Human rights in context

Human rights experts, agencies and scholars have been tracking human rights indicators at a national level for decades. Country reports from Human Rights Watch and Amnesty International; the US Department of State Human Rights Reports; United Nations Country Mission Reports; ILO Monitoring Reports; and Freedom House Rankings are a subset of leading publishers of human rights data, drawn from verified first-person accounts of rights violations.

In contexts characterized by major human rights risks—such as countries with active or recent conflict, state-sponsored forced labor regimes, endemic

cronyism, and significant infringements on the free press—operations often struggle to extricate themselves from the adverse outcomes resulting from government human rights failings. Such issues pose risks for operations, which are flagged and then investigated in corporate policies and practices.

Corporate human rights policies and practices

Companies establish internal governance mechanisms to standardize business practices across operations. These include codes of conduct, policies and procedures. Many of the governance structures designed to increase efficiency synergistically affect corporate social performance. For example, mechanisms for tracking the purchases of protective gear also ensure that all workers have access to the gear they need, in support of Favorable Working Conditions (Art 7, Covenant on Economic, Social & Cultural Rights). Corporate anti-corruption efforts are designed to protect companies from prosecution under US and UK (and other) laws, but they have the dual effect of reducing the influence of cronyism in corrupt states, and increasing transparency to improve Public Participation for citizens (Art 25, Covenant on Civil & Political Rights). Corporate nondiscrimination policies, rigorously implemented, can reduce the effects of gender-, ethnicity- and race-based discrimination present in a country context. Where these policies are thorough, they can mitigate the risk of corporate complicity in systemic violations of the Freedom from Discrimination (Art 1 and 2, Universal Declaration on Human Rights).

Corporate past (and current) performance

Policies and processes are essential elements of corporate human rights governance, but it is the implementation of those policies that determines actual outcomes. Corporate performance must be considered – both where rights-respectful policies exist and where there are gaps. For example, corporate nondiscrimination policies can be validated by a review of gender- age- and ethnicity-disaggregated payroll data. Health and safety policies can be validated by a review of workplace injury and accident logs. ^x

Voices of opposition

Companies that have been the subject of media reports, activist campaigns and public (legal and

extra-legal) complaints are not necessarily guilty of allegations leveled against them. The existence of such complaints can be indicative either of bad practices or of strong activist involvement in anti-corporate activities. Either of these could generate human rights risks, directly or indirectly.

Field Research: Cross-Checking the Literature & Policies

Fact-based deskwork, described above, combined with a review of allegations faced by the Operation, are used to generate a basic list of human rights and key rightsholders to be evaluated in the field. The human rights identified by desk review as “potentially at risk” guide initial interviews during fieldwork, help to determine which company personnel and stakeholders should be prioritized as interviewees, and give a general sense of which rightsholders are likely to be vulnerable to human rights risks.

However, the purpose of fieldwork is not only to validate desk-based findings, but also to identify (and, to a limited extent, fill) gaps in the documented information.

The duration of fieldwork for an HRRR is brief – often three to five days. In that period, assessors generally engage with roughly 10-15 rightsholders and stakeholders per day. These interviews and group discussions are not standardized, with some lasting three hours and some limited to 10-minute chats with workers or community members as the assessor

observes safety conditions in the work site and asks basic questions about income, family or other topics. A minimum of 30 and an average of 60 stakeholders and rightsholders are engaged during typical fieldwork. This does not comprise a representative sample of communities or company personnel. It is targeted, and assessors present the rationale for the interviews they conducted in the HRRR report, clearly explaining interview gaps where relevant individuals were not engaged (e.g. child laborers, who were credibly alleged to exist but were not encountered by assessors).

Company Interviews

Company personnel are generally an assessor’s first point of contact. A particular department within the Interested Party will have connections within the Company, which will begin the process of Company interviews.

Generally, Company interviews will be focused towards management personnel (employees and contractors are engaged separately through rightsholder engagement). Depending on the established aims and scope of the HRRR, and on the contextual conditions a range of personnel will be appropriate to interview. Several key personnel are shortlisted in Table 1, with brief explanations for the circumstances in which they should be included.

Table 1: Sample Key Company Personnel to Interview

Security Chief	If the operation is in a conflict or post-conflict zone, it may have an internal security department, employ private security, or have standing relationships with local or national security forces. The company lead managing those relationships should be interviewed to gauge the security challenges faced at the operation, from the scale and scope of theft, to the frequency and intensity of site invasions and blockades, to any violence occurring at or near the operation.
HR Manager	Hiring is often a space where workforce discrimination risks surface, frequently reflecting “structural discrimination” endemic within a society (Pincus, 1996) ^{xi} . Additionally, HR managers are often a key point of contact to validate or refute allegations of wrongful dismissal. They can provide gender, age and ethnicity-disaggregated wage data, copies of collective bargaining agreements, and key insights on hiring and retention challenges.
Operations Manager	Operations managers often know what kinds of inefficiencies are plaguing their operation. Those inefficiencies are often linked to real or perceived human rights issues.
Community Relations Manager	A company’s corporate social responsibility (CSR) program often serves as the point of contact for community complaints. The CSR manager is generally familiar with the type and frequency of complaints, the efforts made by the company to address those complaints and the budget allocated to those issues. Assessors can request grievance logs, CSR strategy documents, and community investment records from these individuals.
Environmental & Health Managers	Operations with environmental impacts (e.g. agriculture projects, extractive projects, many manufacturing facilities, shipping and transportation entities, and construction/infrastructure projects) generally have a unique environmental department to oversee environmental risks. Often this department doubles as an occupational health and safety (OHS) department, overseeing distribution of protective gear, managing health screenings, and logging workplace incidents. These individuals generally know what environmental parameters are of concern (and they often know whether community complaints align with their scientific findings). They also often have reports monitoring key parameters for air, water and soil quality; protective gear procurement receipts; workplace injury logs; and management strategies used to tackle environmental and workplace health issues.

Stakeholder Engagement

Stakeholders outside of the company provide expertise and contextual knowledge, which can be used to substantiate or challenge company statements. A non-comprehensive list of stakeholders potentially relevant is below in Table 2.

Table 2: Stakeholders to Interview

Community leaders	Community leaders are often essential gatekeepers for accessing rightsholders and should be engaged out of respect for existing power structures. Additionally, they may provide important (but potentially biased) insight on community relations with the company. In some places they are often arbiters of land allocation and land disputes, which is particularly relevant if a company is procuring or has procured land for operations.
Union leaders	Both the company and the union perspectives on workforce relationships are essential for understanding nuances in labor rights challenges that are not often clearly articulated by employee rightsholders. Union leaders can describe challenges with unionization, including issues with high rates of subcontracting, limitations on contracts, and other forms of intimidation or union competition.
NGOs, Inter-Governmental Organizations & Civil Society Organizations	Nongovernmental Organizations (NGOs) and civil society organizations (CSOs) can be among the strongest advocates for communities affected by corporate operations, and some of them have longstanding history with a community to be able to describe evolving and changing interactions with the company over time. These individuals are not neutral observers, so their perspective is to be triangulated by community leaders, rightsholders and company personnel. One of their most important functions is to help clarify the level of frustration within a community with regard to a company (whether legitimate or fomented by activist involvement). Any data NGOs have available about problems with the company or protest actions against it should be requested.
Government personnel	Government personnel include local and/or regional authorities, as well as educators and clinicians staffing local institutions. Authorities can provide context into the relationship between the company and government. Clinicians and educators can provide perspective on local communities, as well as data on school enrollment and retention rates (if the company is contributing to workforce immigration that severely impacts student-teacher ratios) and frequent health concerns (particularly if any are considered to have relation to company operations – either workplace injuries being treated locally or perceived soil or water impacts affecting health).
Religious leaders	Religious leaders can be strongly influential in some cultures, serving as moral authorities and community experts. They may have close personal relationships with residents, including the vulnerable. They also may act as gatekeepers for accessing rightsholders.
Community groups	Community associations include farming coops, women’s groups, and communal initiatives for managing traditional rites. These groups contribute to social cohesion, and their members can describe any changes in social conditions they view as associated with company operations.

Rightsholder Engagement

A fundamental difference between human rights assessment and other established forms of social assessment is the attention to “rightsholders.” Rightsholders are found within a company’s workforce and supply chain, and within the communities surrounding, downstream of, and along transportation corridors of an operation. These are common spaces for identifying “stakeholders” for an operation, but rightsholder engagement identifies different interviewees from among these populations. These individuals are a subset of stakeholders, characterized by their vulnerability to human rights impacts. People in leadership positions, including company managers, religious or traditional authorities, or activists, are often essential to engage as stakeholders, but that engagement is no substitute for engaging with the rightsholders themselves.

Sampling processes

Given an HRRRA’s focus on risks to rights, vulnerable rightsholders are the key informant group. Frequently identified vulnerable populations – the elderly; the widowed or unwed parents (generally mothers); the children and youth; the ethnic, racial, or religious minorities – are targeted in tailored discussion guides. As communities reveal more complex systems of marginalization, discussion guides are modified to account for uniquely vulnerable populations. For example, in clan-based cultures, there may be a particular clan with strained relations with leaders, which results in their disempowerment from group decisions.

Rightsholder sampling is targeted rather than representative. The aim is to achieve the most holistic understanding of vulnerability possible in a short period of time. For this reason, “snowball” sampling is often employed, building on reports from community stakeholder interviews and early rightsholder interviews (Biernacki and Waldorf, 1981).^{xii}

Interview processes

HRRRA rightsholder engagement is guided by semi-structured discussion guides, which start with general questions about the experiences of workers and community members with regard to the company. Discussions develop and shift throughout fieldwork to

better incorporate issues that arise in the course of interviews.

Engagement methods: interviews, focus groups, small groups, surveys

Human rights engagement is deliberately designed to seem informal to interviewees. An essential element of the process is setting interviewees at ease to talk about difficult topics pertaining to their perceived sense of human dignity (Lee and Renzetti, 1990).^{xiii} Interviewers use professional discretion to determine whether certain topics should be discussed in groups or in one-on-one interviews.

Small group discussions are often preferred by employee rightsholders, as workers can be emboldened to speak out if their colleagues share similar views. Conversely, if retaliation is a major risk, workers may prefer one-on-one interviews.

Women in some cultures prefer group discussions to one-on-one interviews, particularly if the interviewer is foreign and women occupy social positions where they rarely interact with outsiders. For some women’s issues, however, privacy is essential. For example, if a company is facing sexual abuse allegations, women will need complete privacy and assured confidentiality to share information.

Direct observation

Assessors can often validate or invalidate claims made by stakeholders, rightsholders and company personnel through direct observation. For example, corporate policies requiring all workers to wear protective gear can be easily spot checked by watching workers carry out tasks, either with appropriate protection or without. Company contributions to local communities can be directly observed through visits to company-supported facilities and interviews with personnel. These visits serve to verify both the existence of the facility and its functionality. For example, clinics may not be properly stocked or staffed, borehole water pumps may not be operative, housing may not meet hygiene standards, environmental controls may not be effectively managing erosion, and chemical storage may not be properly protective against seepage and soil contamination. These observations within the

facility, worker spaces and communities are essential and should be documented in photographs wherever possible. Key locations where assessors may make observations include:

- Within worker housing
- Within facilities provided by the company to workers (including medical facilities and cafeterias)
- Within facilities provided by the company to communities (including borehole water pumps, clinics and schools, which may not be functional or staffed)
- Along watersheds downstream from company operations (including employee and jobseeker housing), particularly local water sources for drinking, cleaning and bathing
- At chemical storage facilities
- At water effluent discharge sites
- At core business operations (a site tour hosted by the company is appropriate)

Sample size

Rightsholders, stakeholders and company personnel are interviewed over the course of 3-5 days. Assessors will take notes (and possibly recordings) from 30-90 interviews and observations from the vicinity, which complement or compromise the data gathered during desktop research. The limitations on these sample sizes are noted and considered in the risk assessment phase.

Iterative Desktop Research

Field work inevitably both clarifies desktop research and raises new questions. Field-acquired data may contradict desktop literature for an array of reasons. The most common issues are outdated, oversimplified and biased literature. Such literature still adds value to a report, by exposing gaps.

When literature is outdated

Outdated literature may shed light on key issues, such as a local clinic's failure to collect up-to-date health data, or it may expose a media's outdated reporting. Problems evoked in past research may no longer be relevant. In such a scenario, an assessor may arrive on scene prepared to focus on land tenure issues, only to find that strong agreements have been established with the company governing land use. The reason

may be that the available literature is misleading, or conditions may have changed. Last month's protests may have been genuinely resolved, or last month's media reports may have been a community effort to extract a promise from the company. Alternatively, the currently resolved issue may be the start of a series of expressions of community discontent that are likely to continue and become more extreme.

When literature fails to capture complex sociopolitical and cultural conditions

Just as the absence of land protests may not wholly obviate research on land tenure, various other complex socio-political interactions may require far more scrutiny than desktop review might indicate. These issues, invisible in the desktop research phase, may be urgent. For example, operations that are not required to conduct environmental monitoring activities might have dysfunctional chemical storage processes, which could be damaging local water supply while being completely undocumented. In addition, questions raised in the fieldwork phase may require statistical or other evidence-based validation, which require the assessor to revisit literature.

When local perceptions do not align with available literature

In examples like the one above involving water contamination, an intricate combination of observation, interviewing and data gathering is essential to evaluate whether local fears are justified despite being out of alignment with available literature. Fieldwork includes the acquisition of perceptions and the cross-checking of facts. Community fears of water pollution caused by industrial or agricultural plants can be confirmed or rebutted by water quality data. Fear of increased disease spread (HIV, malaria) caused by in-migration or changes in local water bodies can be checked with public health data. Of course, these facts may also disprove the local beliefs. The absence of relevant data, however, generates human rights risks.

The desktop study, fieldwork and follow up research should all flow together. They are directed toward finding facts and determining rights and rightsholders who may be at risk. These goals accomplished, analysis follows.

Phase 3: Analysis

This phase is directed toward identifying and classifying the magnitude of human rights risks. It begins with the selection of rights at risk and the definition of rightsholder groups potentially affected. As with conventional risk assessment, it culminates with the establishment of a risk score representing both the *likelihood* and the extent of a potential *impact*.^{xiv} Processes for conducting likelihood analysis and impact analysis are elaborated below. These are not akin to standard probability charts, as there is no numeric value associated with human rights risk. Instead, broad categorizations of likelihood and impacts are used. This is partly because human rights risks are not linear, and both the likelihood and severity of a risk can hinge on a confluence of conditions that result from variable conditions within an operation.

Identification of Rights at Risk and Rightsholders Potentially Affected

After returning from the field, findings are organized according to the human rights risks associated with them. This is the beginning of HRRRA preparation.

A high level of human rights proficiency is essential for the data analysis process. Assessors need a strong understanding of the human rights framework to correctly assign identified risks to established human rights. This process is more standardized and automated in a full-scale HRIA, but there is no substitute for expertise in HRRRA.

Human rights are considered in both the scoping and data-gathering phases of HRRRA preparation. During the analysis phase, those considerations are formalized. Pertinent information is sorted and organized by these rights. Each relevant human right is used as a section heading. All facts relevant to that right – interview quotes, company data, social data and assessor imagery – are collected in one place to create a holistic depiction of actual conditions and risks. This is referred to in the sociological literature as “thick description” (Bowen, 2010). Some facts may be relevant to multiple rights and should be included under each. Rights do not exist without rightsholders, so a final step is matching rightsholder groups with

rights. The resulting right-rightsholder match is the basic building block of an HRRRA.

For example, rightsholders (classified as “Residents Using Borehole A”) may have complained about agricultural impacts on ground water, which is being pumped and used as drinking water. The information on where the complaints were sourced (without revealing personal details that would identify the actual complainant(s)), what topics the complaints covered and when the complaints first arose are all relevant. Factors for the assessor to consider and detail could include:

- If (and when) the water looked or tasted different.
- What the claimed health effects are.
- If there is water quality and public health data, which could be used to tie discharges from an industrial plant to health outcomes (e.g. chemicals which could only come the plant are in the drinking water in levels that could cause illness, and that such an illness is identified at a higher than normal rate in the population drinking the water).
- If, in the absence of data, the presence of a reasonable risk exists (i.e. there is no data that could dismiss an industrial plant as a possible source of water contamination).
- If data nullifies the possibility of a connection between the industrial plant and the health outcome (e.g. if there is no hydrological connection between the plant effluent and the aquifer from which the population gets its drinking water).

In all cases except the last, there is sufficient cause to include the right to health and the right to a clean environment as rights at risk. Likewise, the “Residents Using Borehole A” should be designated as at-risk rightsholders.

Once the assessor has performed this analysis, she can readily see that the same fact pattern implicates a second right: the right to a clean environment. All of the facts stated above are then included under the section heading “Right to a clean environment.” This yields two elemental HRRRA building blocks: 1) Right to health for Residents Using Borehole A and 2) Right to

a clean environment for Residents using Borehole A. The risk analysis described below would apply to each.

Rating Human Rights Risks: Impacts and Likelihood as Inputs to Risk

Risk analysis is an evaluation of an operations potential to infringe human rights. Risk is a resultant of two factors: 1) the *Likelihood* of a particular adverse human rights outcome, and 2) the *Impact* of that outcome.

Likelihood

Likelihood is determined by the level (kind, quantity and quality) of evidence that the risk is at or approaching fruition. Likelihood is rated on a four-tiered scale from certain to uncertain, according to the table below:

Table 3 - Tiers of Likelihood

Likelihood
Certain
Highly Likely
Likely
Possible

Because risk evaluation is inherently prognostic, most risks fall into a range of likelihood. The exception is risks that have already become impacts, which have a likelihood of “certain,” as they have already occurred and generated adverse human rights impacts. There are, of course, risks that are varying levels of “unlikely.” The majority of these are generally unhelpful in advancing the goals of HRRRA and so do not end up in the final risk analysis. For all other likelihood levels, data is evaluated for its level of legitimacy, using sociological frameworks for authority and consensus to drive determinations (Brown, 2014).^{xv} Under social theory, the legitimacy of a risk hinges on the breadth to which it is agreed upon and the authority of the risk identifier. In lay terms, this results in three processes for evaluating data:

- By type and quality (Authority), with routinely collected scientific data holding the highest authority, followed by formally logged issues that are not scientifically based (e.g. accident report

logs or clinic patient admission logs), followed by unsubstantiated claims problems

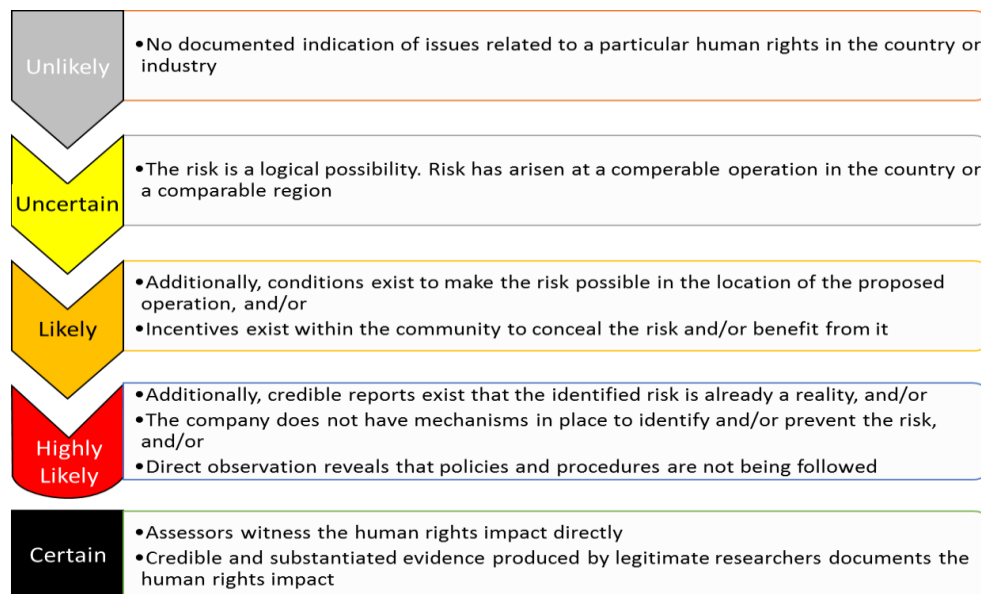
- By intra-party triangulation (Consensus), such as verification that a policy as written is implemented in practice by direct observation and interviews of employees, or verification that wage rates are below reported levels through interviews with management personnel as well as workers
- By inter-party triangulation (Consensus), such as the frequency of the same claim surfacing in various communities

Impact found to be uncertain after its initial discovery may well turn out to be valid after further investigation. Often, verifying identified risks goes beyond the scope of an HRRRA. However, it is important to include uncertain risks in cases where they would have grave impacts if they became realities. Also, the identification of numerous risks can potentially indicate the presence of systemic shortcomings. In the financial sector, this is referred to the “aggregate effect” of errors, which renders small misstatements material when they are considered in sum (SEC Accounting Standards, Definition of Significant Deficiencies, 2007).

Likelihood is not evaluated using classical probability theory, because fundamental parameters are not mathematical or knowable. Unlike evaluating the chance of drawing a particular hand in a particular game of poker, there are incalculable odds associated with evaluating the chance of a peaceful protest being violently dispersed. The error of attempting to correlate practical analysis of risk to the unpredictable behaviors of humans is known as the “ludic fallacy” (Taleb, 2004 and 2007. Nafday (2009) has more recently applied the theory to engineering management, examining the human idiosyncrasies that hinder identification of risk factors, and management strategies to cope with the potential for hard-to-predict but large-impact events. In line with Nafday’s strategies, determining a risk’s level of likelihood involves a broad analysis of contextual and operational conditions. Although it is not necessarily a linear process, it is generally a chain of reactions that creates the most severe outcomes. As such, there are some step-by-step considerations that can be made, as outlined below.

- A risk shifts from unlikely to uncertain if it has become a reality at a comparable operation in a comparable region or country. Comparability of operation includes size (e.g. number of megawatts produced, number of hectares of land occupied), type (e.g. run-of-river hydropower plant), and implementation approach (e.g. build-operate-transfer). Comparability of region includes landscape (e.g. topography and soil quality), economic conditions (e.g. local/national GDP), political structures (e.g. limited democracy), and stability (e.g. recent history of conflict). It may also include proximity, if neighboring countries share similar characteristics. This is the case, for example, in several post-soviet states and several southeast-Asian states.
- It shifts from uncertain to likely if additional conditions exist locally, within the district or neighborhood where the operation is proposed, to make the risk more probable. Local land uses (e.g. presence of agricultural or herding communities), conflict history, environmental management history, and social divisions are among these relevant local conditions. From a labor standpoint, local conditions might be climatic, resulting in, for example, increased risk of heat stroke for agricultural laborers, or risk of repetitive-motion injury for laborers conducting particular tasks. Additionally, incentives within a community to permit the rights violation boost the likelihood of a risk (e.g. education quality is poor and incomes are low, incentivizing parents to use children for field labor).
- It shifts from likely to highly likely if those existing conditions are compounded by credible reports of the risk that cannot be meaningfully refuted by the company. In essence, a company is expected to have detailed management strategies for risks common to particular operation types in particular contexts (e.g. child labor management strategies for cocoa producers, forced labor management strategies for sugar producers, environmental control strategies for extractive operations, corruption control strategies for operations in opaque or authoritarian contexts). If such management strategies are absent, and conditions for a risk are present, the risk increases in likelihood. In cases where management strategies exist but are not being visibly implemented, the risk remains highly likely (e.g. direct observation of adverse conditions, such as unhygienic living quarters or unsafe chemical storage, regardless of what protocols exist on paper).
- A risk is certain if it is documented as already ongoing, and that documentation cannot be credibly refuted. Certainty is not built of conditions of increasing likelihood, but rather is independently verifiable.

Figure 3 - Degrees of Likelihood



Examples of each likelihood level are provided in Error! Reference source not found.. These examples are drawn from actual HRRAs but are not holistically representative. The categories of likelihood are broad and imprecise. No probability analysis is conducted in determining likelihood.

Table 4 – Sample Likelihood Ratings

<p>Certain: At the <i>Liberian EPO palm oil operation</i>, past violations of the Right to Property were certain, validated through a successful complaint to the Roundtable on Sustainable Palm Oil and the company’s admission of failures in past years.</p>
<p>Highly Likely: At the <i>World Bank-funded Thaton Power Plant in Myanmar</i>, risks to the Right to a Clean Environment and Health were highly likely, resulting from decades of inadequate environmental management at the brownfields site, which had not been accounted for in construction plans for the proposed power plant upgrade. The adverse environmental risks were compounded with likely health risks by the fact that rice farmers lived downslope from the power plant, with fields less than one kilometer from the power plant fence line.</p>
<p>Likely: Risks to the Freedom from State Interference in Private Life at <i>Tullow’s Uganda oil and gas operations</i> was found to be likely, because state forces had participated in the evictions of two homeowners already, creating perceived insecurity about daily life, but the need for additional resettlement was unclear. Likewise, the state had supported 3-D seismic surveys which damaged private property (primarily crops), but future comparable impacts were not highly likely.</p>
<p>Uncertain: As noted in the “Sample Impacts” table, the <i>Disi water conveyance project in Jordan</i> was expected to have a moderate impact on health. The health risks hinged substantially on the certainty of water consumption over a long duration. As there was uncertainty about the quantity of water available in the Disi aquifer, the risks of long-term exposure to radiation are considered uncertain.</p>

Impact

The impact of an outcome is denoted by its *intensity* (the gravity of impact for each affected rightsholder, including the reversibility of impact) and *extent* (number of rightsholders and degree of corporate complicity). Impact is rated on a five-point scale, ranging from extreme to variable, and color-coded according to the table below:

Table 5 - Tiers of Impact

Impact
Extreme
Very High
High
Medium
Variable

Intensity of impact hinges on the gravity of harm experienced by rightsholders. While it must be acknowledged that some human rights can be violated to a greater extent than others (i.e. the worst possible outcome associated with violations of the right to holidays with pay is the fairly mundane outcome of underpaid employment), intensity of a potential impact does not prioritize some rights over others. For example, security of person and the right to a clean environment do not have an established order of prioritization. As such, extrajudicial killings by security forces can be more intense than some forms of environmental degradation, but poisoning a primary drinking water source can be more intense than nonviolent intimidation tactics by security forces.

The United Nations has invested substantial time and resources to define the gradations of impacts on various rights, which are employed by human rights experts conducting HRRAs. For example, violations of the freedom from child labor range from low-severity employment of teens in non-hazardous work for limited hours (e.g. harvesting vegetables after school hours) to young child labor in hazardous conditions that make attending school, getting proper sleep, and staying safe and healthy difficult or impossible (e.g. rock-breaking for road base gravel carried out 14

hours per day). The most extreme forms of child labor involve forced labor in hazardous conditions for excessive work hours. Likewise, violations of the right to public participation exist on a spectrum. Violations can be fairly limited, when, for example, accountability and transparency of public officials are curtailed. They become more substantial when power delegated to elected officials is coopted by special interests, reducing public participation to tokenism. Violations of public participation are extreme when no voting is permitted, voting processes are manipulated, or violent intimidation prevents opposition from holding meaningful campaigns (UNESCO, 1997; Arnstein, 2006).¹

Extent of impact, including the number of rightsholders impacted, is not a designated number or percentage, but rather it varies according to how many affected rightsholders exist within a certain subgroup of rightsholders. For example, if only four pregnant women's rights are at risk as a result of workplace exposure to mercury fumes, but there are only five pregnant women in the workforce, the risk has a very high (verging on extreme) 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 high, even though it is not a majority (Salcito et al, 2013).^{xvi}

Finally, reversibility of impact is taken into account when considering intensity. For example, there is a difference in severity between poisoning one well for one week and poisoning a major river forever, as there is between injury someone's leg and making them lame for life.

The calculus of combining intensity and extent considers the geography of those affected for each. For example, air pollution may be concentrated in a particular zone, while other zones experience progressively less affect. The intensity is combined with extent for each zone, distinguishing the most affected rightsholders from the less affected ones.

In defining impact, HRRRA prioritizes the correct identification of likelihood over the most extreme level of potential impact. With human rights risks, there is always the possibility that compounding human rights risks generate catastrophic adverse impacts. The impact identified in HRRRA is the first point of potential risk generation at a given level of likelihood. From that point, the impact extends outward as a ray; the ultimate outcome could be substantially more severe than the initial risk identified. For example, in a workforce camp where hygiene conditions are poor, the risk combines the *certain* likelihood that conditions are unhygienic and the associated impact of waterborne and fecal-oral illness spread. It does not extend to consider the (potential but intangible) impact of a cholera outbreak, unless a cholera outbreak has already occurred in the area.

The five levels of impact are intended to be general categories. They are not intended to include fine distinctions, but are rough general statements. All the levels are relative to the size of the Operation and the affected population.

- An impact is registered as **present** (variable) if the assessor cannot identify a legitimate reason to consider the right unaffected. In essence, HRRRA begins with the premise that all human rights listed in core human rights instruments may be impacted. Starting from that assumption, assessors strike rights from the scope of investigation by scanning for issues during literature review and fieldwork. Detailed processes for identifying rights at risk are presented in HRIA methodologies. In HRRRA, a variable impact simply denotes that the assessment process flagged a right as potentially relevant.
- An impact shifts from variable to **moderate** when assessors identify a specific rightsholder group that is demonstrably at risk of experiencing the identified human rights impact. For instance, a variable risk of health impacts for residents downstream from a power plant becomes a

¹ Arnstein, Sherry R. "A Ladder of Citizen Participation," JAIP, Vol. 35, No. 4, July 1969. UNESCO [Link](#)

moderate risk if assessors identify a farming population that lives downgradient from the planned power plant.

- An impact shifts from moderate to **high** if the effect if that impact is (1) acute, and (2) likely to affect a majority of the identified rightsholder population, based on existing characteristics and conditions. Continuing the example above, the farming population downstream from the power plant grows rice, which both directly irrigates from water downstream from the facility (“conditions”) and two is a crop that has high uptake of soil components (“characteristics”). Determining the impact to be acute only necessitates that it would be measurable if the operation were carrying out monitoring. Determinations of acuteness where no monitoring is occurring draws on global data about the conditions present and the outcomes documented elsewhere (e.g. what health outcomes are associated with hydrocarbon-affected rice crops in other parts of the world). Determining whether a majority of the rightsholder group is at risk involves careful analysis of rightsholder groupings. If all rice farmers are affected, but no palm oil farmers are affected, the impact on palm oil farmers is not relevant, and the impact remains acute on rice

farmers. In contrast, if only palm oil farmers (and no rice farmers) are irrigating directly downstream from the proposed power plant, the impact is not considered high).

- An impact shifts from high to **very high** if the acute impact affecting a large majority of relevant rightsholders is inherently severe. For example, if there are no low-level chronic health effects to the effluent from the power plant; only immediate and intense health effects, the impact is very high. To use an alternate example, if the equipment used on site is inherently dangerous to respiratory health for workers, or if wage rates are inherently (calculably) unliveable for employees, the impact is very high. An impact may also be rated very high if it will interact with contextual conditions adversely (e.g. poor baseline health conditions will interact with a health risk)
- An impact becomes **extreme** if it would create irreversible harm to rightsholders its occurrence. Impacts that result in death, permanent incapacitation (e.g. the physical loss of a limb, the permanent damage to an organ, or the psychological damage of violent sexual assault), or severe dislocation (e.g. involuntary forced resettlement) are among these

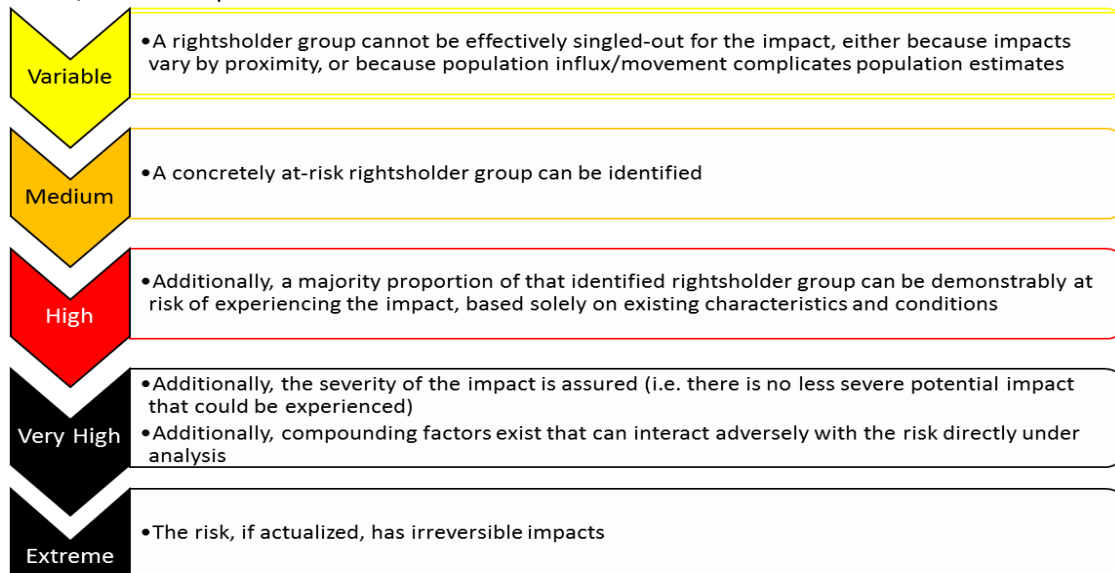


Figure 4 – Degrees of Impact

Examples in

Table 6 - Sample Impact Ratings Representing Each Potential Impact Level below are drawn from HRRAs conducted in Jordan, Uganda, Liberia and Myanmar, in an array of industries. These examples are not holistically representative. The categories of impact are broad and imprecise. No probability analysis is conducted in determining impact severity.

Risks

After evaluating likelihood and impact, the two dimensions of risk are combined to present a risk rating. Identified risks are allocated into the appropriate cells of a risk matrix, as demonstrated in the example below, drawn from the HRRAs of a palm oil plantation in Liberia.

Table 6 - Sample Impact Ratings Representing Each Potential Impact Level

<p>Extreme: The Right to Security of Person was found to carry an “extreme” risk to populations living in the vicinity of the World Bank’s Thaton Power Plant in Myanmar, given the power plant’s historical role as a target for rebel Karen forces, and the fact that project plans excluded ethnic Karen populations from benefitting from power generation, in violation of the terms of the peace agreement signed by Karen and Burmese forces.</p>
<p>Very High: The Right to Just Remuneration was evaluated for subcontractors working at the Liberian EPO palm oil plantation. Their wages were below minimum wage and apparently below liveable wage rates. They represented over two thirds of the work force. The impact score is “very high”. (Since wage data was readily available, the probability is “certain” that Just Remuneration is at risk.)</p>
<p>High: The Right to Security of Person was found to carry a “high” risk to populations living within the exploration zone of Tullow’s oil concession in Uganda, by virtue of the partnership between the company and state security services, which have an extended history of excessive use of force, and which</p>

<p>had already beaten and jailed two activists in the area within the previous 24 months.</p>
<p>Medium: The Disi water conveyance pipeline in Jordan was found to pose a moderate impact on the Right to Health for two reasons. First, a limited number of Amman residents drink tap water directly. Second, although the water had clearly elevated radioactivity above long-term safe drinking thresholds, water supply was expected to be depleted before long-term impacts were likely to accrue.</p>
<p>Variable: The Liberian EPO palm oil operation posed variable impacts on a Right to a Clean Environment and Water, specifically for communities downstream from operations. The variability score is a direct result of the lack of data (which affects the probability ranking, as observable below). Without data documenting water impacts, it is not possible to determine whether clear corporate policies for water quality management are being implemented, or whether communities are correctly identifying the plantation’s water management as a source of local water contamination.</p>

		I M P A C T				
		Extreme	Very High	High	Medium	Variable
L I K E L I H O O D	Certain		Right to Property (Past), Just Remuneration	Right to Collective Bargaining		
	Highly Likely		Safe Working Conditions			
	Likely			Right to Health, Housing, Clean Environment		
	Uncertain		Right to Property (Prognostic)	Freedom from Child Labor		Right to Clean Water

The risk matrix is then folded into a human rights framework to incorporate affected rightsholders. For each affected right, impacted rightsholders are identified by assessors. This is critical for identifying disparities in treatment among affected rightsholders and for helping to pinpoint future human rights due diligence and interventions if the Interested Party

chooses to remain engaged with the company whose operation is under assessment.

The resultant human rights risk summary table clearly links the rights at risk, rightsholders at risk, and likelihood and impact levels. A sample summary table from the same palm oil HRRR is presented below.

Right	Rightholders	Likelihood	Impact	Risk
Just Remuneration	Subcontractors & dependents	Certain	Very High	VERY HIGH
Right to Collective Bargaining	Unionized employees	Certain	High	HIGH
Safe Working Conditions, Health	Employees & Contractors	Highly Likely	Very High	HIGH
Clean Environment, Water, Health	Employees & families in camps	Likely	High	SIGNIFICANT
Adequate Housing	Employees & families in camps	Likely	High	SIGNIFICANT
Clean Environment, Water	Communities downstream of plantation, Employees and families in camps	Uncertain	Variable	PRESENT
Property (Past Actions) ^{xvii}	Communities with land claims	Certain	Very High	N/A
Property (Future Actions)	Communities with land claims	Uncertain	Very High	PRESENT
Child Labor	Working Children	Uncertain	High	PRESENT

Phase 4: HRRR Reporting

Once data has been analyzed and rights risks have been rated (Phase 3), report preparation is largely a process of building the findings into a narrative, incorporating a clear reference section and a readable executive summary. References should list interviewees (except in cases where confidentiality is appropriate) as well as written resources. The executive summary should highlight risks of key concern while also depicting the full rights matrix.

The draft report should be circulated to the Interested Party for review and correction. Comments provided by the Interested Party that address factual issues should be incorporated. Comments that attempt to modify the tone or form of the HRRR should be considered and logged.

The final HRRR should be submitted to the Interested Party. In some cases, it may also be circulated to the company and key informants. However, the HRRR is not often a public document, as it focuses uniquely on potential adverse effects of operations and does not create a holistic picture of impacts, by excluding potential and actual positives.

Use of the HRRR and Follow up

The HRRR, as noted above, can be used to help an Interested Party vet a potential partner or supplier, or to enable the Interested Party to work with the company under assessment to address risks. If the latter, further human rights due diligence may be appropriate. For guidance on full-scale human rights impact assessments, please visit www.nomogaia.org

Case Study #1: Certification of EPO Palm Bay Plantation in Liberia

The HRRRA described here is real, as are the Palm Bay Plantation and its parent company, Equatorial Palm Oil. The Interested Party, CloverGreen, is fictitious. NomoGaia does not conduct consulting work for supply chain human rights due diligence. However, major multinational corporations including Cargill and Unilever—which in 2016 both suspended contractor relations with a different palm oil supplier over environmental and human rights violations—source palm oil from EPO’s parent company KLK and thus may have an interest in human rights risks identified here. The full HRRRA is available online at www.nomogaia.org/work

CloverGreen is a large, multinational consumer goods company based in Europe. It uses palm oil in many of its foods, cosmetics and household products. It has a Human Rights Policy which states that it respects human rights and that one element of this respect is its human rights due diligence, which it conducts on major suppliers before they can be certified. Part of the certification process includes a screen to determine if the would-be supplier should undergo an additional human rights review process. Equatorial Palm Oil’s Palm Bay Plantation in Liberia has made an application to be an approved palm oil supplier to CloverGreen.

As part of the screening process, CloverGreen has “red flags” for particular commodities, countries and operational risks. CloverGreen flags the commodity, palm oil, as a product subject to vociferous human rights criticism. As a palm oil producer, Liberia itself is also flagged as high-risk, as palm oil production has been especially controversial in that country. In addition, a complaint regarding land grabbing was made by a Liberian community against the Palm Bay Plantation. That complaint was determined to have merit and has not yet been resolved. The existence of a past or ongoing complaints before the Roundtable on Sustainable Palm Oil (an international palm oil industry group) is another flag. Equatorial Palm Oil’s Palm Bay Plantation raises three red flags, and so, under CloverGreen’s screening procedures, it must undergo an additional human rights review or being rejected as a supplier. Equatorial Palm Oil agrees to the review.



Figure 5 A palm oil worker atop a full truck of "fresh fruit bunches"

The Palm Bay Plantation HRRRA was performed by NomoGaia, a non-profit think tank. It was conducted as pure research and it was not commissioned, requested or funded by Equatorial Palm Oil. Equatorial Palm Oil did allow

access and graciously cooperated in the assessment. Were CloverGreen to hire a consulting firm, it would then possess the findings of the HRRRA. Because NomoGaia is externally funded, the findings from the HRRRA are presented here.

NomoGaia performed background research on the human rights situation in Liberia. It reviewed the government's Concession Agreements with Equatorial Palm Oil and the other large palm oil plantations. It discovered that Equatorial Palm Oil is majority owned and controlled by Kuala Lumpur Kepong Berhad, a Malaysia-based multinational conglomerate with a market capitalization in the billions of dollars. NomoGaia also reviewed the many public complaints against the large palm oil companies moving into Liberia, including the complaints formally lodged with the Roundtable for Sustainable Palm Oil.



Figure 6 - A palm oil worker carrying a "fresh fruit bunch"

NomoGaia conducted a site visit in mid-2016. At the Palm Bay Plantation, NomoGaia personnel reviewed company information and interviewed employees (including field workers), contractor employees, management, office and mill worker, teachers and clinicians. They also met with government officials, union officials, opposition NGOs, ex-employees, community representatives and members of nearby communities. After these interviews, assessors obtained follow up information from numerous parties, including the company and the government. The entire process was completed in six weeks and the HRRRA was supplied to CloverGreen.^{xviii}

Project Risks Identified Prior to HRRRA

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

The land grab situation was in flux. Residual anger in some of the local communities included elements that dated back to the forced relocations by a predecessor of Equatorial Palm Oil in the 1960s. However, most community members welcomed the plantation and the jobs it brought.

Project Human Rights Risk

Employing the human rights lens on an array of other issues that were not the subject of media reports or formal complaints, the human rights assessors identified numerous human rights risks related to labor. For example, the personal protective equipment needed for safe use of toxic chemicals were not sufficiently available or used, violating the workers’ Right to Favorable Working Conditions. Worker housing, needed because the plantations are large and transportation to the fields is difficult, was substandard, with two families unhappily sharing houses built for one, no sanitation facilities, no safe drinking water and no electricity (as promised in the company’s Concession Agreement with the government and its Collective Bargaining Agreement with the Union). The housing situation alone was a cause of significant unrest. Additionally, the great majority of field workers were not categorized or treated as employees -- who receive benefits, union representation and labor law protections -- but were considered subcontractors, which receive no benefits, no company-issued personal protective equipment, and wages below the “extreme poverty” level.

NomoGaia identified the rights affected (Right to Favorable Working Conditions, Right to Just Remuneration, Right to Housing) and the impacted rightsholders (employees, employees’ families, contract laborers). They determined that the magnitude of the impacts varied from medium to high, affecting hundreds of people. The likelihood of these impacts was certain, because rights were currently and obviously being degraded. Adverse impacts were certain to continue into the future unless Equatorial Palm Oil changed its operational approaches. The cause of the rights violations was the company itself, not an external force manipulating the company. The human rights impacts were entirely the responsibility of Equatorial Palm Oil.

Right	Rightsholders	Likelihood	Impact	Risk
Just Remuneration	Subcontractors & dependents	Certain	Very High	VERY HIGH
Right to Collective Bargaining	Unionized employees	Certain	High	HIGH
Safe Working Conditions, Health	Employees & Contractors	Highly Likely	Very High	HIGH
Clean Environment, Water, Health	Employees and their families in camps	Likely	High	SIGNIFICANT
Adequate Housing	Employees and their families in camps	Likely	High	SIGNIFICANT
Clean Environment, Water	Communities downstream of plantation, Employees and families in camps	Uncertain	Variable	PRESENT
Property (Past) ^{xix}	Communities with land claims	Certain	Very High	N/A
Property (Future)	Communities with land claims	Uncertain	Very High	PRESENT
Child Labor	Working Children	Uncertain	High	PRESENT

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

Case Study #2: Investment in Myanmar's Thaton Gas-Fired Power Plant

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

The World Bank is a multilateral development bank dedicated to poverty reduction worldwide. The World Bank's Corporate Responsibility Program aims to mainstream sustainability throughout the institution, and its infrastructure investments are guided by a Sustainability Framework that was updated in August 2016. In its 2015 "Sustainability Review," the World Bank observed that "reducing its own corporate environmental impacts is in line with the institutional mission to reduce poverty, as environmental degradation affects the world's poor disproportionately." To this end, "Key aspects related to the Bank's environmental footprint include the following: energy, emissions, effluents and waste, and procurement practices (including supplier environmental assessment, supplier assessment for impacts on society, and supplier human rights assessment)."



Figure 7 A rubber plantation worker, uninformed about World Bank development plans 1km from his home

Thaton is a 40-year-old gas-fired power plant in Mon State, Myanmar, seeking funding for a much-needed upgrading. Historically the Thaton power plant has supplied energy primarily to a privately owned tire factory, which sells products to neighboring Thailand. The refurbished plant will produce twice as much energy with the same amount of fuel, presenting opportunities for power to be supplied beyond the industrial sector. The decision to refurbish Thaton was jointly made by the Government of Myanmar and the World Bank, in light of its rural location, its age and inefficiency, and its existing connections to the (generally limited) electric grid. To secure funding for the upgrade, Thaton was subject to the World Bank's Environmental and Social Safeguards, including an environmental and social impact assessment process.

Because the power plant is located in an area with an extensive history of conflict with government, and where a peace agreement hinged on an array of benefits flowing to ethnic minority populations, it was agreed that an additional review, explicitly considering human rights would add value. This was the trigger for the stand-alone human rights risk assessment performed by NomoGaia.

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

The NomoGaia assessors conducted a site visit in June 2014. They met with government officials, government opposition, NGOs, current employees, community representative and members of nearby communities. After interviews, NomoGaia human rights assessors obtained follow-up information from numerous parties, including the World Bank. The entire process was completed in six weeks, and the Human Rights Risk Assessment was submitted to the World Bank.

The Thaton project was (and remains) overseen by engineers within the World Bank. As such, the socio-political risks, including those pertaining to conflict, health risks and inequitable distribution of benefits, had not been fully considered. The human rights lens brought into focus rightsholders that had been considered by the World Bank (employees experiencing unsafe working conditions) as well as those that had not (e.g. local residents not receiving employment opportunities, access to electricity, opportunities to participate in public discussions about infrastructure development, information about health risks associated with construction on a brownfields site). Potentially impacted rights included the right to health, public participation, nondiscrimination, and, if the terms of the power agreement failed to align with the new peace agreement, risks to security of person from renewed conflict. NomoGaia identified the likelihood of impacts ranging from high to certain, with magnitudes ranging from high to extreme (in the case of potential renewed conflict). Aside from labor, none of these risks had been investigated before the HRRR was conducted. In addition to the human rights risks identified in the HRRR, risk management strategies were proposed.

Project Risks Identified Prior to HRRR

Project documentation identified three main risks that could destabilize the project:^{xx}

1. Fuel supply risks if the government were to opt not to allocate the needed gas to the facility,
2. Fuel price volatility, which could compromise the financial stability of MEPE and
3. Limited government capacity and attention to plant needs, which could affect personnel skills training, maintenance needs and other operational essentials.

Project Human Rights Risks

However, infrastructure projects also present human rights risks, which can have material impact on feasibility. From this perspective, a fourth risk was apparent: Deterioration of the fragile ceasefire established two years prior between ethnic armed organizations (particularly the Karen National Union (KNU) and the New Mon State Party (NMSP) and the Government of Myanmar.

Some human rights risks were material to project sustainability and feasibility. The termination of a ceasefire agreement would impact both project feasibility and human rights. Other human rights risks were not material to the project but are in violation of World Bank principles for responsible development. Damage to health and the

environment would not affect project viability but could potentially undermine the World Bank's lending position on future projects, by sending the message that World Bank due diligence is not sufficient to protect populations from harm. Both types of human rights risks were present at Thaton if not mitigated.

Fragility of Ceasefire – Security of Person

The potential for renewed conflict had gone unaddressed in project documents, resulting in analytical gaps that, without mitigation, increased project risk and human rights risk. Thaton power station came under heavy attack at least four times during the war between the KNU and the Tatmadaw between 1975 and 1991. The power plant and associated tire factory were erected on Karen farmlands, causing forced relocation and creating a state of perpetual of insecurity for the local population, which remained palpable by the time of fieldwork. The ceasefire between the KNU and the Government of Myanmar hinged on a government commitment to “support the basic needs of the people and ensure that development projects have the full participation and support of local villagers” (Point 4, Ceasefire Statement).

Exacerbated Inequality - Nondiscrimination

Although the World Bank considered the Karen people indigenous, no indigenous peoples assessments or planning frameworks were produced. It was argued that because Karen people living near the power plant comprised the “majority of beneficiaries,” they needed no separate assessment. However, the Karen people in the vicinity represent a highly underserved population in terms of both electrical connectivity and employment. Their houses, schools and healthcare workers operate without electricity. Given their extreme poverty (17% are food poor, as defined by UNDP in the Integrated Household Living Conditions Survey 2009-2010 to represent households that cannot purchase sufficient food to meet their caloric needs), they do not have access to transportation to seek job opportunities in urban Thaton or at the power plant, where increased power generation could positively impact job creation. Rather than beneficiaries, they were at risk of being uniquely negatively impacted, experiencing environmental impacts of the power station without benefitting from employment, electricity or the use of electrified facilities.

Marginalized Groups – Public Participation

In addition to the disparate impact project development was likely to have on the impoverished communities near the power station, Thaton refurbishment social teams also failed to meaningfully engage with Karen stakeholders. Engagement was attempted in the Burmese language, but the majority of the local population spoke only the Karen language fluently. Most Karen villagers remained uninformed about the project. The lack of input from the most marginalized residents near the project site was a twofold problem. In concrete terms, social impact assessors failed to gather local perspectives. Symbolically, the decision not to engage with Karen people in the Karen language signaled a disregard for Karen perspectives.

The Karen leadership were highly sensitive to actions by the Government of Myanmar perceived to alienate them from public participation; a 60-year war was waged in the name of self-determination. A peacetime failure to involve Karen people in infrastructure decision-making risked undermining government commitments to be more inclusive. Interviews conducted in 2013 and 2014 throughout Mon and Karen regions found that local people felt threatened by international organizations “who are being closely directed by the government” (Asia Foundation, 2014). The Myanmar Peace Support Initiative found widespread concern that increased government involvement in ethnic minority lands “could promote the government’s perceived economic and political agendas” (MPSI, 2014). At the time of HRRRA fieldwork, engagement processes at Thaton had done nothing to invalidate these fears. Social impact assessors documented “broad community support for the project,” but only from the Burmese-speaking residents, who were disproportionately well off. In Burmese-language consultations, non-Karen residents professed to speak for Karen people and act as their representatives. This type of paternalism has historically been perceived as condescending and disempowering by Karen communities.^{xxi}

Although the value of pre-HRRA consultations was limited by language restrictions, at least one key area of disjoint between project designs and community interests was revealed. Consultation documented “broad community support” only on the condition that local people would receive access to electricity. The Thaton project was not slated not provide improved electricity to local communities. The World Bank proposed to consider Thaton community electrification through the National Electrification Plan (NEP). However, the NEP investigations, conducted jointly by the World Bank, Asian Development Bank (ADB) and Japan International Coordination Agency (JICA), did not, at the time of assessment, include Mon or Karen States. The ADB’s Power Distribution Improvement Plan was only designed to improve access in townships within Yangon, Mandalay, Saigaing and Magway regions.^{xxii}

Risks to the Right to Health and a Clean Environment

In the Thaton plant’s 40 years of operation, staff used hydrochloric acid to lower the pH of process water, caustic soda to raise it and phosphoric acid to soften the water. They ran the plant on crude oil when gas lines stopped flowing. Oil was carted to site in drums that were not been disposed of for years or decades. Tanks and drums used to transport these materials sat in storage rooms, empty fields and roadsides, untreated. Adjacent to the power plant, two large transformers ramped up voltage for transmission. Thaton dates to an era when PCBs were commonly used as dielectric fluids in transformers, but soils had not been tested for these toxicants.

The project ESIA included no soil or water testing. As a result, soil levels of total petroleum hydrocarbons (TPH), petroleum product compounds (BTEX) and PCBs were unknown. Local residents drank from bucket wells, located downslope from the power plant. Their paddies were in valleys downstream from the power plant. It was unclear whether drinking water or irrigation water was safe for villagers, which made it impossible to monitor negative impacts associated with construction or positive impacts associated with site redevelopment. If TPH levels were high in the soil directly beneath the plant site, there would be reason for concern about worker safety. Soil vapors seep up from TPH-affected soils. In a closed space such as the new Thaton power plant, that could affect worker health.

Right	Rightsholders	Likelihood	Impact	Human Rights Risks
Clean Environment; Health	Project Area Inhabitants	Highly Likely	High	HIGH
Public Participation	Karen-Speaking Project Area Inhabitants	Certain	Very High	VERY HIGH
Nondiscrimination	Project Area Inhabitants	Certain	Very High	VERY HIGH
Favorable Working Conditions	Project Employees	Highly Likely	High	HIGH
Security of Person	Project Employees; Project Area Inhabitants	Uncertain	Extreme	PRESENT

The World Bank validated NomoGaia’s findings through an internal review process and incorporated additional benchmarks into project development, recognizing “substantial” environmental and social risk. The project is said to be on track for completion in 2017, now benefitting from additional social oversight by the World Bank and linked into a broader “National Electrification Plan” that explicitly incorporates “off-grid” communities into plans for electrification. As of September 2017, all villages in the vicinity of the power plant had been provided with electricity. The World Bank moved forward with the investment and is now better positioned to identify, validate and manage ongoing problems of land confiscation and weak social engagement.

References

- ⁱ Ruggie, JG. (2011) Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. OHCHR A/HRC/17/31 Agenda Item 3.
- ⁱⁱ In accordance with the UN Guiding Principle, Principle XX, these include, as least, the Universal Declaration of Human Rights, The Covenant on Civil and Political Rights, The Covenant on Economic, Social and Cultural Rights and the eight Core Conventions of the International Labor Organization.
- ⁱⁱⁱ Graetz, G and Franks D (2013). Incorporating human rights into the corporate domain: due diligence, impact assessment and integrated risk management. *Impact Assessment and Project Appraisal*, 31(2)
- ^{iv} Bekefi, T, Jenkins, B and Kytte, B. 2006. “Social Risk as Strategic Risk”. In *Corporate Social Responsibility Initiative, Working Paper No. 30* Cambridge, MA: School of Government, Harvard University. John F. Kennedy, editor
- ^v Knowledge of human rights impacts belongs to everyone, not just the company running an operation. Human rights are inherently public and other parties have a need to understand how a corporate operation affects rights and rightsholders. There are several situations when a community, NGO or government can commission an HRRRA. For example: a community desires to understand the human rights risks of a current or proposed project; an NGO desires to understand the human rights risks of a current or potential project; or a government agency needs to determine whether to approve a company to be a government supplier or contractor.
- ^{vi} Likosky MB (2003) Mitigating Human Rights Risks Under State-Financed and Privatized Infrastructure Projects. *Indiana Journal of Global Legal Studies* 10(2):65-85.
- ^{vii} A prime example of when a company is incentivized to reapply is when an existing operation needs funding for an expansion. In such a case, there is no “no-go” option, so a sense of necessity may prod a company to take extra steps to secure the expansion loan.
- ^{viii} For example, the International Finance Corporation’s categorization of A, B and C loans.
- ^{ix} Assessors should be cautious not to be reliant on company restrictions on scope. In one example, a company requested that human rights evaluation consider the transportation corridor and local population, but did not include time or access to contractor camps on site. These camps turned out to have poor sanitation and sub-standard housing conditions which were the source of major tension within the operation and potential human rights violations.
- ^x Land acquisition policies generally require field-based vetting, as formal land title documents do not accurately reflect complex land use and ownerships systems in many countries.
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- ^{xvi} Salcito, K, Utzinger, J, Weiss, MG, Münch, AK, Singer, BH, Krieger, GR, Wielga, M (2013). Assessing human rights impacts in corporate development projects. *Environ Impact Assess Rev*. 42: 39-50.
- ^{xvii} This is a past event and so not a “risk.” It is shown as the basis for the Property (Future Actions) risk analysis
- ^{xviii} The actual NomoGaia Human Rights Risk Assessment was supplied to KLK, the parent company, whose personnel noted during fieldwork that KLK might have reconsidered investing in EPO had their due diligence exposed the full range of challenges associated with the operation. The HRRRA was also supplied to EPO.
- ^{xix} This is a past event and so not a “risk.” It is shown as the basis for the Property (Future Actions) risk analysis
- ^{xx} World Bank, Strategic Context, Paragraph 71
- ^{xxi} Kim Jolliffe, Interview
- ^{xxii} ADP Power Distribution Improvement Project- Program Administration Manual