



# Human Rights Risk Assessment

Methodology for Phase 2 “Risk Scoping” under CS3D

## Human Rights Risk Assessment

Having screened its portfolio, supply chain, and/or operations for high-risk facilities and geographies, a company will then work to understand the real-world risks at highest-priority locations, undertaking one or several Human Rights Risk Assessments (HRRA) to complete the ‘risk scoping’ phase detailed in the CSDDD.

Human rights risk assessments offer an opportunity to bring company actors to a more holistic understanding of human rights as they apply at home and abroad. For example, companies rarely directly influence the right to vote or the freedom from arbitrary arrest, but human rights also covers an array of rights that are directly linked to businesses. Often, the risks are just out of scope of a company’s direct oversight, around the margins. They do not necessarily stare us in the face. Others are open and obvious, but, for various reasons go unrecognized and unaddressed.

Human rights cover fair wages and rest days, including for subcontractors whose pay slips a company’s HR team might never have reviewed. They cover environmental protections for people near waste management facilities who could be made sick if waste management contractors cut corners. In these cases, cheaper contracts might carry human rights costs that are intolerable to rights-respecting operators. Human rights also cover worker protections from harm on the job, even when a company has put in place rules requiring everyone to wear protective gear that people take off for convenience. Often, human resources, procurement, environment, and health & safety managers are actually aware of limitations in their scope and are actively working to overcome them. The human rights lens adds clarity to their efforts and can drive increased resources and attention.

In other cases, human rights risks linked to companies are driven by contextual conditions that an operation needs to overcome. This reality is built directly into the UNGPs; if regulatory frameworks adequately protected all human rights, businesses would never need human rights due diligence. For example, lax security on freight shipments entering or exiting a company’s ports could make shipping containers vulnerable for misuse, to traffic drugs or people, jeopardizing public security and contributing to modern slavery. This is more common than most security teams publicly admit. Any port operator in a major trafficking hub or recipient country is at risk, as are all the destinations for shipping containers on land routes - the whole world is at risk.

HRRA is an investigation and analysis to determine the human rights risk present in a business operation. The subject of the analysis is a single business operation, such as a factory, mine, plantation or pipeline. “Risk” refers both to the probability that human rights will be negatively affected and the magnitude or gravity of the human rights impact. “Risk” does not refer to the hypothetical conditions that could be extrapolated from human rights risk screens. For example, knowing that Ivoirian cocoa is often linked to child labor does not provide sufficient information

to a cocoa buyer to establish 'risk mitigation' measures; it provides the cocoa buyer with an impetus to thoroughly investigate its supply chain through HRRAs. This is because general contextual risk does not enable a company to scope appropriate interventions. The risk that forced labor is present in the cocoa supply chain, for example, cannot be mitigated by requiring cocoa suppliers to sign attestations that forced labor is not used, or by requiring suppliers to be rated by online supply chain platforms. Instead, a company must first verify that forced labor is, indeed, present within its supplier base, in what forms and to what extent. A full-scale impact assessment might be used to assess the scope and severity of child labor (how many children, under what types of conditions of repression, requiring what types of intervention to eliminate the drivers for their exploitation). Without detailed knowledge of the actual impacts an operation has in causing, contributing to, or benefitting from harms, mitigation is not possible.

## Preparation for assessors

An HRRAs should be conducted by individuals and teams with human rights expertise. It is usually performed by an outside consultant, except in companies with highly mature human rights programs. An expert consulting firm can collaborate with the company to set a preliminary scope of work based on screening and preexisting fieldwork.

HRRAs require evaluation of existing documentation. This can include environmental and social impact assessments, stakeholder mapping and political risk assessments, grievance logs, health and safety incident reports, environmental incident reports, site security incident data, labor dispute records, and other studies. Assessors supplement internal reports with external literature, data and statistics to establish a fieldwork plan, inclusive of what areas to directly observe, what rightsholders and stakeholders to interview, and what format and location will be most appropriate for engaging with potentially vulnerable respondents.<sup>1</sup>

Fieldwork for HRRAs is generally brief, limited to no more than five working days. This reflects the nature of the report, which will either find that risks are already well managed or, alternatively, that severity of risks will necessitate heightened assessment (see: Human Rights Impact Assessment (HRIA)) and follow-up fieldwork.

## Preparing an operation to undergo assessment

The aim of human rights risk assessment is twofold: to use a human rights lens on known issues that a company's experts have already identified but have not seen as human rights issues; and to draw attention to blind spots where contribution to human rights risk has not historically been anyone's job but where emerging regulations now demand due diligence.

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<sup>1</sup> Conflict-sensitive interview approaches drawn from medical anthropology shape these decisions.

## Content of Risk Assessment

Under the UNGPs, and thus emerging regulations, human rights risks are reported in detail where they are found to be salient. Reporting will identify both the *human rights* at risk and the corresponding *rightsholders* at risk. A risk matrix differentiating the likelihood and extent of potential impacts will clearly show which risks require most immediate intervention.

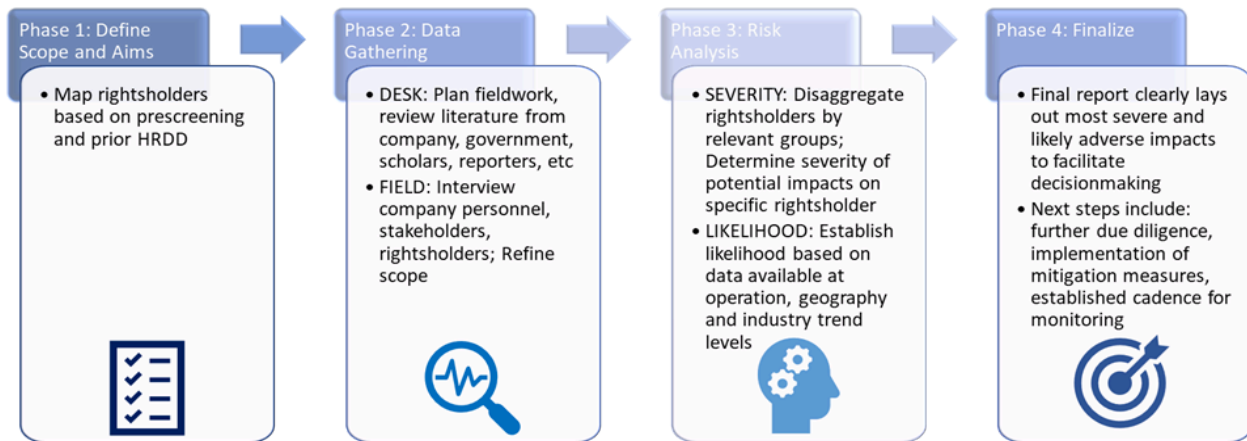
HRRA is not a comprehensive, final or definitive human rights analysis. There are over 40 human rights listed in key instruments, and HRRA is designed to target and characterize only the distinctly acute rights risks. That does not mean risks can be cherry-picked or assessed only based on those identified in risk screens; it simply means that as experts evaluate a location and observe risks that have temporary and slight impacts on few people, they are unlikely to require a client to report these or pursue immediate remediation. HRRA also includes risks whose 'probability' is certain, because ongoing impacts generate secondary significant risks to the same and/or additional rights.

## How to use an HRRA

The HRRA report is an input into the decision processes for human rights management. In some cases, the results of the HRRA will be so clear that the decision is easy. An HRRA may identify grave human rights concerns that not only undercut a company's values but could also imperil the company's legal standing, reputation or other operational priorities. In contrast, an entirely exculpatory HRRA will indicate that, from a human rights standpoint, there is little need for intervention or frequent monitoring. In many cases the results of the HRRA will be mixed, for example the human rights risks identified, but their impact limited. Sometimes the HRRA will initiate further due diligence.

HRRA can be the basis for developing mitigation measures only when it provides clarity on both the certainty and severity of an impact, which generally requires that the company already gathers data pertinent to the right in question. For example, environmental rights risks can be validated and scoped as actual impacts during HRRA, because emissions data is often readily gathered by a company. In such cases, with a verified impact and verified identified rightsholders, mitigation measures can be proposed (and then monitored for effectiveness at reducing the harm to people over time) without further investigation.

# Methodology



HRRRA is conducted in four phases, beginning with scoping and ending with findings that can be used to determine next steps. The following general methodology is a guideline that should be tailored. Example HRRAs available online demonstrate its use in practice ([www.nomogaia.org](http://www.nomogaia.org)).

## Phase 1: Defining the Scope of the HRRRA

Companies usually have existing concerns about particular human rights issues (child labor in cocoa supply chains, for example), which trigger internal processes for heightened due diligence. These existing concerns contribute to scoping. This scope may change if expert investigation reveals unanticipated human rights risks; not all human rights issues are documented in media reports or international indices. The physical, institutional and human scope of the HRRRA should be fit-for-purpose. Workers and residents in an operational footprint, alongside transportation corridors, and downwind and downstream of effluent and emissions may all be rightsholders. 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 well-scoped 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 to make the analysis feasible and meaningful.

A second consideration will be business relationships. This will include the depth of investigation into an operation's local and global suppliers, production chain, joint ownerships and other business relationships (including political connections).

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.

## 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. Screening will have touched on two 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. There are also risks linked to weak or misguided management within a company, which ill-equip it to identify or manage risks. HRRRA builds an evidence base to support or contest the bases for all prior screened risks. Key materials to review include human rights reports by experts, corporate policy commitments and past performance, and allegations that require substantiation or review.

#### **Human rights in context**

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 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.

#### **Voices of opposition**

Companies that have been the subject of media reports, activist campaigns and public (legal 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 anticorporate activities. Either of these could generate human rights risks, directly or indirectly.

## Field Research: Cross-checking the literature and policies

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 HRRRA 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 HRRRA 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. 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 HRRRA, 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.

Security Manager	Security risks that could jeopardize worker or community rights include theft, site invasions, road blockades, violence on or near operations, unauthorized personnel on site, weaknesses in surveillance, and adverse living conditions for security contractors themselves. Relationships between site security and public forces could also contribute to human rights risks caused by public security.
Human Resources Manager	Discrimination, exclusion, wrongful and wrongful dismissal can be tied to HR decisions. Tense union negotiations, a trend towards outsourcing tasks to contracted companies, and retention challenges may all have human rights implications.
Operations Manager	Operation managers often know what inefficiencies are plaguing their operation. Those inefficiencies are often linked to real or perceived human rights issues.
Community / Social Team	A company's community-facing team is often best informed about local people's concerns and complaints, challenges in relaying information, and challenges in shaping operational decisions to better suit community needs.
Environment Manager	Operations with environmental impacts generally have a unique environmental department to oversee permits, compliance, and monitoring. They will hold data regarding potential air, water and soil emissions that could have human rights implications. Their strategies for driving long-term improvements, tackling chronic challenges, and responding to emerging environmental challenges contribute to human rights analysis.
Health & Safety Manager	Occupational health and safety teams oversee distribution of protective gear, manage health screenings, log workplace incidents, and contribute to risk-based audits. Their strategies for driving long-term improvements, tackling chronic challenges, and responding to emerging health and safety challenges contribute to human rights analysis.

Contractor Manager	For locations that have outsourced services, contractors may actually have higher human rights risk exposure than employees, and they may have less recourse. Understanding how labor rights, working conditions, hiring approaches, and antidiscrimination efforts are undertaken is important where this is an important sector of the on-site workforce.
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### External Stakeholder Interviews

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	Union perspectives are essential for understanding nuances in labor rights challenges. Union leaders can describe challenges with unionization, including issues with high rates of subcontracting, limitations on contracts, worker health and safety challenges, disputes of working hours, and other forms of intimidation or union competition.
NGOs & Civil Society	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	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	Farming coops, women’s groups, communal initiatives for managing traditional rites, and other such groups contribute to social cohesion. 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. [Stakeholder & rightsholder engagement are distinct actions.](#)

Rightsholders are 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.

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; the injured and infirm – 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.

Semi-structured interview guides are used to draw out information about the lived experiences of rightsholders. Human rights engagement is deliberately designed to seem informal to interviewees, setting respondents at ease to talk about difficult topics pertaining to their sense of dignity. 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, survivors 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. Company contributions to local communities can be directly observed through visits to company-funded facilities. 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, or chemical storage may not be properly protective against seepage and soil contamination. These observations within the facility, worker dining and resting spaces, and communities should be documented in photographs wherever possible. Key locations where assessors may make observations include:

- Within worker housing (employee and contractor, including the highest-occupancy areas and toilets, which may lack security or cleaning schedules)
- Within facilities provided by the company to workers (including medical facilities, laundries, and cafeterias, including stockrooms and workspaces)
- 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, security bases, and energy supplier facilities
- At water effluent discharge sites
- At core business operations (a site tour hosted by the company is appropriate)

### **Iterative Desktop Research**

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

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.

Just as the absence of land protests may not indicate an absence of land tenure violations, 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 inadequate chemical storage processes, which could be damaging local water supply while being undocumented. In addition, questions raised in the fieldwork phase may require statistical or other evidence-based validation, which require the assessor to revisit literature.

In examples like the one above involving water contamination, a 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

Analysis is directed toward identifying and classifying the magnitude of human rights risks. It begins with the establishment of a matrix of *rights at risk* and *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. 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 HRRR 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 tiered scale from certain, to highly likely, to likely, to possible. NomoGaia recommends a four-tiered scale in these pages, but companies have bespoke risk departments that might prefer five, six or even seven tiers.

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 HRRA 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. Risks can be legitimized either by the quality of data collected (e.g. an accident report that includes a detailed medical analysis by a qualified medical doctor), or by triangulation (e.g. multiple sources provide different types of evidence that point to the same conclusion).

It is critical that a risk’s likelihood be evaluated beyond its initial identification. A risk found to be uncertain after its initial discovery may well turn out to be an ongoing impact after further investigation. Uncertainty has been, frequently and tragically, used by decisionmakers to forego investigation and implement ‘mitigation’ blindly. The result is that effects on rightsholders are never understood and potentially never addressed. This applies for both major and some minor risks, as the identification of numerous risks can potentially indicate the presence of systemic shortcomings.

Likelihood of human rights risks cannot be evaluated using mathematical probabilities, because fundamental parameters are rarely 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. Instead, 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, fitting with the descriptions below.

- An ‘uncertain’ risk is an event that has occurred at a comparable operation in a comparable region. Comparability of operation includes size (e.g. number of megawatts produced, number of hectares of land occupied), hydropower type plant), (e.g. run-of-river 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.
- A ‘likely’ risk has heightened likelihood of occurring because of additional conditions that exist locally. 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. Heat stroke risks for strenuous work become likely under certain climatic conditions; forced labor risks become likely under certain social conditions (e.g. education quality is poor and incomes are low, incentivizing parents to use children for field labor).
- A ‘highly likely’ risk is an event that has been credibly reported and cannot be meaningfully refuted by the company.
- 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.

A company is expected to have investigated its own operations to seek clarity on whether uncertainty results from lack of evaluation or from lack of on-site conditions. In other words, it is not enough to be ‘uncertain’ about risks without actively seeking evidence that would increase the likelihood of an impact. Companies are accustomed to developing management strategies for risks that are characteristic to their operations and geographies. For example, all cocoa producers should have child labor management strategies for cocoa producers; all non-mechanized sugar producers should have forced labor management strategies; all extractive operations should have environmental contamination management strategies for extractive operations; operations in authoritarian states should have corruption control strategies.

These are all necessary but insufficient. Under today’s regulatory frameworks, management strategies should be both present and visibly implemented, so that operators can document the conditions of rightsholders and “know and show” that their rights are respected. If management strategies are absent or non-functioning, a likely operational risk becomes ‘highly likely.’ For example, if a Brazilian manufacturer relies on subcontracted workers in an impoverished region with endemic forced labor, human resources should actively manage worker hours, wages, training and PPE; documentation should demonstrate that these conditions meet human rights benchmarks. Absent the data, the likelihood that subcontractors are exploited is ‘highly likely.’

### **Severity**

The severity of an outcome is its *intensity*, which is a blend of gravity and irreversibility, as well as its *extent*, which refers to the number of rightsholders and level of corporate involvement. NomoGaia recommends a five-tiered scale in these pages, but, as with likelihood, we recognize that companies might have other preferences in their internal risk processes.

United Nations agencies and offices have invested substantial time and resources to define the intensity 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.

Extent of impact does not reflect a numerical value, but rather the percentage of the affected subpopulation that would experience impact. If 100 workers are affected by an occupational harm, out of a workforce of 1,000, the extent of impact may still be extreme, depending on whether there are conditions that would make those 100 a designated sub-group of rightsholders. Even a very small number of rightsholders might garner an extreme rating if those rightsholders represent a distinct sub-population. For example, if mercury fumes only affect pregnant women, and four women on site are pregnant, the intensity for pregnant women is very high or extreme.

Reversibility of impact is taken into account when considering severity. For example, there is a difference in severity between poisoning one well for one week and poisoning a major river forever, there is a difference between contaminating water sources with lead than with chlorine, and there is a difference between spraining an ankle a leg and losing a foot.

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. The affected population is disaggregated by locality, distinguishing the most affected rightsholders from the less affected ones. For example, if the 100 working-age men affected by an occupational harm, described two paragraphs above, all worked on the same part of a facility, away from their 900 colleagues, the extent of impact on them would be much greater on them.

In defining severity, HRRAs prioritize 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 HRRAs 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's severity is registered as 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.

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

Severity shifts from moderate to high if the effect if that impact is (1) acute, and (2) likely to affect a large portion 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).

Severity 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. For another 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).

Severity becomes extreme if it would create irreversible harm to a substantial percentage of the relevant rightsholder group if it occurred. 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 permanent forced resettlement) are among these.

Each relevant right and rightsholder group can be evaluated on a standard risk matrix like the one below.

SEVERITY versus LIKELIHOOD	Variable A specific rightsholder group cannot be identified, either because population movement or because impact patterns are unclear	Medium A concretely at-risk rightsholder group can be identified	High A substantial portion of an identified rightsholder group is demonstrably at risk of impact, based on existing conditions & characteristics	Very High Severity of impact to identified rightsholder group is unavoidable and would affect a majority	Extreme Irreversible impact on a large majority of the identified rightsholder group
Uncertain Logical possibility of risk occurring. Risk has arisen at comparable operations or geographies					
Likely Local conditions heighten likelihood; incentives exist within the community to conceal or benefit from the risk					
Highly Likely Credible reports exist that the identified risk is underway; operation cannot 'know and show' non-impact					
Certain Direct observation of impact; credible & substantiated evidence from legitimate researchers					

HRRRA findings can be reported in table form to present each risk score as related to rights and rights holders. Below is a sample summary table for an agricultural operation with worker housing where families live.

Right	Rightsholders	Likelihood	Impact	Risk
Just Remuneration	Subcontractors & Dependents	Certain	Very High	VERY HIGH
Collective Bargaining	Unionized employees	Certain	High	HIGH
Safe & Healthy Work Conditions	Employees in dorms	Highly Likely	Very High	HIGH
Clean Environment, Water & Health	Communities downstream	Uncertain	Variable	PRESENT
Clean Environment, Water & Health	Employees in dorms	Likely	High	SIGNIFICANT
Adequate Housing	Employees in dorms	Likely	High	SIGNIFICANT
Property (Past actions)	Communities with land claims	Certain	Very High	VERY HIGH
Property (Future actions)	Communities with land claims	Uncertain	Very High	SIGNIFICANT
Child Labor	Working Children	Uncertain	High	PRESENT

## Phase 4: HRRRA Reporting

Once data has been analyzed and rights risks have been rated (Phase 3), an operation is positioned to begin responding to requirements of the EU’s Corporate Social Responsibility Directive’s public disclosure requirements and the requirements of other transparency laws. The HRRRA itself is rarely a public document, but it provides the evidence basis for reporting requirements and establishes a framework for tracking change over time. Having identified and quantified impacts, a Company may then either escalate the level of assessment by building the HRRRA into a Human Rights Impact Assessment, or it may begin developing monitoring and mitigation measures. This decision point will be guided by internal policies and standards. NomoGaia has produced sample policies and standards available at [nomogaia.org](http://nomogaia.org).