



International
Code of Conduct
Association

Guidance on Human Rights Impact Assessments for Private Security Providers





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Contents

1. PURPOSE	1
2. INTRODUCTION TO HUMAN RIGHTS AND DUE DILIGENCE	2
3. DEFINITION AND PURPOSE OF HRIAs	6
4. TIMING OF HRIAs	11
5. PHASES OF HRIAs	13
5.1 PLANNING AND SCOPING	13
5.2 DATA COLLECTION AND BASELINE DEVELOPMENT	19
5.3 IMPACT ANALYSIS	21
5.4 IMPACT MITIGATION AND MANAGEMENT	24
5.5 EVALUATION AND REPORTING	27
CONCLUSION	30
ACKNOWLEDGEMENTS	31
ANNEX – USEFUL RESOURCES	32

1. Purpose

Human rights due diligence is becoming increasingly central in the current debate about socially responsible business practices. Efforts continue to gain traction at national and international levels to make this a mandatory requirement for companies.¹ All ICoCA Member and Affiliate companies have an obligation under Paragraph 2 of the Code to act with due diligence in order to avoid infringing the rights of others.

The purpose of this Guidance is to help private security companies (PSCs) implement the first step in human rights due diligence by assessing whether delivery of a contracted service might negatively impact the enjoyment of human rights and, for those operating in conflict-affected contexts, also possibly breach international humanitarian law. The Guidance provides an overview of human rights due diligence, separates out the elements of human rights impact assessments, and offers a number of recommendations based on best practice.

¹ At the time of writing these efforts include the 2017 French law on 'Duty of Vigilance'; the Swiss 'Responsible Business Initiative'; the German 'Supply Chain Due Diligence Act'; and the European Union initiative on 'Mandatory Human Rights and Environmental Due Diligence'. For the latest developments on mandatory human rights due diligence, see: Business and Human Rights Resource Centre, *Mandatory Due Diligence*. At: www.business-humanrights.org/en/big-issues/mandatory-due-diligence.

2. Introduction to human rights and due diligence

Human rights and the corporate responsibility to respect

Human rights are rights that are inherent to each person as a human being. They exist independently of state recognition and regardless of the right-holder's nationality, sex, national or ethnic origin, colour, religion, language, or any other status. All human rights are:

- **Universal.** They are inherent to each person, everywhere in the world and without time limit.
- **Inalienable.** They cannot be lost or sold, although some can be suspended or restricted under certain circumstances.²
- **Indivisible.** All human rights exist together at the same time.
- **Interdependent.** The enjoyment of each human right impacts and depends on enjoyment of the others.

The three main human rights reference documents are:

- The 1948 Universal Declaration of Human Rights (UDHR).³
- The 1966 International Covenant on Civil and Political Rights (ICCPR).⁴
- The 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR).⁵

Together these three documents form the so-called 'International Bill of Rights'.⁶

States have traditionally been responsible for protecting, promoting and fulfilling human rights. However, businesses (including PSC operations) may also be held responsible if they create adverse human rights impacts. [For more information on different types of impact, see Section 5.3.] The United Nations Guiding Principles on Business and Human Rights (UNGPs), adopted in 2011, established a globally recognised and authoritative framework that sets out the responsibility of companies to respect human rights and the actions they must take to fulfil it. In brief, business entities should take steps to avoid infringing human rights and should address adverse human rights impacts with which they are involved [UNGP 11].

In addition to respecting human rights, private security companies that operate in conflict-affected environments should comply with applicable provisions of international humanitarian law (IHL).⁷

2 Human rights that can never be suspended or restricted are called 'non-derogable'. A non-exhaustive list includes: the prohibition of torture, cruel, inhuman and degrading treatment; freedom of thought, conscience and religion; the right to essential primary healthcare; and the fundamental principles of fair trial. Human rights that can be suspended or restricted under certain circumstances are called 'derogable'. To take a current example, states may legitimately limit freedom of movement during a health emergency. For further information on derogable and non-derogable rights, see: Office of the United Nations High Commissioner for Human Rights (OHCHR), *Core Human Rights in the Two Covenants*, 2013. At: <https://nhri.ohchr.org/EN/IHRS/TreatyBodies/Page%20Documents/Core%20Human%20Rights.pdf>.

3 Available in several languages at: www.ohchr.org/EN/UDHR/Pages/SearchByLang.aspx.

4 Available in all the six official UN languages at: www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx.

5 Available in all the six official UN languages at: www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx.

6 OHCHR, *What are human rights?* At: www.ohchr.org/en/issues/pages/whatarehumanrights.aspx.

7 International humanitarian law is the law applicable to armed conflicts. Its purpose is to regulate the conduct of hostilities and protect civilians. For further information on IHL, see: International Committee of the Red Cross (ICRC), Advisory Service on International Humanitarian Law, *What is International Humanitarian Law?*, 2004. At: www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf.

Commentary of the Office of the UN High Commissioner for Human Rights (OHCHR) on UNGP 11

“The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.

Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation.”⁸

The Code and ICoCA

Drawing on the UNGPs, the International Code of Conduct for Private Security Service Providers (the Code) sets out the human rights and humanitarian law responsibilities of PSCs, notably when they operate in complex environments.⁹ Today, the International Code of Conduct for Private Security Service Providers’ Association (ICoCA), the Code’s governance and oversight mechanism, provides one of the most rigorous examples of sector-specific implementation of the UNGPs.¹⁰

PSCs and human rights

Recognising that private security operations in complex environments may generate adverse human rights impacts and violate norms of international humanitarian law, the Code contains provisions on:

- Freedom of expression, association, and peaceful assembly (Paragraph 21).
- Freedom from arbitrary or unlawful interference with privacy or deprivation of property (Paragraph 21).
- Respect for people’s dignity and privacy (Paragraph 28).
- Use of force in compliance with the rights to life and physical integrity (Paragraphs 29 to 32).
- Detention and apprehension in compliance with the right to liberty and security of person and the person’s status and protections under applicable international humanitarian law (Paragraphs 33 and 34).
- Prohibition of torture and other cruel, inhuman or degrading treatments or punishments (Paragraphs 35 to 37).
- Sexual exploitation and abuse and gender-based violence (Paragraph 38).
- Prohibition of human trafficking (Paragraph 39).
- Prohibition of slavery and forced labour (Paragraph 40).
- Prohibition of the worst forms of child labour (Paragraph 41).
- Freedom from discrimination (Paragraph 42).
- Right to safe and healthy working conditions (Paragraph 64).
- Right to an effective remedy (Paragraph 67(a)).

Practical examples of how private security operations can adversely impact the enjoyment of human rights are provided in the document.

Human rights due diligence

Human rights due diligence (HRDD) can be defined as “a process for identifying, preventing, mitigating and accounting for the adverse human rights impacts with

⁸ OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, HR/PUB/11/04, New York and Geneva, 2011, p. 13. At: www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

⁹ The Code is available in several languages at: <https://icoca.ch/the-code>.

¹⁰ For further information on ICoCA and its work, see: <https://icoca.ch/about>.

which a business is involved”.¹¹ HRDD is therefore a broad term used to “describe the overall process companies undertake to ensure respect for human rights”.¹²

The Code

Paragraph 2 of the Code reminds PSCs that:

The ‘Respect, Protect, Remedy’ framework developed by the Special Representative of the United Nations Secretary-General on Business and Human Rights, and welcomed by the UN Human Rights Council, entails acting with due diligence to avoid infringing the rights of others.

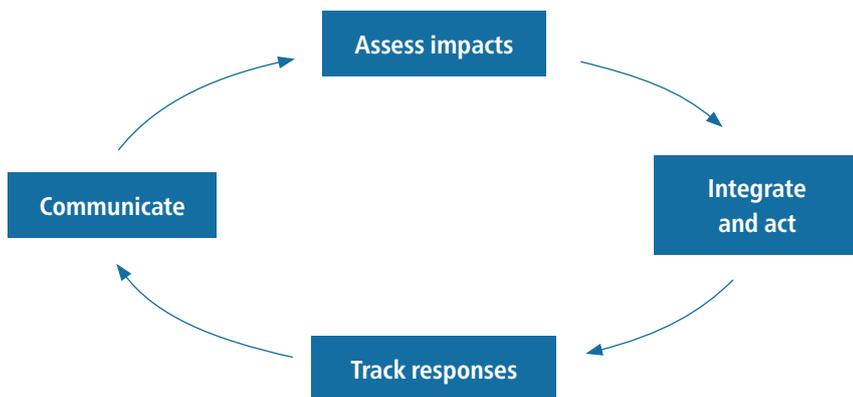
Paragraph 6(d) gives practical implementation to this expectation by requiring companies to:

Take steps to establish and maintain an effective internal governance framework in order to deter, monitor, report, and effectively address adverse impacts on human rights.

HRDD needs to be tailored to a company’s operational realities and associated human rights risks [UNGP 17(b)]. This proportionality principle implies that, when companies operate in environments affected by conflict where the risk of human rights abuses is greatest, they should increase due diligence to ensure respect for human rights and IHL.¹³

Irrespective of the context or risks, the essential phases of HRDD are:

1. **Identify and assess** potential and actual adverse human rights impacts.
2. **Integrate** findings on adverse human rights impacts across relevant internal functions and processes **and act appropriately** to address them.
3. **Track the effectiveness** of actions taken to address them.
4. **Communicate externally** on how the company is addressing them.¹⁴



11 Danish Institute for Human Rights (DIHR), *Human Rights Impact Assessment: Guidance and Toolbox*, 2020, p. 13. At: www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hria_toolbox_2020/eng/dihr_hria_guidance_and_toolbox_2020_eng.pdf.

12 Business for Social Responsibility (BSR), *Conducting an Effective Human Rights Impact Assessment: Guidelines, Steps, and Examples*, 2013, p. 5. At: www.bsr.org/reports/BSR_Human_Rights_Impact_Assessments.pdf.

13 For more information on heightened due diligence and associated triggers and indicators, see: UN General Assembly, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, *Business, human rights and conflict-affected regions: towards heightened action*, A/75/212, 2020. Available in all the six official UN languages at: <https://undocs.org/en/A/75/212>.

14 These phases are spelled out in UNGP 17 and in UNGPs 18-21. See also: Shift, Oxfam and Global Compact Network Netherlands, *Doing Business with Respect for Human Rights: A Guidance Tool for Companies*, 2016, pp. 48-101. At: https://shiftproject.org/wp-content/uploads/2020/01/business_respect_human_rights_full-1.pdf.

These phases are discussed in more detail in section 5, which describes human rights impact assessments [see Section 5.1 to 5.5].

Meeting HRDD expectations also improves PSCs' performance

Although the fundamental purpose of HRDD is to identify potential and actual adverse impacts on people (rights-holders), not risks to the company, private security companies can obtain benefits too. HRDD:

1. Enables companies to deliver high quality services while preventing and managing adverse human rights impacts. This can attract clients and give companies a social licence to operate.
 2. Reduces the risks of liability claims and associated reputational and financial harms.
 3. Reduces grievances and personnel turnover, as well as low morale and operational disruption.
 4. Strengthens community engagement and trust, helping companies to identify and address risks before they escalate.
 5. Fulfils contractual obligations and industry standards, such as ISO 18788 and PSC.1.
-

3. Definition and purpose of human rights impact assessments (HRIAs)

OHCHR commentary on UNGP 18

“The initial step in conducting human rights due diligence is to identify and assess the nature of the actual and potential adverse human rights impacts with which a business enterprise may be involved. The purpose is to understand the specific impacts on specific people, given a specific context of operations. Typically this includes assessing the human rights context prior to a proposed business activity, where possible; identifying who may be affected; cataloguing the relevant human rights standards and issues; and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified.”¹⁵

A human rights impact assessment (HRIA) is “a process for identifying, understanding, assessing and addressing the adverse effects of a business project or business activities on the human rights enjoyment of impacted rights-holders”.¹⁶ [For more information on rights-holders and other stakeholders, see Section 5.1.] The fundamental purpose of HRIAs is therefore to “provide a reasoned, supported and comprehensive answer to the question: ‘how does the project affect human rights?’”.¹⁷ To answer this question, HRIAs rely on field research and meaningful engagement with stakeholders. [For more information on stakeholder engagement and on data collection, see Sections 5.1 and 5.2 respectively.]

A HRIA requires a private security company to assess how delivery of a contracted service, in a specific operating context, could negatively affect the ability of workers, communities, clients and other stakeholders to enjoy their human rights. The answer clarifies the content of the company’s responsibility to respect human rights and enables it to take appropriate action to address the adverse impacts identified. [For more information on types of appropriate action and assigning internal responsibilities, see Section 5.4.]

HRIAs and HRRAs

The purpose and characteristics of HRIAs differentiate them from other forms of assessment, and in particular from what are generically called human rights risk assessments (HRRAs).

The difference between human rights risks and human rights impacts

A ‘human rights risk’ is an event that might or might not happen but which, if it does happen, will have an adverse effect on someone’s human rights. A ‘human rights impact’ is that adverse effect. Impacts can be potential (if they have not yet occurred) or actual (if they have already occurred). The UNGPs and HRIAs use the term ‘human rights risk’ to indicate a potential adverse human rights impact.¹⁸

15 OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, p. 19.

16 Danish Institute for Human Rights, *Human Rights Impact Assessment: Guidance and Toolbox*, p. 10.

17 NomoGaia, *Human Rights Impact Assessment: A toolkit for practitioners conducting corporate HRIAs*, 2012, p. 4. At: <http://nomogaia.org/tools/#item1>.

18 Global Compact Network Germany, twentyfifty and Deutsches Institut für Menschenrechte, *Assessing Human Rights Risks and Impacts: Perspectives from corporate practice*, 2016, pp. 10-11. At: www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Weitere_Publikationen/HRIA_Assessing_Human_Rights_Risks_and_Impacts_Perspectives_from_corporate_practice.pdf.

HRIAs focus on the impact on people. They assess and address the potential and actual adverse human rights impacts of a business activity [a PSC operation] on rights-holders. Because they adopt a human rights-based approach,¹⁹ they affirm five key principles:

1. **Participation.** Rights-holders (individuals whose rights might be impacted or have been impacted by an operation), duty-bearers (individuals who have human rights duties and responsibilities towards rights-holders), and other relevant parties should participate meaningfully throughout. [For definitions of ‘meaningful engagement’ and stakeholder categories, see Section 5.1.]
2. **Accountability.** To be accountable, a company must make appropriate actors responsible for impact assessment, mitigation and management. (For example, a company might make its HRIA team responsible for impact assessment and other company departments responsible for mitigation and management.) It must also act transparently, provide access to information, and make remedies available to impacted rights-holders.²⁰ [For more information on the HRIA team and on transparency, see Section 5.1. For more information on assigning responsibility, see Section 5.4.]
3. **Non-discrimination and equality.** Participation and consultation processes must be inclusive and ensure that stakeholders and their views are represented on equal terms. This implies that processes must be gender-sensitive and take into account the needs of those whose circumstances might make them especially vulnerable (women and children, for example, or internally displaced persons in conflict-affected environments).²¹
4. **Empowerment.** People whose circumstances make them especially vulnerable are likely to find it more difficult to be heard. For this reason, it is important to make sure that HRIAs build capacity. Those who organise them can do this in several ways. They can take steps to inform people at high risk of their rights and entitlements; help them to convey their needs and expectations; and provide specific forms of support. For instance, a PSC that supplies security in a refugee camp might arrange translation facilities for refugees who do not speak the local language(s).
5. **Legality.** Being guided by the international human rights framework, a HRIA takes account of all internationally-recognised human rights standards and principles.²²

When a business conducts a HRIA, on the other hand, it considers what human rights risks might materialise, and the potential legal, reputational and operational consequences for that business enterprise of being involved in a human rights

19 A human rights-based approach is “a conceptual framework directed towards promoting and protecting human rights, based on international human rights standards”. European Network of National Human Rights Institutions, *Human Rights-Based Approach*. At: <http://ennhri.org/about-nhris/human-rights-based-approach>. For a comprehensive overview of the essential elements and key criteria of HRIAs, see Danish Institute for Human Rights, *Human Rights Impact Assessment: Guidance and Toolbox*, pp. 24-26 and 28-39.

20 To provide effective forms of remedy, it is vital to have effective grievance mechanisms. Grievance mechanisms that a PSC operates in coordination with a client and relevant subcontractors may be more effective. For more information on how to establish and sustain company grievance mechanisms, see: ICoCA, *Manual: Developing and operating fair and accessible company grievance mechanisms that offer effective remedies*, and the associated *Interpretative Guidance*. Both are at: <https://icoca.ch/what-we-do>.

21 For information on how to integrate children’s needs and perspectives in HRIAs, see: DIHR and the United Nations Children’s Fund (UNICEF), *Children’s Rights in Impact Assessments: A guide for integrating children’s rights into impact assessments and taking action for children*, 2013. At: https://sites.unicef.org/csr/css/Children_s_Rights_in_Impact_Assessments_Web_161213.pdf.

22 For more information on internationally-recognised human rights standards and principles, including the nine core international human rights treaties and other universal human rights instruments, see OHCHR, *Standards and resources*. At: www.ohchr.org/EN/Issues/Business/Pages/Resources.aspx.

infringement.²³ In these terms, HRRAs are one of many enterprise risk management (ERM) processes that evaluate risks of all kinds to the business rather than impacts on people.

It should be noted, however, that the distinction between HRIAs and HRRAs has not been uniformly adopted across all sectors. [For more information on the integration of HRIAs in private security ERM processes, see Section 5.1.]

Scope of HRIAs

HRIAs assess the impact of an activity or project on the human rights of rights-holders. They look at all rights because, while the most salient issues should be prioritised, business activities (including PSC operations) can have an impact on the full range of human rights, including civil, political, economic, social and cultural rights.²⁴ [For more information on prioritisation, see Section 5.4.]

Examples of adverse impacts for which PSCs can be responsible

- Private security personnel who intentionally delay the transfer to public authorities of persons they have apprehended might be responsible for arbitrary arrest or detention.
- A private security company that operates without a required license and does not declare the exact number of its personnel might infringe the right to social security of its unregistered employees, who will lack protection if they become unemployed, become pregnant, have an accident, etc.
- Private security personnel who disperse a crowd outside the gate of a mining site they are contracted to protect might infringe the protesters' right to freedom of peaceful assembly.
- A private security company that cannot demonstrate the due diligence of its recruitment processes might employ personnel below the minimum age for employment and be guilty of using child labour.
- Private security personnel who prevent local community members from using a footpath to their only available water source might infringe their right to water and sanitation.
- A private security company that retains the passports of third-country employees when they arrive in the country of operation might be guilty of forced labour.

In addition to the Code, PSCs' main sources of reference for cataloguing human rights are [in accordance with UNGP 12]:

1. The International Bill of Human Rights (UDHR, ICCPR and ICESCR).
2. The 1998 ILO Declaration on Fundamental Principles and Rights at Work.²⁵

Depending on the operating context, companies might also consider:

3. Regional instruments, such as the 1981 African Charter on Human and Peoples' Rights²⁶ and the 1969 American Convention on Human Rights.²⁷

²³ Danish Institute for Human Rights, *Human Rights Impact Assessment: Guidance and Toolbox*, p. 24. See also Aim for Human Rights, *Guide to Corporate Human Rights Impact Assessment Tools*, 2009, p. 7, at: www.commddev.org/pdf/publications/Human-Rights-in-Business-Guide-to-Corporate-Human-Rights.pdf.

²⁴ For an analysis of the rights affirmed in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and how business activities might impact them, see Monash University, *Human Rights Translated 2.0: A Business Reference Guide*, 2017. At: https://jmarketing.agency/monash/Monash_HRT_Final.pdf.

²⁵ Available in several languages at: www.ilo.org/declaration/thedeclaration/textdeclaration/WCMS_716594/lang--en/index.htm.

²⁶ Available in several languages at: www.achpr.org/legalinstruments/detail?id=49.

²⁷ Available in English at: www.cidh.oas.org/basicos/english/basic3.american%20convention.htm.

4. Instruments that protect vulnerable populations, such as the 1989 Convention on the Rights of the Child,²⁸ the 1979 Convention on the Elimination of all Forms of Discrimination against Women,²⁹ the 2007 UN Declaration on the Rights of Indigenous People,³⁰ the 2006 Convention on the Rights of Persons with Disabilities,³¹ and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.³²
5. Human rights provisions enshrined in national legislation.

The sections that follow discuss in more detail how HRIAs should be conducted.

28 Available in all the six official UN languages at: www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx.

29 Available in all the six official UN languages at: www.ohchr.org/en/professionalinterest/pages/cedaw.aspx.

30 Available in all the six official UN languages at: www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html.

31 Available in all the six official UN languages at: www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx.

32 Available in all the six official UN languages at: www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx.

TIMING

- Start the HRIA as early as possible and before operations begin.
- Review the HRIA at critical points in the operation and when significant changes occur.

**PHASE I.
PLAN AND
SCOPE**

- Establish the parameters of the assessment.
- Scope the operation, the context, and relevant stakeholders.
- Design strategies to create meaningful stakeholder engagement.
- Develop the assessment's terms of reference (TORs).
- Form the HRIA team.

**PHASE II.
COLLECT DATA
AND SET A
BASELINE**

- Select relevant human rights indicators.
- Collect relevant information and evidence.
- Set a baseline for the assessment.

**PHASE III.
ANALYSE
IMPACTS**

- Identify adverse human rights impacts that stem from the operation.
- Assess the scale, scope and remediability of impacts to determine their severity.
- Recommend actions to mitigate and manage the impacts.

**PHASE IV.
MITIGATE
AND MANAGE
IMPACTS**

- Integrate the HRIA findings across relevant internal functions.
- Prioritise actions to address more severe impacts, as needed.
- Apply or create leverage to address adverse impacts to which the company has contributed or is directly linked.
- Take appropriate action by developing and implementing an impact management plan.

**PHASE V.
EVALUATE
AND REPORT**

- Evaluate the HRIA. Consider how effectively the assessment identified adverse impacts, the effectiveness of measures taken to address them, and whether the measures were implemented correctly.
- Communicate externally how the company has identified and addressed adverse impacts, including through formal reporting.

4. Timing of HRIAs

TIMING

- Start the HRIA as early as possible and before operations begin.
- Review the HRIA at critical points in the operation and when significant changes occur.

UNGP 17(c) states that human rights due diligence should be continuous. Recognising the importance of this point, when should companies initiate a HRIA?

First, to comply with UNGP 16, a company might find it useful to start by affirming its commitment to human rights and setting out its human rights objectives in a human rights policy.³³ On this foundation, it could initiate a HRIA. Second, it is important to distinguish HRIAs that take place before an operation begins and focus exclusively on potential impacts (*ex-ante* HRIAs) from HRIAs that occur once an operation is underway and examine actual as well as potential impacts (*ex-post* HRIAs).³⁴

Because the fundamental objective of HRDD is ideally to ‘prevent and mitigate’ adverse impacts on human rights, rather than have to remedy them, it is recommended to start HRIAs as early as possible and before private security operations begin.

OHCHR commentary on UNGP 17

“Human rights due diligence should be initiated as early as possible in the development of a new activity or relationship, given that human rights risks can be increased or mitigated already at the stage of structuring contracts or other agreements, and may be inherited through mergers or acquisitions.”³⁵

For a private security company, ‘as early as possible’ means at the very start of the commercial process, when deciding to bid for a contract; at the latest, a HRIA should begin when the contract is awarded, or during project mobilisation.

Although it may not be feasible to conduct HRIAs before every operation, PSCs should be mindful that operations in complex environments, especially operations that provide armed services, pose greater human rights (and IHL) risks and require heightened due diligence.

³³ The human rights policies of ICoCA Member and Affiliate companies should refer to their status in the Association and to the commitment they made to comply with the Code.

³⁴ World Bank, *Human Rights Impact Assessments: A Review of the Literature, Differences with other forms of Assessments and Relevance for Development*, 2013, pp. 8-9. At: <http://documents1.worldbank.org/curated/en/834611524474505865/pdf/125557-WP-PUBLIC-HRIA-Web.pdf>.

³⁵ OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, p. 18.

Challenge for PSCs

Private security operations, especially when they involve ad-hoc or short tasks, can happen at very short notice. In addition, PSCs often provide routine or recurring services in the same context. (For example, they meet and greet different clients at the same airport.) A separate HRIA for such services, as if each were a new operation, is not usually feasible or appropriate. Their recurring nature means that companies should be able to gauge their human rights risks and impacts on the basis of previous experience and past provision of similar services in the same context.

By contrast, recurring activities performed as part of a broader operation should be assessed. In these cases, a dedicated HRIA should be conducted and reviewed regularly.

Once started, HRIAs need to be reviewed on a continuous basis to make sure that any new potential or actual human rights impacts are addressed without delay. It is particularly important to review HRIAs at critical points of project implementation, and when an operation's design or operating context changes significantly. This can happen very fast in complex environments.³⁶ [For more information on HRIA review, see Sections 5.4 and 5.5.]

Feedback from an ICoCA Member company

"The assessment process has to start when the company is planning a market entry to a new country of operations. For an existing operational location, the planning is embedded at strategy formulation stages, when the company is evaluating its target contracts, clients, and future operations. These plans would be further developed and customised to the specific context during request for proposal (RFP) stages and when developing the concept of operations (CONOPS) for a particular contract.

Companies typically carry out reconnaissance and pre-market entry activities, and conduct site risk assessments to assess all the requirements and risks long before any contract is awarded. This is done even before an offer to the client is made. The mobilisation stage would typically involve actual implementation of existing plans, developed earlier on. Activities at this stage would include active community liaison activities. Companies cannot start these activities at contract award alone, as all of these activities involve costs, which must be taken into consideration when developing the CONOPS and offer pricing."

36 Danish Institute for Human Rights, *Human Rights Impact Assessment: Guidance and Toolbox*, p. 19.

5. Phases of HRIAs

HRIAs can be broken down into the following phases:

1. **Planning and scoping.**
2. **Data collection and baseline development.**
3. **Impact analysis.**
4. **Impact mitigation and management.**
5. **Evaluation and reporting.**³⁷

5.1 Planning and scoping

PHASE I. PLAN AND SCOPE

- Establish the parameters of the assessment.
- Scope the operation, the context, and relevant stakeholders.
- Design strategies to create meaningful stakeholder engagement.
- Develop the assessment's terms of reference (TORs).
- Form the HRIA team.

The first phase of a HRIA establishes its parameters and obtains sufficient information about the operation, its context, and relevant stakeholders to be able to identify the focuses of data collection and the impacts that should be analysed. This phase is mostly desk-based.

Stand-alone vs. integrated HRIAs

At this stage, it is important to decide whether the HRIA will be a stand-alone exercise or integrated in other types of assessment, notably assessments that PSCs do as part of their enterprise risk management processes.

There is no best choice. Both approaches present pros and cons and it is ultimately up to each company to determine which is the best option, given the nature and context of its operations.³⁸ Many PSCs, for example, combine both risk and impact assessments in so-called human rights risk and impact assessments (HRRRIAs). These enable them to comply with relevant industry standards, optimise assessment processes and save resources.

Irrespective of whether HRIAs are stand-alone or integrated, what matters is that they must fulfil the key criteria listed above. In particular, to meet HRDD expectations the company must consider the impact of its activities on people, not just the potential consequences for the company if it is involved in human rights infringements.

³⁷ In the literature, different models propose more or fewer phases. In this Guidance, we follow the five phase model adopted by the Danish Institute for Human Rights. See *Human Rights Impact Assessment: Guidance and Toolbox*, pp. 48-115.

³⁸ For a comparison of the strengths and weaknesses of stand-alone and integrated HRIAs, see Danish Institute for Human Rights, *Human Rights Impact Assessment: Guidance and Toolbox*, pp. 26-28. For a similar comparison in conflict-affected environments, see International Alert, *Human rights due diligence in conflict-affected settings: Guidance for extractives industries*, 2018, pp. 21-22. At: www.international-alert.org/sites/default/files/Economy_HumanRightsDueDiligenceGuidance_EN_2018.pdf.

HRIAs and enterprise risk management

Relevant security industry standards, such as ISO 18788 and PSC.1, require companies to conduct comprehensive internal and external risk assessments, including assessments of human rights risks.³⁹ In this context, risk assessment covers the impact of PSCs' operations on human rights, beyond reputational, financial and operational consequences for the company. The approach implies integration of HRIAs in broader ERM processes.

The authoritative commentary of OHCHR on UNGP 17 makes clear that "human rights due diligence can be included within broader enterprise risk management systems, provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders".⁴⁰

When PSCs provide services for a larger project, their HRIAs might need to be integrated, or at least coordinated, with the HRIAs of their clients (as project owners).

The operation

When scoping a HRIA, a PSC should start by identifying the specific characteristics of its operation. In particular, it should ask:

- **Which security services and activities need to be analysed for their human rights impact?** It should also establish whether the operation is new or inherited. Particularly in complex environments, inherited operations may bring a legacy of human rights concerns. For example, if a previous security provider was alleged to have used excessive force against local residents, the PSC that takes over its contract is likely to inherit the resentments of the community and associated human rights risks and responsibilities.
- **How do the company's policies, procedures and controls apply to the operation or services it will supply?** It should also look closely at its agreement with the client and the client's expectations.
- **Who will be involved in delivering the operation or services?** It should review the composition of its personnel (local nationals, third-country nationals, expatriates), their gender balance, their knowledge of the environment, and their understanding of relevant human rights risks and challenges.
- **What is the nature of the location in which the services will be delivered, and what is the company's experience and past performance in this and similar contexts?** For example, operations in conflict areas or remote environments, where supervision is limited, may generate more acute human rights risks and a corresponding responsibility to comply with international humanitarian law.

The context

The context in which an operation is implemented influences the incidence and seriousness of human rights risks. Companies should particularly:

- **Seek to understand the human rights situation in the country and in the specific operating environment.** For example, where services have to be delivered in a country or region in which public security forces have been accused of extrajudicial, summary or arbitrary executions, a company should consider whether it might endanger the right to life by handing over suspects to local authorities.

³⁹ See: ANSI/ASIS PSC.1-2012 (R2017), p. xviii; and ISO 18788:2015(E), p. viii.

⁴⁰ OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, p. 18.

- **Consider the need for a conflict analysis.** A company that works in environments affected by conflict needs to understand the root causes of the conflict, the population groups most affected, and how its own activities might influence conflict dynamics and cause additional human rights impacts or IHL violations. As part of this conflict analysis, the company should ascertain with which parties to the conflict it is likely to have contact, and their human rights and IHL record.⁴¹
- **Map the private security industry in the country of operations.** This review should cover perceptions of the industry by local stakeholders, associated human rights risks and challenges, and broader legacy issues.⁴²
- **Assess the capacity of local authorities** to hold perpetrators accountable for human rights abuses (and IHL violations in situations of armed conflict), **and the effectiveness of mechanisms** that purport to remedy adverse impacts of business activities.

Stakeholders and engagement strategies

After analysing the operation and the context, as a third step it is necessary to identify stakeholders. In this case, a stakeholder is any person, group or organisation that might be adversely impacted by the activities of a private security operation, as well as persons or organisations who have an interest in or an ability to influence the operation. In the context of a HRIA, three main categories of stakeholders can be identified:

1. **Rights-holders.** These are individuals whose human rights may be or have been impacted by the operation being assessed. They might include company personnel, the client, members of local communities, other residents, workers in camps and facilities that the company is contracted to secure, seafarers in maritime operations, etc. In HRIAs, rights-holders are the most important constituency to take into account because the fundamental purpose of a HRIA is to assess and manage adverse human rights impacts on people.
2. **Duty-bearers.** These are “actors who have human rights duties or responsibilities towards rights-holders”.⁴³ They include the company itself (at all levels), and also its clients, partners, subcontractors, and personnel of national and local government institutions, such as public security forces who cooperate with the operation, police, and other law enforcement agencies.
3. **Other relevant parties.** These include individuals and groups who help to identify and analyse adverse human rights impacts, and provide inputs and expertise. They might include human rights experts, local civil society organisations, national human rights institutions, relevant government ministries and departments, humanitarian organisations working in conflict-affected environments, etc.

41 For more information on how to conduct a conflict analysis, see: International Alert, *Human rights due diligence in conflict-affected settings: Guidance for extractives industries*, pp. 31-46. See also: UN General Assembly, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, *Business, human rights and conflict-affected regions: towards heightened action*, pp. 9-11.

42 Geneva Centre for Security Sector Governance (DCAF) and International Committee of the Red Cross (ICRC), *Addressing Security and Human Rights Challenges in Complex Environments*, Third Edition, p. 91. Available in several languages at: www.securityhumanrightshub.org/toolkit.

43 Danish Institute for Human Rights, *Human Rights Impact Assessment: Guidance and Toolbox*, p. 118.

Effective participation of all relevant stakeholders, and rights-holders in particular, is an essential element of HRIAs.⁴⁴ This is because HRIAs seek to identify actual and potential impacts on people from their perspectives rather than from the perspective of the company. While stakeholders are likely to be most actively involved during the data collection phase [see Section 5.2], meaningful engagement strategies should be designed and introduced from the start and should satisfy the following criteria:

- **Timeliness and continuity.** Engagement with stakeholders should start as soon as they are identified and continue throughout all phases of a HRIA.
- **Appropriateness.** Engagement strategies should take into account the character of each stakeholder (clients, local and foreign employees, communities living in the area of operation, refugees, women, children, etc.) and be sensitive to the local context and culture.
- **Prioritisation.** Engagement strategies should prioritise rights-holders, and especially rights-holders who are disproportionately impacted by an operation, or most directly affected by a conflict, or more generally particularly exposed to risk (for example, women, children, indigenous people).
- **Inclusivity.** All identified stakeholders, and rights-holders in particular, should be allowed to participate in a company's HRIA without discrimination. In environments affected by conflict, it may be difficult or impossible for some groups to do so; the principle of inclusion nevertheless requires a company to take steps to remove barriers that prevent or limit stakeholder participation. It can do this in many ways, for instance by promoting multi-stakeholder collaboration, implementing empowerment strategies, or adopting gender-sensitive or child-rights approaches as needed.
- **Safety.** Contact with a company should not expose stakeholders to risks. Particularly in conflict-affected environments, for example, individuals may face retaliation by state authorities, community members, or other actors for participating in company assessment processes.
- **Based on good faith.** A company's approach to engagement should be driven by a genuine desire to understand stakeholders' perspectives. Stakeholders should seek to make sure that the company is fully informed of all adverse impacts associated with its activities.
- **Transparency and accessibility.** A company should share relevant information with stakeholders, and make that information easily accessible to them, if necessary by providing it in translation and in different forms.⁴⁵ Transparency requires the company to communicate relevant information about the operation and its impacts and about the methodology used to assess them and reach results. This implies that a company must inform stakeholders about the different phases of a HRIA, as well as the issues that it considers and the findings it reaches.

44 The Danish institute for Human Rights defines stakeholder engagement as "the core cross-cutting component" of a HRIA. For its detailed description of stakeholders and how to engage with them, see: *Human Rights Impact Assessment: Guidance and Toolbox*, pp. 116-153. For more information on stakeholder engagement in complex and conflict-affected environments, see International Alert, *Human rights due diligence in conflict-affected settings: Guidance for extractives industries*, pp. 24-28; UN General Assembly, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, *Business, human rights and conflict-affected regions: towards heightened action*, pp. 11-14; and Geneva Centre for Security Sector Governance and International Committee of the Red Cross, *Addressing Security and Human Rights Challenges in Complex Environments*, pp. 148-168.

45 Where human rights capacity is limited, it is particularly important to use accessible language, not only for external communications but also for communication inside the company. Company departments and personnel need to understand their responsibilities to rights-holders and what action is expected of them.

- **Two-way communication.** Information should pass in both directions. A company should provide stakeholders with information about its activity. Both sides should have space to express their views. And stakeholders should be permitted to provide input into the HRIA process.

Challenge for PSCs

Private security companies may find it difficult to be transparent, especially when they operate in complex environments where disclosure of information might put stakeholders at risk. To address this challenge, companies can analyse the risks and benefits of transparency in terms of its impact on people, including clients. PSCs are not required to disclose the details of their contracts with clients or associated security arrangements, but they should be transparent about the anticipated or actual impacts of their activities on human rights and the measures they take to address those impacts. Information can often be disclosed in a way that minimises risks to stakeholders, for example by anonymising it. Decisions not to release information about foreseen or actual impacts and measures to address them should be properly justified.

Transparency can also benefit companies that operate in high-risk environments, because it reduces the risk of misinformation and enables companies to improve their practices as a result of stakeholder feedback.⁴⁶

- **Responsiveness.** Companies must take proper account of stakeholders' views. These should inform companies' decision-making process; and companies should act to address any adverse impacts stakeholders identify. Responsiveness implies that rights-holders are able to participate meaningfully in decisions that affect them.⁴⁷

Challenge for PSCs

Because they frequently work in complex environments, it can be difficult for PSCs to engage extensively and directly with stakeholders. In addition, security operations are inherently somewhat confidential. Nonetheless, PSCs should make every effort to cooperate with stakeholders because their participation is key to the successful conduct of HRIAs. Without meaningful stakeholder engagement, a HRIA is unlikely to identify all the potential and actual adverse human rights impacts that stem from a company's operations.

When direct cooperation with rights-holders is not possible or advisable, a PSC should consider working with organisations or groups that can legitimately represent rights-holders' interests. For example, trades unions may be in a position to represent workers, civil society organisations local communities, and humanitarian organisations people affected by conflict.

As project owners, clients may also restrain their suppliers, including PSCs, from working closely with rights-holders or other stakeholders. In such situations, PSCs should attempt to participate in stakeholder consultations run by the client or, at the least, ask to be fully briefed on their outcome.

A company can meaningfully engage with stakeholders by a variety of means, including bilateral meetings, surveys, group consultation, and collaboration with third parties, such as clients and other companies. It is for the PSC to assess which path is most

46 Shift, *Human Rights Due Diligence in High Risk Circumstances: Practical Strategies for Business*, 2015, pp. 18-19. At: https://shiftproject.org/wp-content/uploads/2015/03/Shift_HRDDinhighriskcircumstances_Mar2015.pdf.

47 Some of these criteria are listed by the Organisation for Economic Co-operation and Development (OECD) in *OECD Due Diligence Guidance for Responsible Business Conduct*, 2018, pp. 49-50. Available in several languages at: www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm.

appropriate, taking into account the operating environment and the category of stakeholders it wants to engage. Through these forms of engagement, the company should seek to acquire a comprehensive understanding of all the potential and actual adverse human rights impacts of its operation, drawing on the views expressed by those whose rights have been or might be harmed. Meaningful engagement also gives the company some claim to legitimacy and can empower stakeholders, who can become more aware of their rights and entitlements as a result of participating in a HRIA.⁴⁸

Feedback from an ICoCA Member company

“Many of the challenges that we face relate to our status as service providers, not project owners. We believe that this is a challenge that applies to the entire industry. ICoCA may be able to play a valuable role both in offering its own guidance, and in providing a collective voice to help the industry engage with employers.

One critical area concerns consultation. *UN Guiding Principle 18* states that human rights due diligence should *involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation*. However, it will almost never be appropriate for us to conduct such consultation before taking on an assignment.

Once we have taken on an assignment we will operate according to the principles of ‘security by consent’ and this involves liaison with affected communities and other stakeholders. We are certainly alert to their concerns and may be able to play a role in communicating those concerns to the project owners. Arguably this amounts to a form of ‘consultation’. However, we do not have a mandate to undertake formal consultations on the project owner’s behalf.”

TORs and the HRIA team

Once it has acquired a thorough understanding of the operation, the context, and relevant stakeholders, a company can draft the HRIA’s terms of reference (ToRs). It should do so in a document that sets out the HRIA’s scope and purpose and a plan for its completion. The ToRs should describe:

1. The **HRIA’s rationale**.
2. The **methodology** that will be used.
3. A **timeline** for implementing single activities and phases, and a **budget**.
4. The **responsibilities** of the HRIA team.
5. **Reporting requirements**. [For more information on reporting, see Section 5.5.]

In the final step of this first phase, the HRIA team is formed.

The HRIA team should possess human rights expertise and be familiar with the industry and the context (including any conflict), and should be gender-balanced so that it can meaningfully engage with all categories of stakeholder. In addition, it should remain as independent of the company as possible, to ensure that it identifies and assesses impacts without bias or interference. For this reason, companies are advised not to place company representatives (such as the regional director or the operations manager) in the HRIA team but to supervise the process by participating in steering committees that include other stakeholders as well as members of the HRIA team.⁴⁹

48 On the benefits of stakeholder engagement, see also: Shift, Oxfam, and Global Compact Network Netherlands, *Doing Business with Respect for Human Rights: A Guidance Tool for Companies*, pp. 95-96.

49 Danish Institute for Human Rights, *Human Rights Impact Assessment: Guidance and Toolbox*, pp. 57-61. For a comparison of the respective pros and cons of in-house and third-party assessments, see International Alert, *Human rights due diligence in conflict-affected settings: Guidance for extractives industries*, p. 23.

Independence and objectivity

A HRIA team needs to be independent to ensure that its assessments are as objective as possible. If companies decide nevertheless to place their own personnel in HRIA teams, they can still achieve objectivity by adopting a cross-functional approach. This adds personnel from other departments and operations to the team, and possibly independent experts or consultants as well, to balance the presence of internal staff.

5.2 Data collection and baseline development

PHASE II. COLLECT DATA AND SET A BASELINE

- Select relevant human rights indicators.
- Collect relevant information and evidence.
- Set a baseline for the assessment.

In the second phase, a PSC's HRIA team collects information and evidence in order to identify potential or actual adverse impacts that stem from the company's operations. To guide data collection, the team should select relevant human rights indicators and adopt a human rights-based approach.

While HRIA scoping is mostly a desk-based exercise, data collection requires the team to engage with stakeholders, through bilateral meetings, surveys, group consultations, and other means listed above.

It should be underscored that meaningful engagement with rights-holders is critical. PSCs cannot rely on consultations with clients and partners alone to obtain the information HRIAs need.

Human rights indicators

Because a HRIA is rooted in the international human rights framework, it is important to use human rights indicators to properly identify and assess adverse impacts.⁵⁰

Human rights indicators can be defined as "specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights".⁵¹ They are a tool that companies can use to identify and assess (potential and actual) adverse impacts of their activities on the human rights of rights-holders, and track the effectiveness of measures they take to mitigate and manage them.⁵²

Human rights indicators can be categorised in several ways.⁵³ In HRIAs, both quantitative and qualitative indicators should be used. Quantitative indicators can be measured in statistical terms. Qualitative indicators require a narrative description.

⁵⁰ The Danish institute for Human Rights has developed *Human Rights Indicators for Business*, an open-source database of 1,000 indicators which covers a wide range of issues, including: (1) management; (2) human resources; (3) workplace health and safety; (4) product quality and marketing practices; (5) community impact; (6) security arrangements; (7) legal and governmental affairs; and (8) contractors and supply chain. At: <https://old.business-humanrights.org/en/platform-for-human-rights-indicators-for-business-hrib>.

⁵¹ Benchmarks are linked to indicators. Benchmarks are "predetermined values for indicators that can be based on normative or empirical considerations". Both definitions are taken from: OHCHR, *Human Rights Indicators: A Guide to Measurement and Implementation*, HR/PUB/12/5, 2012, pp. 16 and 20. The Guide is available in several languages at: www.ohchr.org/EN/Issues/Indicators/Pages/documents.aspx.

⁵² For more information on the appropriate characteristics of indicators used in human rights assessments, see *ibid*, pp. 50-51.

⁵³ On the different categories of indicators, see *ibid*, pp. 16-20; and Danish Institute for Human Rights, *Human Rights Impact Assessment: Guidance and Toolbox*, pp. 78-81.

Examples of quantitative and qualitative indicators

Quantitative indicators

- Number of complaints received in the past operating year that allege a violation of the company's human rights policy.
- Percentage of suppliers or subcontractors that have passed HRDD assessments.
- Incidence of sexual exploitation and abuse (SEA) or gender-based violence (GBV) in the operating context. (A figure can be obtained by comparing the number of registered cases to the number of inhabitants, for example.)
- Number of registered incidents in the past operating year in which company personnel were alleged to have used excessive force.
- Percentage of operational personnel trained in the human rights risks relevant to a specific assignment.

Qualitative indicators

- Progress status of corrective actions taken by the company to address ascertained violations of its human rights policy.
- Alignment of suppliers or subcontractors with the company's human rights policy.
- Availability of SEA or GBV reporting mechanisms in the operating context.
- Actions taken by the company to disseminate its rules on the use of force (RUF) to personnel (recurrent training, distribution of RUF cards, etc.).
- Content of personnel human rights training (areas covered).

Data collection criteria

The following criteria are used in human rights-based data collection:

- **Participation.** Stakeholders should be actively involved.
- **Data disaggregation.** Data should be organised in a manner that makes it possible to analyse statistical information in relevant ways on different categories of stakeholders, particularly rights-holders.⁵⁴
- **Self-identification.** Individuals should be allowed to define themselves (in terms of their membership of an indigenous community, for example) and allowed to disclose or withhold information about their personal characteristics (for example, sexual orientation).
- **Transparency.** A company should explain clearly and transparently the purpose of data collection, the methodology used to collect data, and the types of information gathered. Stakeholders should have access to the data that has been collected (appropriately anonymised), in a language and a format that are accessible in the operating context.
- **Privacy.** A company must protect the confidentiality of responses and personal information, unless the individuals concerned explicitly agree to their dissemination.
- **Accountability.** Data should be used for the purpose it was collected. In this case, information is collected by a company so that it can hold itself accountable for adverse human rights impacts with which it may be involved, and can evaluate the action it has taken (or should take) to address them. At the same time, data

⁵⁴ In human rights analysis, data are generally disaggregated by prohibited grounds of discrimination. A non-exhaustive list of these grounds includes: sex, age, economic and social situation, race, colour, language, religion, political or other opinion, national or social origin, property, birth, disability, health status, nationality, marital and family status, sexual orientation and gender identity, place of residence, and other status.

collectors should be held accountable for the impact of data collection activities and data dissemination. They should be held accountable, for example, if data is disseminated that stakeholders did not agree to release and that might put them at risk.⁵⁵

HRIA baseline

Once relevant information and necessary evidence have been collected, the HRIA team can develop a baseline for the assessment, that is to say a document that describes the state of human rights enjoyment in a specific context at a specific time. This document will subsequently inform the impact analysis.

5.3 Impact analysis

PHASE III. ANALYSE IMPACTS

- Identify adverse human rights impacts that stem from the operation.
- Assess the scale, scope and remediability of impacts to determine their severity.
- Recommend actions to mitigate and manage the impacts.

Having collected data and set a baseline, the HRIA team can proceed to identify and analyse adverse human rights impacts that stem from the operation (potential impacts in the case of *ex-ante* HRIAs and both potential and actual impacts in the case of *ex-post* HRIAs). Impact analysis must take account of the baseline previously developed and relevant human rights standards. The HRIA team should actively involve stakeholders to ensure that its analysis reflects the perspectives of individuals who might suffer impacts in the future or have suffered impacts in the past.

On the basis of its impact analysis, the team can formulate recommendations that will enable the company to develop an effective impact management plan. [For more information on impact mitigation and management, see Section 5.4.]

Types of adverse impact

HRDD should cover the following three categories of (potential and actual) adverse human rights impacts [UNGP 17(a)]:

1. Adverse impacts **directly caused** by a [private security] company's business activities.
2. Adverse impacts to which the activities of a [private security] company **contribute**.
3. Adverse impacts that are **directly linked** to a [private security] company's operations, products or services by its business relationships.

In certain situations, a PSC's cooperation with state security forces is likely to be particularly relevant. Such cooperation is mandatory in some contexts for the provision of armed services. However, state security forces sometimes commit human rights violations while protecting a project. A PSC may be deemed to have contributed to or to be directly linked to such violations even if the public security forces that committed them operate independently and have an entirely separate chain of command.

⁵⁵ OHCHR, *A Human Rights-Based Approach to Data: Leaving No One Behind in the 2030 Agenda for Sustainable Development*, 2018. Available in several languages at: www.ohchr.org/EN/Issues/Indicators/Pages/documents.aspx.

The concepts of 'direct link' and 'business relationship'

A 2014 commentary by OHCHR helps to clarify the meaning of 'direct link' and 'business relationship' in practice. It states: "The term 'direct link' refers to the linkage between the harm and the company's products, services and operations through another company (the business relationship) [...] A company's 'business relationships' is defined broadly to encompass relationships with business partners, entities in its value chain and any other State or non-State entity directly linked to its business operations, products or services. This includes entities in its supply chain beyond the first tier and indirect as well as direct business relationships."⁵⁶

A subsequent letter from Professor John Ruggie offers additional clarification. He wrote: "at the end of the day a decision needs to be made whether a specific instance falls into the 'contribute' or 'linked' category [...] A variety of factors can determine this. They include the extent to which a business enabled, encouraged, or motivated human rights harm by another; the extent to which it could or should have known about such harm; and the quality of any mitigating steps it has taken to address it. Moreover, a company's involvement may not be static, but can change over time. These factors should not be considered in isolation from each other, but as part of a totality of circumstances."⁵⁷

Distinguishing between these three categories of impacts enables a company (and other stakeholders) to understand what action it needs to take to mitigate and manage them. [For more information on different types of action, see Section 5.4.]

Examples of impacts caused, contributed to and directly linked

- Private security personnel who use excessive force to control a member of the local community may infringe that person's right to personal integrity.
- A private security company that is contracted to protect construction of a pipeline closes a road to facilitate movement of vehicles and delivery of materials; other roads are available but access to them has been severely restricted by other business activities. As a result, the local community finds itself in a de facto enclave, unable to leave the area. The PSC may have contributed to an infringement of community members' right to freedom of movement.
- A private security company subcontracts part of an operation to another PSC. The subcontractor recruits third-country nationals for the assignment through a recruitment agency that is later discovered to have charged applicants recruitment fees. Through its business relationship with the subcontractor, the main contractor may be directly linked to debt bondage.

Criteria in impact analysis

When analysing adverse human rights impacts, the main aspect to consider is their (anticipated or actual) severity.⁵⁸ Assessments of severity help a company to set priorities when it acts to mitigate and manage impacts.

Three main elements determine impact severity:

56 OHCHR, *Frequently Asked Questions about the Guiding Principles on Business and Human Rights*, HR/PUB/14/3, New York and Geneva, 2014, p. 32. At: www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf.

57 Letter dated 6 March 2017 to Prof. Dr. Roel Nieuwenkamp, Chair of the OECD Working Party on Responsible Business Conduct, p. 2. At: media.business-humanrights.org/media/documents/files/documents/OECD_Workshop_Ruggie_letter_-_Mar_2017_v2.pdf.

58 Impact severity is linked to the concept of salience of risks to people (the impacted rights-holders). Salience differs from risk materiality, which generally focuses on risks to the business and is used in traditional ERM assessments. For more information on the difference between salience and materiality, see: Human Rights Reporting and Assurance Frameworks Initiative (RAFI), UN Guiding Principles Reporting Framework, *Salient Human Rights Issues*. At: www.ungpreporting.org/resources/salient-human-rights-issues.

1. **Scope.** This describes the number and profile of people adversely affected (for example, 50 children or 20 members of a local community).
2. **Scale.** This describes the seriousness of the impact (from the perspective of the rights-holder).
3. **Remediability.** This assesses the extent to which it is possible to restore the state that existed before the impact occurred, or establish some equivalent state, and how difficult restoration will be. (For example, if an applicant has been subject to discrimination during a company recruitment process, is it feasible and appropriate to offer the person another job, or compensation, or another form of remedy?)

Assessment of impact scale is subjective because rights-holders who experience an impact will not necessarily share the same view of its seriousness. HRIA teams are therefore advised to consult stakeholders carefully when they evaluate the scale of impacts.

When determining the severity of impacts, rights-holders' vulnerability is also relevant. Not all rights-holders are equally exposed to adverse impacts; some groups are more vulnerable than others. To analyse the scale of an impact, a company should therefore consider the extent to which population groups are differently exposed to adverse impacts, as well as their sensitivity and adaptive capacity.⁵⁹ Rights-holders in environments affected by conflict may have lowered resilience, which can increase the felt severity of adverse impacts.

Weak rule of law makes impacts less remediable.⁶⁰

Integrating a gender perspective in impact analysis

PSCs should integrate a gender perspective in their analysis of impacts. A company should consider how its operation may differently affect women and men in certain contexts and adjust impact mitigation and management strategies accordingly, to ensure that the remedial measures it takes are appropriate and effective for the target group.⁶¹ For example, if a company's security procedures require visitors to show their faces in public, this might disproportionately impact women who cover their faces for religious reasons. (In this instance, a PSC might arrange to allow women to uncover their faces discreetly in a separate room in the presence of female security personnel.)

Impacts on children and other potentially vulnerable population groups should be approached similarly.

Risk assessments, such as HRRAs, often consider risk likelihood. Risk likelihood is an estimate of the probability that a given risk will materialise. The estimate is based on several factors, including the frequency of similar occurrences in the same operating environment in the past. In this instance, it will also be based on the degree to which a PSC operation will enable, facilitate or prevent a given risk from occurring. Risk likelihood in environments affected by conflict is also determined by external factors, such as the dynamics of the conflict. Risk likelihood clearly helps a company to foresee and forestall future impacts. In the context of HRDD, however, it must be underscored that it plays a secondary role in determining mitigation and management priorities. Impact severity remains the primary consideration.

59 Dylan Tromp, *Assessing Business-Related Impacts on Human Rights: Indicators and Benchmarks in Standards and Practice*, Institute for Development and Peace, University of Duisburg-Essen, INEF Report 110/2016, pp. 22-30. At: www.uni-due.de/imperia/md/content/inef/report110.pdf.

60 International Alert, *Human rights due diligence in conflict-affected settings: Guidance for extractives industries*, p. 40.

61 Organisation for Economic Co-operation and Development, *OECD Due Diligence Guidance for Responsible Business Conduct*, pp. 41-42. See also, UN General Assembly, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, *Business, human rights and conflict-affected regions: towards heightened action*, p. 14.

5.4 Impact mitigation and management

PHASE IV. MITIGATE AND MANAGE IMPACTS

- Integrate the HRIA findings across relevant internal functions.
- Prioritise actions to address more severe impacts, as needed.
- Apply or create leverage to address adverse impacts to which the company has contributed or is directly linked.
- Take appropriate action by developing and implementing an impact management plan.

Once adverse human rights impacts have been identified and analysed, a company should integrate these findings across relevant internal functions and take appropriate action to address them [UNGP 19].

Prioritisation

OHCHR commentary on UNGP 24

“While business enterprises should address all their adverse human rights impacts, it may not always be possible to address them simultaneously. In the absence of specific legal guidance, if prioritization is necessary business enterprises should begin with those human rights impacts that would be most severe, recognizing that a delayed response may affect remediability. Severity is not an absolute concept in this context, but is relative to the other human rights impacts the business enterprise has identified.”⁶²

All identified adverse human rights impacts must be addressed; but, because companies (including PSCs) are often unable to address all impacts at the same time, company mitigation and management strategies should prioritise. Impact severity should determine such decisions [UNGP 24]. In other words, impacts that the impact analysis has judged greatest in scope or scale or least remediable should be addressed first. (For example, a company should prioritise a death due to the poor management of weapons and ammunition; or a case of ill-treatment, which infringes a non-derogable right.) Impact likelihood is not a primary factor in prioritisation.

Companies that operate in environments affected by conflict should consider the extent to which any delay in addressing an impact might exacerbate the conflict, generating additional impacts, and prioritise action accordingly. (On these grounds, a company that operates in a situation characterised by inter-ethnic tensions might prioritise action to address a case of discrimination against a member of a local tribe.)⁶³

Leverage

In addition, a company’s leverage conditions what action it should take to address adverse impacts with which it is involved [UNGP 19 (b.ii)].

OHCHR commentary on UNGP 19

“Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm.”⁶⁴

62 OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, p. 26.

63 International Alert, *Human rights due diligence in conflict-affected settings: Guidance for extractives industries*, p. 40. See also, UN General Assembly, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, *Business, human rights and conflict-affected regions: towards heightened action*, p. 11.

64 OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, p. 21.

'Leverage' refers to a company's capacity to influence the behaviour of a third party – in this case a third party responsible for an adverse impact. A third party may be a client, a subcontractor, a partner, a supplier, a state security force, another government institution, etc. Leverage becomes relevant when a company must define what action is appropriate to address adverse impacts to which it contributes or which are directly linked to its operations, products or services by its business relationships. Once again, the key factor in prioritisation decisions is impact severity, not leverage. PSCs should prioritise actions to address the most severe impacts, based on their scope, scale and remediability, not impacts that are easier to manage.⁶⁵

Feedback from ICoCA Member companies

"In my opinion, the biggest practical challenge is to assess, monitor and ensure that companies' clients, partners and suppliers have adopted human rights-compliant policies, and that they have the needed capacity and systems in place to implement them. This requires ongoing monitoring which may be challenging at times due to the limited resources available to some companies."

"In one of the sites where we provide security services, the duty-bearer (our client) has not taken adequate measures to provide heating in the guard post according to what had been previously agreed in our contract. We have been immediately informed of this situation by our employees and have taken all the necessary measures with the client to remedy it, so that our guards can fully enjoy their right to just and favourable conditions of work."

"We use leverage through constant collaboration with our partners, the provision of capacity building support and the inclusion of dedicated contract clauses, where applicable."

Types of actions

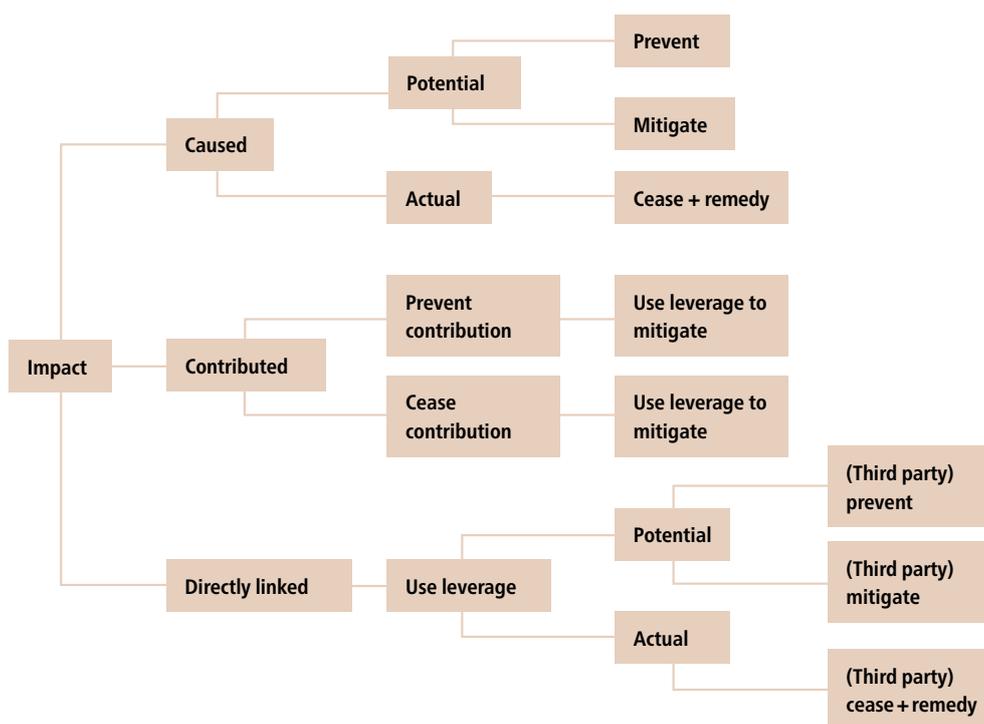
It was noted above that a company should distinguish between different categories of impact to understand the actions it should take to address them [UNGP 19(b.i)].

Different forms of action will be required to address impacts the company causes, impacts it contributes to, and impacts that are directly linked to its operations, products or services by its business relationships; and, also, to address actual impacts and potential impacts.

1. **Where a company causes an impact**, it should prevent or mitigate that impact (in the case of a potential impact) or cease and remedy it (in the case of an actual impact).
2. **Where a company contributes to an impact**, it should prevent or cease its contribution and use leverage to mitigate any continuing or residual impact to the greatest extent possible.
3. **Where an impact is directly linked** to a company's operations, products or services by its business relationships, the company should apply leverage to influence the behaviour of the third party that is causing the impact, inducing that party to prevent or mitigate the impact (in the case of a potential impact) or cease and remedy it (in the case of an actual impact).

When a PSC contributes or is directly linked to adverse human rights impacts, it can also choose to contribute to impact remediation.

⁶⁵ Dylan Tromp, *Assessing Business-Related Impacts on Human Rights: Indicators and Benchmarks in Standards and Practice*, p. 12.



When a company has limited leverage, it should develop strategies to increase its influence, including through multi-stakeholder approaches. Using leverage to influence business relationships generally implies taking one of the following actions:

- **Continuing the relationship** with the third party that is causing the impact but adopting risk mitigation measures. (For example, a PSC might provide human rights training to personnel of a subcontractor.)
- **Temporarily suspending the relationship** with the third party while risk mitigation efforts are carried out.
- **Disengaging** from the business relationship. For example, a PSC might terminate its relationship with any subcontractor that fails to comply with its human rights policy. Disengagement is usually considered a last resort, to be used when the company is not able to exercise leverage or the impact appears too severe to manage. In such cases, a company should consider whether disengagement is likely to exacerbate already harmful human rights impacts or generate new ones. (For example, it could immediately cause the subcontractors' employees to lose their jobs.) If there are such outcomes, the company should take steps to mitigate them.⁶⁶ In environments affected by conflict, disengagement may have a negative effect on the dynamics of the conflict.⁶⁷

Horizontal integration and the impact management plan

A company horizontally integrates HRIA findings when it allocates responsibilities for addressing each identified impact to specific personnel. The assigned staff should have appropriate functions and be sufficiently senior to fulfil the responsibilities in question. In private security operations and depending on the size of the company, horizontal integration often involves a variety of departments, including community engagement, human resources, compliance, staff welfare, and operations.

⁶⁶ Organisation for Economic Co-operation and Development, *OECD Due Diligence Guidance for Responsible Business Conduct*, pp. 30-31.

⁶⁷ International Alert, *Human rights due diligence in conflict-affected settings: Guidance for extractives industries*, pp. 59-60. See also, UN General Assembly, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, *Business, human rights and conflict-affected regions: towards heightened action*, pp. 14-15.

OHCHR commentary on UNGP 19

“The horizontal integration across the business enterprise of specific findings from assessing human rights impacts can only be effective if its human rights policy commitment has been embedded into all relevant business functions. This is required to ensure that the assessment findings are properly understood, given due weight, and acted upon.”⁶⁸

An impact management plan maps horizontal integration arrangements and describes how a company intends to address identified impacts. Essentially the plan:

1. **Summarises the findings of the company’s HRIA.**
2. **Describes in detail the measures** the company intends to implement.
3. **Assigns specific responsibilities to specific personnel** for implementing each measure.
4. **Sets a timeline and budget.**
5. **Defines monitoring and reporting procedures** that will be used to assess and communicate on the effectiveness of the measures adopted.⁶⁹

PSC practice

Because companies integrate HRIAs in broader ERM processes to comply with relevant industry standards [see Section 5.1], PSCs commonly integrate impact management plans in broader risk management plans. Where this occurs, these also take into account and address the impact of private security operations on the human rights of rights-holders, in addition to considering risks to the business.

A company’s impact management plan provides a roadmap for addressing impacts based on an agreed order of priority. The plan should be developed by the HRIA team in consultation with the company and relevant stakeholders so as to ensure that the envisioned action is feasible and appropriate in relation to the targeted groups and context. In addition, it should be reviewed and updated regularly to take account of relevant changes and newly identified impacts.

5.5 Evaluation and reporting**PHASE V.
EVALUATE
AND REPORT**

- Evaluate the HRIA. Consider how effectively the assessment identified adverse impacts, the effectiveness of measures taken to address them, and whether the measures were implemented correctly.
- Communicate externally how the company has identified and addressed adverse impacts, including through formal reporting.

UNGPs 20 and 21 respectively require companies to track the effectiveness of their response to identified impacts and communicate externally the actions they took to address them.

68 OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, p. 21.

69 Danish Institute for Human Rights, *Human Rights Impact Assessment: Guidance and Toolbox*, p. 95.

Evaluation

OHCHR commentary on UNGP 20

“Business enterprises should make particular efforts to track the effectiveness of their responses to impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization.”⁷⁰

HRIA evaluation is a continuous learning exercise that helps a company to monitor its progress in meeting HRDD expectations, plan future activities, identify potential adverse impacts that stem from them, and prevent past impacts from recurring. An evaluation should establish both:

- How **effectively an assessment** identified potential and actual adverse impacts on the human rights of rights-holders.
- Whether the **measures** taken to address the impacts were **effective**, and whether they were **implemented correctly**. (For example, how were use of force training and the distribution of RUF cards implemented? Did these measures cause a decrease in cases of excessive use of force?)

Evaluations should apply the human rights indicators previously selected for the HRIA and should solicit and consider feedback from relevant stakeholders, especially rights-holders, including their complaints.

To evaluate the effectiveness of a company’s impact mitigation and management strategies, the following aspects should be considered:

- **Relevance.** Did the measures accurately target the impacts identified by the HRIA? (For example, did training in use of force address the reasons why security personnel used excessive force?)
- **Outcome.** Did the measures have the intended effects? (For example, has the incidence of excessive use of force declined?)
- **Efficiency.** Were the allocated resources used efficiently? (For example, how much time was devoted to training on the use of force, and how much did it cost?)
- **Sustainability.** Can the measures be continued into the future, and will the outcomes be long-lived? (For example, for how long will personnel retain the knowledge they acquired during use of force training?)
- **Flexibility.** Can the measures be adapted to meet new or overlooked impacts? (For example, can the use of force training be adapted to address the risk of unlawful apprehension?)⁷¹

Reporting

After the evaluation has been done, a company should communicate externally how it has addressed the potential and actual adverse human rights impacts it identified. For example, it can explain to relevant stakeholders how it has handled adverse impacts it (might have) caused or to which it (might have) contributed. When companies are operating in contexts in which there are risks of severe human rights impacts, or when severe risks are posed by the business activity itself, however, UNGP 21 states that companies should issue formal reports. This is often the case for PSC operations in complex environments.

70 OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, p. 23.

71 International Business Leaders Forum (IBLF) and International Finance Corporation (IFC), *Guide to Human Rights Impact Assessment and Management (HRIAM)*, 2010, p. 58. At: www.globalgovernancewatch.org/docLib/20140206_hriam-guide-092011.pdf.

OHCHR commentary on UNGP 21

“Formal reporting by enterprises is expected where risks of severe human rights impacts exist, whether this is due to the nature of the business operations or operating contexts. The reporting should cover topics and indicators concerning how enterprises identify and address adverse impacts on human rights. Independent verification of human rights reporting can strengthen its content and credibility. Sector-specific indicators can provide helpful additional detail.”⁷²

Formal reports and other external communications should be:

- **Accessible.** The language and format of reports should be suited to the audience. If a report is presented, the location of the presentation should be accessible. In places that have poor access to the Internet, local communities may not be able to read a report published on the company’s website; physical copies may need to be printed and distributed.
- **Timely.** Companies should not delay communications for so long that they become irrelevant.
- **Exhaustive.** The amount of information provided must be sufficient to enable readers to evaluate the adequacy of the company’s actions.
- **Culturally sensitive.** Communications should respect the values of the intended audience.
- **Safe.** Communications should not disclose information that might pose risks to stakeholders and should not contravene confidentiality standards.

An exhaustive HRIA report should:

1. **Describe the methodology used** to conduct the assessment.
2. **Set out the HRIA’s findings.**
3. **Detail the measures the company has adopted** to address adverse impacts the HRIA identified.
4. **Evaluate the process** and any **lessons learned** from it.
5. **Declare how the company intends to monitor future impacts and communicate** about them.

Disseminating information on how the company has addressed identified adverse impacts not only promotes transparency, but enhances a company’s accountability to relevant stakeholders and other interested parties and allows the company to demonstrate by its actions that it is committed to respect human rights.⁷³

Communication with impacted or potentially impacted rights-holders is particularly important.

⁷² OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, p. 24.

⁷³ Danish Institute for Human Rights, *Human Rights Impact Assessment: Guidance and Toolbox*, p. 107.

Conclusion

Conducting robust due diligence to avoid infringing the human rights of others is a clear requirement for all ICoCA Member and Affiliate companies. The first step for any PSC is to identify and assess actual or potential human rights impacts with which it may be involved. HRIAs are a useful tool for this purpose.

The field of HRDD is evolving. New national and international regulations are specifying an increasing number of obligations and reporting requirements. ICoCA recognises that running rigorous HRIAs can be challenging, especially for small and medium enterprises, because they require capacity and human rights expertise. Every PSC must nevertheless develop impact assessment processes and work towards their continuous improvement in accordance with a human rights-based approach. ICoCA will continue to work with Members and Affiliates to achieve this goal and, when necessary, will offer companies education and support to help them improve their HRDD practices.

This Guidance indicates how companies can effectively implement the obligations that derive from Paragraphs 2 and 6(d) of the International Code of Conduct. It is intended to be a 'living document' that may be updated and further adapted as HRDD processes and the realities of PSCs evolve and additional best practices are identified in the industry. ICoCA welcomes feedback from Members, Affiliates and other stakeholders to improve the human rights due diligence efforts of private security companies operating in complex environments.

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Annex – Useful Resources

Websites

Business and Human Rights Resource Centre, Mandatory Due Diligence. www.business-humanrights.org/en/big-issues/mandatory-due-diligence

Danish Institute for Human Rights, Human Rights Indicators for Business (HRIB). <https://old.business-humanrights.org/en/platform-for-human-rights-indicators-for-business-hrib>

Human Rights Reporting and Assurance Frameworks Initiative (RAFI), UN Guiding Principles Reporting Framework. www.ungpreporting.org

Verisk Maplecroft and United Nations Global Compact, Human Rights and Business Dilemmas Forum. <https://hrbdf.org/>

Guidance, tools and methodologies

Aim for Human Rights, *Guide to Corporate Human Rights Impact Assessment Tools*, 2009. At: www.commddev.org/pdf/publications/Human-Rights-in-Business-Guide-to-Corporate-Human-Rights.pdf

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Office of the United Nations High Commissioner for Human Rights (OHCHR), *Human Rights Indicators: A Guide to Measurement and Implementation*, HR/PUB/12/5, 2012. At: www.ohchr.org/EN/Issues/Indicators/Pages/documents.aspx

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Other resources

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