



Chapter 1.3 Human Rights Due Diligence

BACKGROUND

In 1948, the United Nations General Assembly adopted the *Universal Declaration of Human Rights*, which, for the first time in history, enumerated the fundamental civil, political, economic, social and cultural rights that all human beings should enjoy. Since that time, a series of core international human rights conventions and treaties, along with other instruments, have established the international legal framework for individual and collective human rights.¹⁶ For example, United Nations instruments have elaborated on the rights of indigenous peoples, women, national or ethnic, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families.¹⁷

In 2011, the UN *Guiding Principles on Business and Human Rights* (the ‘Guiding Principles’), which were unanimously endorsed by the United Nations Human Rights Council, clarified the corporate responsibility to respect human rights, stating that all corporations “should avoid infringing on the human rights of others.”¹⁸ Other frameworks have similarly emerged that outline specific due diligence under particular circumstances. For example, the *OECD Due Diligence Guidance for Mineral Supply Chains in Conflict-Affected and High-Risk Areas*¹⁹ provides specific guidance for mining companies on what due diligence is required in such areas to address risks to human rights and other risks when operating in those areas (see IRMA Chapter 3.4).

TERMS USED IN THIS CHAPTER

Actual Human Rights Impact ■ Adverse Human Rights Impact ■ Business Relationships ■ Competent Professionals ■ Confidential Business Information Consultation ■ Grievance ■ Grievance Mechanism ■ Human Rights Defenders ■ Human Rights Risks ■ Indigenous Peoples ■ Inform ■ Leverage ■ Mining Project ■ Mining-Related Activities ■ Mitigation ■ Operating Company ■ Potential Human Rights Impact ■ Remediation/Remedy ■ Rights-Compatible ■ Rights Holder ■ Salient Human Rights ■ Serious Human Rights Abuses ■ Stakeholders ■ Vulnerable Group ■

These terms appear in the text with a dashed underline. For definitions see the Glossary of Terms at the end of the document.

OBJECTIVES/INTENT OF THIS CHAPTER

To respect human rights, and identify, prevent, mitigate and remedy infringements of human rights.

SCOPE OF APPLICATION

RELEVANCE: This chapter applies to any mine that is seeking IRMA certification. The requirements outlined below are applicable to activities and business relationships that relate to the mining project seeking certification, not all of a company’s activities and business relationships.

¹⁶ For more information, see the United Nations website: www.un.org/en/sections/what-we-do/protect-human-rights/index.html and Office of the High Commissioner for Human Rights website: www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx

¹⁷ The Office of the High Commissioner for Human Rights (OHCHR) lists a number of United Nations human rights instruments that enumerate the rights of persons belonging to particular groups or populations. See: OHCHR. 2012. The Corporate Responsibility to Respect – An Interpretive Guide. p. 38. www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf

¹⁸ See: Ruggie, J. 2011. Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. March 21, 2011. A/HRC/17/31. www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf

¹⁹ OECD. 2016. OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas. (3rd Ed.) <https://mneguidelines.oecd.org/mining.htm>

Human Rights Due Diligence Requirements

1.3.1. Policy Commitment

1.3.1.1. The operating company shall adopt a policy commitment that includes an acknowledgement of its responsibility to respect all internationally recognized human rights.²⁰

1.3.1.2. The policy shall:

- a. Be approved at the most senior level of the company;
- b. Be informed by relevant internal and/or external expertise;
- c. Stipulate the operating company's human rights expectations of personnel, business partners and other parties directly linked to its mining project;
- d. Be publicly available and communicated internally and externally to all personnel, business partners, other relevant parties and stakeholders;
- e. Be reflected in the mining project's operational policies and procedures.

1.3.2. Assessment of Human Rights Risks and Impacts

1.3.2.1. The operating company shall establish an ongoing process to identify and assess potential human rights impacts (hereafter referred to as human rights "risks") and actual human rights impacts from mining project activities and business relationships. Assessment of human rights risks and impacts shall be updated periodically, including, at minimum, when there are significant changes in the mining project, business relationships, or in the operating environment.

1.3.2.2. Assessments, which may be scaled to the size of the company and severity of human rights risks and impacts, shall:

- a. Follow a credible process/methodology;²¹
- b. Be carried out by competent professionals; and
- c. Draw on internal and/or external human rights expertise, and consultations with potentially affected rights holders, including men, women, children (or their representatives) and other vulnerable groups, and other relevant stakeholders.

1.3.2.3. As part of its assessment, the operating company shall document, at minimum:

- a. The assessment methodology;
- b. The current human rights context in the country and mining project area;
- c. Relevant human rights laws and norms;
- d. A comprehensive list of the human rights risks related to mining project activities and business relationships, and an evaluation of the potential severity of impacts for each identified human rights risk;

²⁰ IRMA recognizes that for some operating companies, a policy commitment may be made at the corporate level. In these cases, operating companies do not need to have developed their own policies, but they will be expected to demonstrate that they are operating in compliance with their corporate owner's policy (e.g., site-level management understand the policy, and have integrated it into the mine's procedures and dealings with business partners, contractors, etc.).

²¹ A "credible" assessment process/methodology would typically include: scoping or identification of the salient human rights, stakeholder consultations; data collection; assessment of the severity of human rights risks and impacts; development of prevention/mitigation measures; and monitoring and evaluation of the effectiveness of implemented measures. This process should be ongoing/updated, as mentioned in 1.3.2.1. For more information see: <https://www.humanrights.dk/projects/human-rights-impact-assessment>

- e. The identification of rights holders, an analysis of the potential differential risks to and impacts on rights holder groups (e.g., women, men, children, the elderly, persons with disabilities, indigenous peoples, ethnic or religious minority groups, and other disadvantaged or vulnerable groups), and a disaggregation of results by rights holder group;
- f. Recommendations for preventing, mitigating and remediating identified risks and impacts, giving priority to the most salient human rights issues.

1.3.2.4. At minimum, stakeholders and rights holders who participated in the assessment process shall have the opportunity to review draft key issues and findings that are relevant to them, and shall be consulted to provide feedback on those findings.

1.3.2.5. The operating company shall demonstrate that steps have been taken to effectively integrate assessment findings at the mine site operational level.

1.3.3. Prevention, Mitigation and Remediation of Human Rights Impacts

1.3.3.1. Mining project stakeholders shall have access to and be informed about a rights-compatible grievance mechanism and other mechanisms through which they can raise concerns and seek recourse for grievances related to human rights.²²

1.3.3.2. Responding to human rights risks related to the mining project:

- a. If the operating company determines that it is at risk of causing adverse human rights impacts through its mining-related activities, it shall prioritize preventing impacts from occurring, and if this is not possible, design strategies to mitigate the human rights risks. Mitigation plans shall be developed in consultation with potentially affected rights holder(s).
- b. If the operating company determines that it is at risk of contributing to adverse human rights impacts through its mining-related activities, it shall take action to prevent or mitigate its contribution, and use its leverage to influence other contributing parties to prevent or mitigate their contributions to the human rights risks.
- c. If the operating company determines that it is at risk of being linked to adverse human rights impacts through its business relationships, it shall use its leverage to influence responsible parties to prevent or mitigate their risks to human rights from their activities.

1.3.3.3. Responding to actual human rights impacts related to the mining project:

- a. If the operating company determines that it has caused an actual human rights impact, the company shall:
 - i. Cease or change the activity responsible for the impact; and
 - ii. In a timely manner, develop mitigation strategies and remediation in collaboration with affected rights holders. If mutually acceptable remedies cannot be found through dialogue, the operating company shall attempt to reach agreement through an independent, third-party mediator or another means mutually acceptable to affected rights holders;
- b. If the operating company determines that it has contributed to an actual human rights impact, the company shall cease or change any activities that are contributing to the impact, mitigate and remediate

²² The operational-level grievance mechanism developed as per IRMA Chapter 1.4 may be used as the mechanism to receive all types of complaints, including those related to human rights, or a separate mechanism may be created to handle only human rights complaints and grievances. If a separate mechanism is developed, it shall be done in a manner that is consistent with Chapter 1.4. Also, there may be other mechanisms that are not operated by the company through which stakeholders or rights holders can seek recourse (e.g., administrative, judicial and non-judicial remedies), and these options should be mentioned to stakeholders who lodge human rights related grievances with the company.

impacts to the extent of its contribution, use its leverage to influence other contributing parties to cease or change their activities, and mitigate and remediate the remaining impact;

- c. If the operating company determines that it is linked to an actual human rights impact through a business relationship the company shall use its leverage to prevent or mitigate the impact from continuing or recurring; and
- d. The operating company shall cooperate with other legitimate processes such as judicial or State-based investigations or proceedings related to human rights impacts that the operating company caused, contributed to, or was directly linked to through its business relationships.

1.3.4. Monitoring

1.3.4.1. The operating company shall monitor whether salient human rights risks and impacts are being effectively addressed. Monitoring shall include qualitative and quantitative indicators, and draw on feedback from internal and external sources, including affected rights holders.

1.3.4.2. External monitoring of an operating company's human rights due diligence shall occur if the company's due diligence efforts repeatedly fail to prevent, mitigate or remediate actual human rights impacts; or if its due diligence activities failed to prevent the company from unknowingly or unintentionally causing, contributing to or being linked to any serious human rights abuse.²³ Additionally:

- a. The company shall fund the external monitoring; and
- b. The form of such monitoring, and selection of external monitors, shall be determined in collaboration with affected rights holders.

1.3.5. Reporting

1.3.5.1. The operating company or its corporate owner shall periodically report publicly on the effectiveness of its human rights due diligence activities. At minimum, reporting shall include the methods used to determine the salient human rights issues, a list of salient risks and impacts that were identified, and actions taken by the operating company to prevent, mitigate and/or remediate the human rights risks and impacts.

1.3.5.2. If relevant, the operating company shall publish a report on external monitoring findings and recommendations to improve the operating company's human rights due diligence, and the operating company shall report to relevant stakeholders and rights holders on its plans to improve its due diligence activities as a result of external monitoring recommendations.²⁴

1.3.5.3. Public reporting referred to in 1.3.5.1 and 1.3.5.2 may exclude information that is politically sensitive, is confidential business information, or that may compromise safety or place any individual at risk of further victimization.

²³ This requirement does not apply if a company has knowingly or intentionally caused, contributed to or been linked to serious human rights abuses. (See Notes section at the end of Chapter 1.3 for more on serious human rights abuses).

²⁴ This requirement is only relevant if external monitoring was required as per 1.3.4.2.

NOTES

This chapter is based on the framework for corporate responsibility established in the UN *Guiding Principles on Business and Human Rights*, and includes best practice requirements to increase transparency regarding human rights impacts, and to increase the ability of rights holders to participate, in a meaningful way, in decisions that affect their lives.

This chapter does not specifically address cases where operating companies knowingly contribute to serious human rights abuses. However, IRMA has created a draft Policy on Association to provide a means for IRMA to exclude companies from IRMA participation if those companies are directly or indirectly involved in activities that violate IRMA's core principles and values. It is likely that knowingly or intentionally causing or contributing to serious human rights abuses would be grounds for IRMA to exclude an operating company or its corporate owner from participating, or terminate a relationship with a company that has an IRMA certified mine. In the current draft policy, the decision of whether or not to deny or withdraw IRMA certification, and any terms and conditions that might allow a company to re-associate with IRMA, will be made by the IRMA Steering Committee. The IRMA Policy on Association will not be put into effect until after the IRMA Launch Phase. IRMA welcomes comments on its draft Policy on Association, which is available on the IRMA website: www.responsiblemining.net.

In Chapter 1.3, criteria 1.3.4, the decision to initiate external monitoring may be made by an operating company that recognizes (e.g., through its human rights due diligence processes, complaints filed through its operational-level grievance mechanism, observations made by a third party, or some other means) that it has repeatedly failed to prevent, mitigate or remediate human rights impacts, or that discovers its due diligence has failed to prevent it from causing, contributing to, or being linked to serious human rights abuses. External monitoring may also be suggested as a corrective action if an IRMA auditor discovers during a certification audit that the operating company's due diligence has failed to prevent any of the situations listed above.

CROSS REFERENCES TO OTHER CHAPTERS	
CHAPTER	ISSUES
1.2—Community and Stakeholder Engagement	Engagement with <u>stakeholders</u> and <u>rights holders</u> in Chapter 1.3 must conform with the requirements of Chapter 1.2. In particular, criterion 1.2.3 is important to ensure that affected <u>rights holders</u> have the capacity to fully understand their rights and participate effectively in the assessment and development of prevention/ <u>mitigation</u> plans, monitoring, and <u>remedies</u> for impacts on their human rights. And 1.2.3 ensures that communications and information are in culturally appropriate formats and languages that are <u>accessible to affected communities and stakeholders</u> , and are provided in a timely manner.
1.4— Complaints and Grievance Mechanism and Access to Remedy	As mentioned in 1.3.3.1, the <u>operating company</u> shall ensure that <u>stakeholders</u> have access to a mechanism for raising human rights concerns. Any operational-level <u>grievance mechanism</u> developed as per Chapter 1.4 is required to be <u>rights-compatible</u> , and should be appropriate for raising human-rights-related complaints. It may be deemed necessary, however, to create a separate mechanism for determining appropriate <u>remedies</u> for infringements of human rights. If a separate mechanism is created, it is expected to adhere to the requirements of Chapter 1.4.
2.1—Environmental and Social Impact Assessment and Management	As long as the assessment of <u>human rights risks</u> and impacts meets the requirements in Criterion 1.3.4, it may be conducted as stand-alone assessment or integrated into a larger impact assessment process (e.g., the Environmental and Social Impact Assessment required in Chapter 2.1).

CROSS REFERENCES TO OTHER CHAPTERS	
2.2—Free, Prior and Informed Consent	<u>Indigenous peoples</u> are <u>rights holders</u> , and mining developments may pose risks to their individual and collective human rights. The requirements in Chapter 2.2 are meant to facilitate a <u>rights-compatible</u> relationship between <u>indigenous peoples</u> and mining companies. See requirement 2.2.1.1 on the company's policy commitment to respect <u>indigenous peoples' rights</u> ; and requirements 2.2.3.2.a, b and c, related to engagement with <u>indigenous peoples</u> in the assessment of potential impacts on <u>indigenous peoples' rights</u> from <u>mining-related activities</u> .
2.4—Resettlement	Even where <u>mining project</u> proponents have obtained legal rights over land, displaced households and <u>affected communities</u> have human rights under international law that must be fully respected and fulfilled by project proponents and contractors. <u>Human rights risks</u> related to resettlement may be assessed as per requirement 1.3.2.1 in Chapter 1.3, or assessed as part of the Resettlement Risk and Impact Assessment Process in Chapter 2.4.
3.1—Fair Labor and Terms of Work	Even though there is a <u>worker grievance mechanism</u> required as per Chapter 3.1, the <u>grievance mechanism</u> in Chapter 1.3 may also be used by <u>workers</u> seeking remedy specifically in relation to perceived infringements of their human rights (e.g., core labor rights are considered human rights). Incidents of <u>child labor</u> or <u>forced labor</u> associated with a <u>mining project</u> are addressed in Chapter 3.1, but should also be assessed as per requirement 1.3.2.1 in Chapter 1.3. Similarly, the determination of whether or not there is a high risk of <u>child labor</u> in the supply chain should occur as part of the <u>operating company's</u> human rights due diligence in Chapter 1.3. If <u>child labor</u> in the supply chain is identified as being a salient risk during the human rights impact assessment, the company will be required to carry out the remaining due diligence as per Chapter 1.3, and also the requirements in 3.1.7.6. Similarly, if <u>forced labor</u> in the supply chain is identified as a risk, the company should carry out due diligence as per Chapter 1.3, and also the requirements in 3.1.8.2.
3.2—Occupational Health and Safety	<u>Workers</u> have the right to health, and so during the human rights assessment companies should include an assessment of the potential that <u>workers</u> and management-level employees may be exposed to unacceptable health impacts. The occupational health and safety risk assessment in Chapter 3.2 will likely feed into this assessment.
3.4—Mining in Conflict-Affected or High-Risk Areas	There is often a high risk for infringement of human rights at mines operating in or sourcing minerals from <u>conflict-affected or high-risk areas</u> . If risks are identified during the conflict screening or risk assessment, the information may feed into the human rights risk and impact assessment. Strategies developed to mitigate <u>human rights risks</u> and impacts identified in the conflict risk assessment must conform with relevant human rights due diligence requirements in Criteria 1.3.3.
3.5—Security Arrangements	<u>Human rights risks</u> related to mine security may be assessed as per requirement 3.5.2.1 in Chapter 3.5, and/or assessed during the human rights risk and impact assessment in Chapter 1.3. If assessed as per Chapter 3.5, the information from the security risk assessment should feed into the <u>human rights risk</u> and impact assessment. Strategies developed to mitigate <u>human rights risks</u> and impacts related to security arrangements must conform with the relevant human rights due diligence requirements in Criteria 1.3.3.