

HUMAN RIGHTS AND STATE-INVESTOR CONTRACTS

This checklist contains 15 questions for company negotiating teams to assess if human rights are considered in State-investor contract negotiations. The accompanying

mini briefing note provides background information on why and how human rights are relevant to State-investor contract negotiations.

TOPIC	QUESTION	YES	NO	SUGGESTED ACTIONS	OBJECTIVES
Negotiation preparation and planning	1. Have you considered how company commitments to human rights relate to the proposed contract and project (e.g. human rights policy, HSE standards, the Voluntary Principles on Security and Human Rights, labour standards etc.)?			<ul style="list-style-type: none"> Seek input from in-house or external human rights expertise. Consult colleagues from relevant business functions, e.g. legal, security, community relations, human resources etc. Seek input from both corporate and subsidiary levels to clarify company human rights commitments and local host-community context. Consider findings from early feasibility studies, baseline studies, community engagement etc. to understand potential human rights risks and impacts and inform the negotiating agenda. 	The negotiating team is supported by human rights expertise and potential human rights risks and impacts are considered in the negotiating agenda.
	2. Is your negotiating team supported by in-house or external human rights expertise?				
	3. Have you considered how the project may impact positively and negatively on the human rights of host-communities (e.g. through resettlement, security arrangements, environmental impacts, growth of local economies etc.)?				
Human rights impact management	4. Do negotiations recognise and require the undertaking of human rights due diligence for the project and do they appropriately assign costs and timing of specific due diligence activities (i.e. human rights baseline, assessment of human rights impacts, community engagement etc.)?			<ul style="list-style-type: none"> Consult with relevant business functions on implementation and costing of human rights due diligence measures. Ensure the negotiating agenda includes consideration of State duties and company responsibilities with regard to human rights. 	The negotiation considers the implementation of effective ongoing human rights due diligence and negotiating parties show awareness of their respective duties and responsibilities with regard to human rights.
	5. Do negotiations consider and delineate State duties and company responsibilities with respect to specific activities for identifying, mitigating and remedying human rights impacts throughout the project lifecycle?				
Monitoring and compliance	6. Do negotiations reflect the State's duty to monitor project compliance with relevant standards (i.e. technical, social, environmental, fiscal, financial and accounting standards)?			<ul style="list-style-type: none"> Ensure the negotiation contemplates that during the term of the contract the State will have access to information and project sites reasonably 	The deal negotiated enables the State to monitor the project's compliance with relevant standards whilst providing necessary

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	7. Have you considered the State’s capacity to monitor project compliance with relevant standards and the potential need for temporary measures to address any gaps in capacity?			<p>required to ensure compliance of the project with relevant standards.</p> <ul style="list-style-type: none"> In case of weak State monitoring capacity include temporary alternative measures, e.g. self-reporting requirements, monitoring by external stakeholders or a multi-lateral body. 	assurances for the company against arbitrary interference in the project.
Project operating standards	8. Have you checked that the proposed operating standards for the implementation of the project facilitate the prevention, mitigation and remediation of any negative human rights impacts throughout the project lifecycle?			<ul style="list-style-type: none"> Draw on early country entry, political risk and legal framework analyses to identify any gaps between host-State standards (and their implementation) and international and best practice standards, including human rights standards. Seek to bridge any gaps in host-State laws, regulations and standards by supplementing them with more protective standards where necessary, including human rights standards. 	The laws, regulations and standards governing the implementation of the project are clearly identified, clear enough to be adjudicated, and facilitate the prevention, mitigation and remediation of any negative human rights impacts throughout the project lifecycle; they apply to contractors, subcontractors and successors.
Stabilisation clauses	9. Do you refrain from seeking or accepting full-freezing stabilisation clauses and clauses that freeze any laws on labour, environment, HSE and any other areas that can be directly related to protecting human rights?			<ul style="list-style-type: none"> Obtain legal and human rights input on any stabilisation clause proposed by the host-State or the company to ensure that it does not create obstacles to the State’s bona fide efforts to introduce and implement laws, regulations or policies in a non-discriminatory manner to meet the State’s human rights obligations. 	Stabilisation clauses, if used, do not create obstacles to the State’s bona fide efforts to introduce and implement laws, regulations or policies in a non-discriminatory manner to meet the State’s human rights obligations.
	10. Do you seek to ensure that any stabilisation clauses, if used, do not contemplate economic or other penalties for the State in the event that the State introduces laws, regulations or policies which: (a) are implemented on a non-discriminatory basis; and (b) reflect international standards, benchmarks or recognised good practices in areas such as health, safety, labor, the environment, technical specifications or other areas that concern human rights impacts of the project?				
Additional goods or service provision	11. Do negotiations consider the human rights implications of additional goods or services, and if included seek to ensure human rights compliant standards for any additional goods or service provision (including assignment of responsibility for ensuring quality, effectiveness, oversight and monitoring)?			<ul style="list-style-type: none"> Consult with relevant business functions and government agencies to determine applicable standards and consider quality, transparency/disclosure and long-term sustainability of additional goods or services. 	Any additional goods or services provision is structured in a way that supports the State duty to provide such services and considers quality, monitoring, transparency/disclosure and long-term sustainability.

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Project physical security	12. Do negotiations consider potential human rights risks and impacts associated with physical security of the project (including both public and private security provision), including potential legal liabilities?			<ul style="list-style-type: none"> Ensure commitment that security will be carried out in line with international human rights standards and international humanitarian law, and make provision for the further development of detailed security management protocols as part of project implementation. 	Human rights risks associated with physical security for the project are identified and provision is made for any security management by public and/or private security forces to follow international human rights standards and international humanitarian law.
Community engagement	13. Do negotiations consider how to ensure ongoing and effective engagement with impacted communities and individuals (e.g. commitment for the development, implementation and funding of a community engagement plan)?			<ul style="list-style-type: none"> Consult with relevant business unit functions, e.g. community relations and legal, to identify the likely scope of community engagement and applicable effective engagement principles, e.g. Free Prior Informed Consent where applicable. 	Effective community engagement strategies are developed and implemented ensuring impacted communities and individuals are regularly and appropriately engaged throughout the project lifecycle.
Grievance resolution	14. Do negotiations consider provision for the development and implementation of an effective project-level grievance mechanism for impacted communities and individuals?			<ul style="list-style-type: none"> Consult with relevant business functions to identify whether a suitable project-level grievance mechanism is in place or will need to be developed. 	Impacted communities and individuals have access to an effective project-level grievance mechanism.
Transparency and disclosure	15. Do negotiations include seeking agreement about how to ensure the timely and accurate disclosure of the contract, including consideration of information accessibility for impacted rights-holders and other stakeholders?			<ul style="list-style-type: none"> Seek agreement within the negotiation on a strategy for the suitable disclosure of the contract in a timely manner. Negotiate with a presumption towards transparency and disclosure, ensuring that the scope and duration of any exceptions are based on compelling justifications and appropriately time-bound. Seek agreement within the negotiation on strategies for the timely and accurate disclosure of specific human rights due diligence information associated with project implementation (e.g. impact assessments, stakeholder engagement plans, information about the community grievance mechanism etc.), including consideration of accessibility of information for rights-holders and other stakeholders. 	Impacted communities and other stakeholders have public access to the terms and conditions of the contract, as well as public access to specific human rights due diligence information associated with project implementation, in a manner that is accessible to them.
	16. Do negotiations include consideration of how to ensure the timely and accurate disclosure of specific due diligence information related to project implementation, including information accessibility for impacted rights-holders and other stakeholders?				