

A large, dimly lit garment factory with many workers at sewing machines. The scene is filled with rows of sewing stations, each with a worker focused on their task. The lighting is industrial, with long fluorescent fixtures overhead. The overall atmosphere is one of busy, repetitive labor.

THE DANISH  
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## PHASE 3: ANALYSING IMPACTS

HUMAN RIGHTS  
IMPACT  
ASSESSMENT  
GUIDANCE AND  
TOOLBOX

### **Phase 3: Analysing Impacts Human Rights Impact Assessment Guidance and**

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# PHASE 3: ANALYSING IMPACTS

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In this document you will find the Guidance text for Phase 3: Analysing Impacts.

You can find the full version of the Human Rights Impact Assessment Guidance and Toolbox here: <https://www.humanrights.dk/hria-toolbox/>



## What Happens in Phase 3?

Phase three involves analysing the data that has been collected during scoping and data collection in order to identify any business-related impacts and assess their severity. This will involve drawing on the normative content of international human rights standards and principles, comparative projects, findings from stakeholder engagement and so forth. In practice, some of this analysis will occur during data collection itself, but it is nevertheless important to allocate time and space specifically for impact analysis.

It is important to include not only the impacts that seem the most 'immediate' but also to consider impacts that the business has caused and contributed to, as well as impacts that are directly linked to business operations, products and services through business relationships. Impact analysis should also involve assessing impact 'severity', including by considering the scope, scale and irremediability of the impacts. This requires considering impacts from the perspectives of those who are experiencing them.

Lastly, to contribute to business respect for human rights, HRIA of business projects or activities should first and foremost focus on identifying and addressing adverse human rights impacts; therefore, while positive effects may be noted, the identification of 'positive' human rights impacts is not the primary objective and should not detract from identifying and addressing adverse impacts.



## Key Questions Addressed in This Section

- What are the different types of impacts to be considered (i.e., actual; potential; caused by the business; contributed to by the business; directly linked to business operations, products and services through business relationships)?
- Why do the UN Guiding Principles focus on 'adverse' impacts and what does this mean for the inclusion of project benefits in HRIA?
- How can the severity of human rights impacts be assessed?

### 3.1 TYPES OF HUMAN RIGHTS IMPACTS TO BE CONSIDERED

An adverse human rights impact occurs when an action or omission removes or reduces the ability of an individual to enjoy their human rights.<sup>1</sup> Individuals may experience human rights impacts differently based on their gender identity, age,



ethnicity or other characteristics. Assessment teams should ensure their analysis draws from international human rights standards and principles. Section 1.1 of the [Analysing Impacts Practitioner Supplement](#) gives examples of using human rights standards and principles in impact analysis.

HRIA should identify both actual and potential impacts. According to the UN Guiding Principles, businesses are required to consider human rights impacts which are: **caused by** the business; impacts that the business **contributes to**; and impacts that are **directly linked to** a company's operations, products or services through business relationships, including both contractual and non-contractual relationships.<sup>2</sup>

#### Box 3.1: Examples of actual and potential impacts

Actual impacts have occurred or are occurring. They include legacy impacts and inherited legal liabilities. Examples:

- Effluents from an agricultural company pollute local waterways, affecting the right to water and health of local communities.
- A previous operator of a mine site provided insufficient compensation to communities in a resettlement process, leading to livelihood and housing disputes with the current operator.

Potential impacts have not occurred yet, but may occur in the future.

Examples:

- The project may involve extensive use of local water supplies.
- The project may involve the resettlement of local communities, depending on how it is designed and implemented. This may lead to potential impacts on the right to housing and an adequate standard of living.

Box 3.1, above, provides some examples of actual and potential impacts, and Table 3.A, below, presents some examples of the three categories: caused; contributed to; and directly linked to. You can find more examples in section 1.2 of the [Analysing Impacts Practitioner Supplement](#).



Table 3.A: Examples of different types of human rights impacts	
Type of impact	Examples
Caused (by the business's action or omission)	<ul style="list-style-type: none"> <li>• A company discriminates in its hiring practices (for example, by not affording equal opportunity to indigenous applicants).</li> </ul>
Contributed to (through the business's own activities or through a third party, including cumulative impacts)	<ul style="list-style-type: none"> <li>• A company provides information about internet users to a government that uses the data for surveillance of political opponents.</li> <li>• A project site discharges a permissible amount of pollution into the local environment which, when combined with permissible discharges by other companies, impacts community use of ecosystem services (e.g., water).</li> </ul>
Directly linked (to operations, products or services through business relationships, including both contractual and non-contractual relationships)	<ul style="list-style-type: none"> <li>• A company's supplier subcontracts embroidery on clothing products to child labourers in homes, contrary to contractual obligations.</li> </ul>
Source: Some of these examples come from: Office of the United Nations High Commissioner for Human Rights (2012), <i>The Corporate Responsibility to Respect Human Rights: An Interpretive Guide</i> , New York and Geneva: United Nations.	

### 3.1.1 IMPACTS TO WHICH THE BUSINESS CONTRIBUTES AND COMPLICITY

The categories of impacts to which the business **contributes** or is **directly linked** are broader than a strict legal definition of complicity. However, the concept of complicity might prove useful for impact assessment practitioners when analysing such impacts and communicating about them to certain audiences (e.g., when communicating with legal professionals on the impact assessment team or in the company).

The term 'complicity' in the context of business and human rights can have both non-legal and legal meanings. In a non-legal context, human rights organisations and activists, international policy-makers, government experts and businesses might use the term to describe what they view as undesirable business

involvement in human rights abuses or benefiting from the actions of a third party.<sup>3</sup> Examples of situations that may invoke allegations of complicity in a non-legal context may include: inadequate supply chain management (e.g., workers in the supply chain are not adequately paid); a business taking over land where people have been forcefully displaced by the government; or situations where business revenues are paid to an oppressive state.

As a legal matter, complicity in criminal law refers to being legally accountable or liable for a criminal offense based upon the behaviour of another party. Most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of businesses in such cases.<sup>4</sup> The standards for legal complicity vary from jurisdiction to jurisdiction; however, civil or criminal legal sanctions generally require establishing three key elements, namely that the company:<sup>5</sup>

1. **Caused or contributed to** the human rights abuse(s) by enabling, exacerbating or facilitating the abuse
2. **Knew** or should have **foreseen** that human rights abuse(s) would be likely to result from its conduct; and
3. Was **proximate to** the human rights abuse(s) either geographically or through the strength, duration or tone of its relationships.

The UN Guiding Principles suggest that businesses should consider both legal and non-legal instances of complicity, paying particular attention to risks of complicity in operating environments where there are heightened risks of human rights violations and abuses occurring. This may, for example, include conflict-affected settings. As such, complicity might provide a reference framework for impact assessment practitioners in analysing impacts to which the business contributes or is directly linked, including both actual and potential impacts.

### **3.1.2 CUMULATIVE IMPACTS<sup>6</sup>**

Businesses may also contribute to cumulative impacts. Cumulative impacts are the successive, incremental and combined impacts from multiple projects or multiple activities located in the same region or affecting the same resource.<sup>7</sup> Different projects or different phases of the same project can combine with incremental impacts from other existing, planned or future projects, leading to an accumulation of impacts. Box 3.2, below, outlines some areas of concern about cumulative impacts from a human rights perspective.



### **Box 3.2: Human rights concerns regarding cumulative impacts**

Cumulative impacts are areas of concern from a human rights point of view for a number of reasons:

- Cumulative impacts are often much harder to predict than singular impacts from one project. Unless an increased effort is made by businesses and the authorities to assess and analyse the potential for such impacts, it is much harder to prevent environmental and social changes that can have long-term impacts on human rights, such as the rights to life and security of person, health, education and an adequate standard of living.
- Cumulative impacts can be severe, both in terms of the type of impact (e.g., the cumulative burden on poor infrastructure causes it to collapse) or the widespread nature of the impact (e.g., cumulative water use due to tourism development reduces water tables, resulting in drought with widespread effect on food security in the local community). Repetition may also increase the severity (e.g., a singularly-occurring, minor impact may not pose a human rights risk, but a series of minor impacts may add up to a human rights impact).
- Companies may not consider themselves responsible for cumulative impacts, as they make only a contribution to these impacts. This may especially be the case where their activities individually fit within acceptable regulatory limits, but the regulatory regime is not advanced enough to take account of accumulation of impacts over time or space.
- Populations most at risk are affected by cumulative impacts, as they are likely to have the least resilience to respond and the least capacity to demand a response from the authorities or businesses. This is particularly problematic in the case of cumulative impacts, since it may be more challenging for vulnerable or marginalised individuals and groups to seek a response from multiple actors contributing to the cumulative impact.
- Cumulative impacts are sometimes slow and may build up incrementally over time. Accordingly, it may be difficult to draw attention to the issues and prompt action from responsible parties.

Source: Myanmar Centre for Responsible Business (MCRB), Institute for Human Rights and Business (IHRB) and Danish Institute for Human Rights (DIHR) (2015), *Tourism Sector-Wide Impact Assessment (SWIA)*, Yangon: MCRB, IHRB and DIHR.

Often, impacts from one project alone may not necessarily be significant. Instead, it is the build-up of smaller impacts over time or within the same physical footprint that have a cumulative effect. Sometimes, a series of smaller events can trigger a much bigger environmental or social response if a tipping point is reached, changing the situation abruptly. A response can also be



triggered by poorly designed policies that prompt companies to repeat the same mistakes. The resilience of the environment or society to cumulative impacts depends upon the nature of the impacts and the vulnerability (or sensitivity) of the society or ecosystem. In other words, resilience is the degree to which society is susceptible to versus able to cope with injury, damage or harm.<sup>8</sup>

Because project developers and regulators tend to focus on assessing impacts of individual projects, they often do not consider the incremental impacts on areas or resources used or directly impacted by a project from other existing, planned or reasonably defined developments.<sup>9</sup>

Cumulative impacts are of growing importance in regions where environmental and social systems have reached their maximum capacity to absorb and adapt to additional impacts.<sup>10</sup> However, they can also be important in regions that have not yet reached maximum capacity but which will undergo significant growth.

For these reasons, it is important that HRIA includes consideration of cumulative impacts.

### **3.2 ADVERSE IMPACTS AND PROJECT BENEFITS**

Human rights due diligence, as outlined in the UN Guiding Principles, focuses on the ‘adverse’ human rights impacts of business activities. This raises the question of how generating and maximising project benefits for impacted rights-holders is to be considered in HRIA.

According to the UN Guiding Principles, it is not acceptable for businesses to offset adverse impacts through positive contributions to human rights elsewhere.<sup>11</sup> For example, businesses causing adverse impacts may focus the attention of the general public on community development projects being implemented, jobs being created and so forth as strategies for legitimising the presence of the project, rather than effectively addressing adverse impacts. The UN Guiding Principles seek to change this behaviour by emphasising that, first and foremost, companies should identify and address any adverse human rights impacts associated with their activities, with any positive contributions being separately considered.

Making a clear distinction between human rights due diligence (avoiding, mitigating and remediating adverse impacts) and positive contributions (through, for example, employment creation, skills transfer or social investment) is important for a number of reasons. For example:

- Including both adverse impacts and positive contributions facilitates a space for the **implicit offsetting** of adverse impacts (e.g., a company showcases

local employment and job creation opportunities as a way of moving the emphasis away from adverse impacts caused by the operation, such as human rights issues caused by in-migration and boomtown effects).

- A human rights perspective places a significant emphasis on accountability, including the ability of rights-holders to claim rights and respective duty-bearers to meet their duties and responsibilities with regard to human rights. This includes recognising the **differentiated yet complimentary duties and responsibilities of state and non-state duty-bearers**. Essentially, a human rights analysis asks for caution regarding any provisions that may give rise to a company assuming state responsibilities as human rights duty-bearers.

It is therefore important that any actions taken as part of company human rights due diligence are distinguished from contributions to human rights that a business makes beyond the primary responsibility to respect. While HRIA of business activities will include and refer to positive steps or outcomes to the extent that these are relevant in impact analysis and mitigation planning, the assessment itself is not focused on an evaluation of the business's contribution to human rights enjoyment. While the distinction between an action to address adverse impacts and a 'positive impact' may not necessarily always be clear-cut in practice, the point is that the HRIA should focus on the actual and potential adverse human rights impacts with which the business is involved and not on ad hoc positive contributions that do not relate to addressing such impacts.

One further aspect to note is that community development and strategic social investment activities are considered to be a part of company operations and, as such, need to be included in the scope of HRIA. However, the primary focus would be on whether such initiatives have any adverse impacts on human rights in the way that they are selected, designed, implemented and monitored.

In sum, HRIA of business activities should focus first and foremost on identifying and addressing adverse impacts, and clearly distinguish this from any discussion of positive impacts or benefits.

### **3.3 ESTABLISHING IMPACT SEVERITY**

All human rights are created equal and there is no list of priority human rights. The purpose of establishing impact severity is therefore not to establish which impacts need to be addressed, but to determine the order of priority in which the identified impacts should be addressed. (How these impacts should be addressed is discussed in [Phase 4: Impact Mitigation and Management.](#))

According to the UN Guiding Principles:<sup>12</sup>

- All human rights impacts need to be addressed

- Where it is not possible to address all impacts simultaneously, the impacts should be addressed in order of their ‘severity’
- Severity is determined by the scope (number of people affected), scale (seriousness of the impact) and irremediability (any limits to restore the individual impacted to at least the same as, or equivalent to, their situation before the adverse impact occurred)
- Assessment of severity should give special consideration to human rights impacts on groups or populations that require particular attention, including women, indigenous peoples, persons with disabilities and migrant workers; and
- While it is not necessary for an impact to have more than one of these characteristics to be considered ‘severe’, it is often the case that the greater the scale or the scope of an impact, the less it is ‘remediable’.

It is important to note that ‘severity’ is not the same as ‘significance’, which is the approach found in many environmental and social impact assessments for establishing significance and prioritising actions to address impacts. Box 3.3, below, explains the differences between severity and significance in more detail.

### **Box 3.3: Impact severity and significance**

Establishing impact ‘significance’ is the approach commonly used in ESHIA. The UN Guiding Principles, however, recommend that impacts are assessed according to their ‘severity’. According to a report by the Danish Institute for Human Rights and IPIECA:

“‘Significance’ is used in ESHIA to indicate the nature of a potential impact’s consequences. It is determined through an assessment, primarily, of gravity of impact (i.e., “magnitude”), number of individuals affected (i.e., “extent”), and their sensitivity and resilience. The purpose of attributing a degree of significance is to show a level of materiality of the potential impacts in order to make project and/or permitting decisions.’

Significance includes consideration of the probability of the impact. Assessment of significance, including probability, results in a consequent ranking that indicates which impacts should be addressed.

By contrast, severity does not include consideration of probability; instead, it prioritises a focus on the human rights consequences of the impact. This is not to say that consideration of probability is irrelevant. Consideration of probability will necessarily be involved in initial issues scoping. It is also relevant once severity has been established to determine the order in which mitigation measures are to be implemented. For more on how probability

### Box 3.3: Impact severity and significance

becomes relevant in the prioritisation of actions to address impacts, see [Phase 4: Impact Mitigation and Management](#).

Source: Danish Institute for Human Rights and IPIECA (2013), *Integrating Human Rights into Environmental, Social and Health Impact Assessments: A Practical Guide for the Oil and Gas Industry*, Copenhagen: IPIECA and DIHR.

The terminology used to describe the constituent parameters of severity and significance can be varied and sometimes confusing. The summary in Table 3.B, below, provides one possible interpretation. Having an overview and understanding of the different types of terms used can be important when working in interdisciplinary assessment teams in practice. For example, it might be helpful to understand any differences in terminology when those conducting a HRIA work closely with EIA or SIA practitioners, when drawing on ESHIAs as part of the knowledge base for a HRIA, or when integrating a HRIA into an ESHIA process.

**Table 3.B: Assessment parameters used in ESHIA and the UN Guiding Principles**

Assessment parameter	UN Guiding Principles terminology	Common ESHIA terminology
Seriousness of the impact	Scale or gravity	Intensity
Number of people affected	Scope	Extent or scale
Ease of impact mitigation/remediation	Irremediability	Mitigability
Irreparability of the harm caused by the impact	Irremediability	Irreplaceability
Probability	-	Likelihood or probability
<i>Comprehensive assessment of the impact</i>	<i>Severity</i>	<i>Significance</i>

Source: Prepared by Danish Institute for Human Rights and Community Insights Group based on UN Guiding Principles and ESHIA frameworks.

There are five further points to note regarding the assessment of impact severity:

1. Establishing impact severity must be **undertaken in dialogue** with the individual rights-holders, such as workers and community members who are impacted and the representatives or organisations that represent them.
2. Establishing impact severity **needs to consider vulnerability** as an integral component of establishing the severity of the impact. For example, if a company's use of land means the water access point is now 2km away from the local community, rather than 200 metres, the impact will be more severe on those who have to walk to the water point, rather than those who have vehicles. To take another example, if the company impacts livestock by causing the death of one farm animal, the impact would be more severe if that animal is the only source of income for a family than if the impacted person is a farmer with 100 such animals. For further explanation of the different factors that might give rise to vulnerability, see [Stakeholder Engagement](#) section B.3.
3. In considering the scope (i.e., the number of people affected), it is essential to look not only at the absolute numbers of individuals affected, but to also to **consider in detail who the individuals are** to ensure that any actual or potential discrimination is identified and included in assessing the impact's severity. For example, an analysis that focuses purely on the number of people affected might identify that for ten impacts, five out of 100 people experience each impact; however, if the five people impacted are always the same type of people (e.g., indigenous people, women, persons with disabilities), this should be observed in the analysis, as it may be due to systemic discrimination against the particular group of people or their vulnerability in the given context.
4. **Human rights expertise is key** to ensure that the assessment processes are adequately informed.
5. **Severity is not an absolute concept.** There is no universal threshold for when impacts are 'severe'. Assessing severity of impacts is relative to the impacts identified. It involves professional judgment, dialogue, consideration of the interrelatedness of impacts and analysis of long-term consequences. Severity also depends on the local context and perspectives of stakeholders. For instance, in some contexts, the likelihood and consequences of conflict may be key aspects when determining severity, while in other contexts, these criteria may not be as relevant.



You can find a framework for assessing impact severity, including some examples, in section 1.3 of the [Analysing Impacts Practitioner Supplement](#).

# ENDNOTES

<sup>1</sup> Office of the United Nations High Commissioner for Human Rights (2012), *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, New York and Geneva: United Nations.

<sup>2</sup> UN Guiding Principle 13.

<sup>3</sup> International Commission of Jurists (2008), *Expert Legal Panel on Complicity*, Reports 1-3, Geneva: ICJ.

<sup>4</sup> Office of the United Nations High Commissioner for Human Rights (2012), *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, New York and Geneva: United Nations.

<sup>5</sup> International Commission of Jurists (2008), *Corporate Complicity and Legal Accountability*, Expert Legal Panel on Complicity, Volume 1, Geneva: ICJ.

<sup>6</sup> This section is adapted from: Myanmar Centre for Responsible Business (MCRB), Institute for Human Rights and Business (IHRB) and Danish Institute for Human Rights (DIHR) (2015), *Tourism Sector-Wide Impact Assessment (SWIA)*, Yangon: MCRB, IHRB and DIHR.

<sup>7</sup> Daniel Franks, David Brereton and Chris Moran (2011), 'Cumulative Social Impacts', in F. Vanclay and A.M. Esteves (Eds), *New Directions in Social Impact Assessment: Conceptual and Methodological Advances*, Cheltenham: Edward Elgar.

<sup>8</sup> International Finance Corporation (2013), *Good Practice Handbook on Cumulative Impact Assessment and Management*, Washington: IFC.

<sup>9</sup> United Nations Global Compact, [Human Rights and Business Dilemmas Forum, Cumulative impacts.](#)

<sup>10</sup> Daniel Franks, David Brereton and Chris Moran (2011), 'Cumulative social impacts', in F. Vanclay and A.M. Esteves (Eds), *New Directions in Social Impact Assessment: Conceptual and Methodological Advances*, Cheltenham: Edward Elgar.

<sup>11</sup> UN Guiding Principle 11 commentary.

<sup>12</sup> UN Guiding Principles 12 and 24 and commentaries; Office of the United Nations High Commissioner for Human Rights (2012), *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, New York and Geneva: United Nations.



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