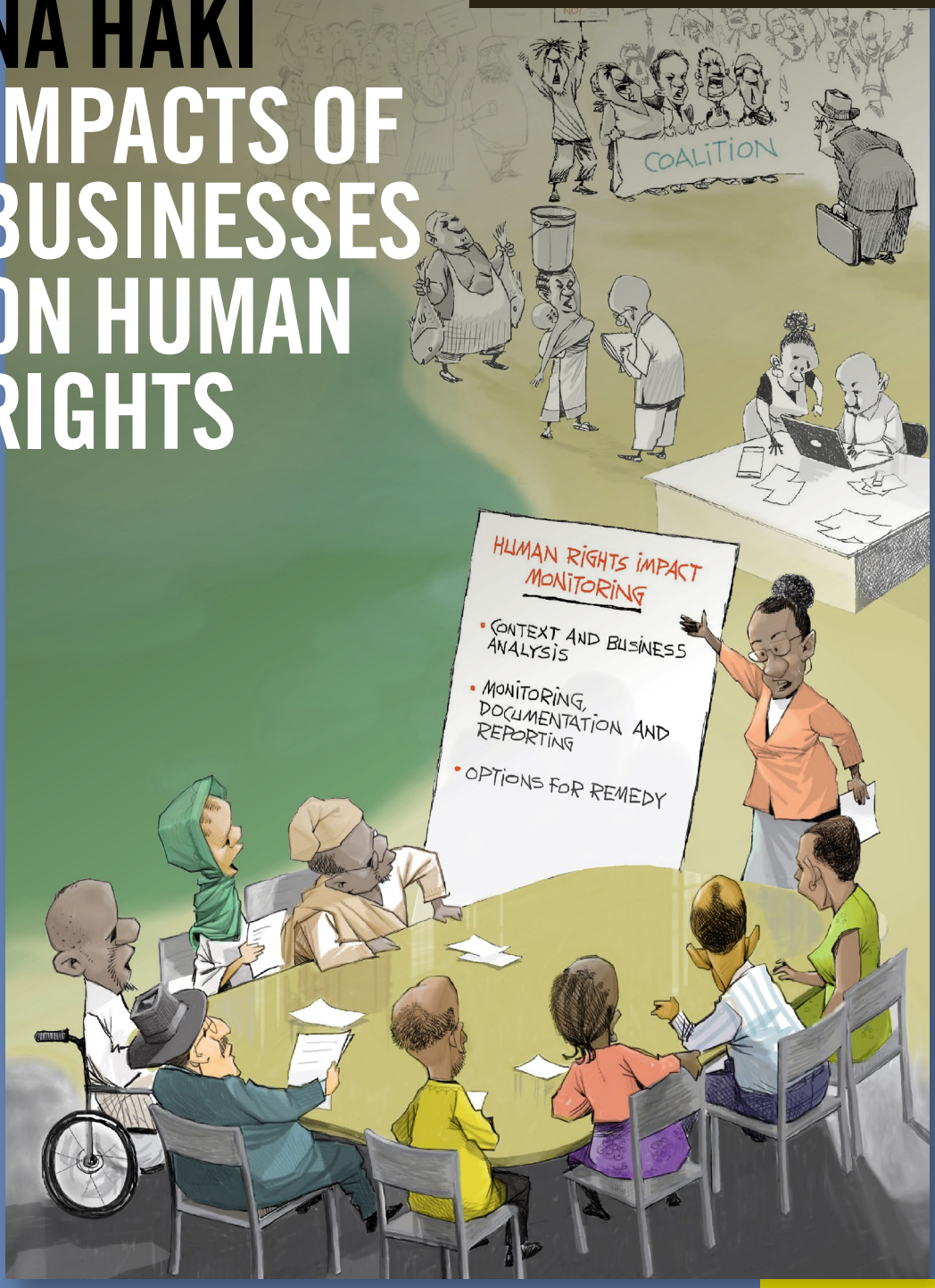
BIASHARA NA HAKI
IMPACTS OF BUSINESSES ON HUMAN RIGHTS

Part two: Taking action



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BIASHARA NA HAKI
IMPACTS OF BUSINESSES ON HUMAN RIGHTS

Part Two: Taking Action. A Guide for Civil Society and Community Rights Advocates

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Amnesty International

Amnesty International is a global movement of more than 7 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

Amnesty International is independent of any government, political ideology, economic interest or religion – we are funded mainly by our members and public donations. This handbook series has been developed and produced by the Human Rights Capacity-Building Programme (HURICAP) of Amnesty International Netherlands. HURICAP strengthens the capacity of human rights organisations and activists in Africa and the Middle East with the aim to help them be more effective in defending the rights of their communities. For more information and to download publications go to www.amnesty.nl/media/huricap

The *Biashara na Haki: Impacts of Businesses on Human Rights* series seeks to respond to concerns raised by HURICAP's local partners in Africa that there are insufficient human rights education materials aimed at local non-governmental organisations (NGOs) and community-based organisations (CBOs) in relation to corporate-related human rights issues. This handbook series follows an extensive consultation of various actors regarding what form such capacity-building materials should take.

This handbook, *Part two: Taking action*, provides users with information on how to incorporate business and human rights into their work. It should be read in conjunction with Part one: Knowing your rights, which aims to introduce readers to international business and human rights standards and their application to specific human rights issues.

The handbook assumes its readers will already be familiar with the concept of human rights and the main human rights standards and bodies. It can be read in conjunction with HURICAP's handbook series on economic, social and cultural rights – Haki Zetu ESC Rights in Practice – and HURICAP's Ukweli series on monitoring and documenting human rights violations in Africa.

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The views expressed in this handbook are those of the authors alone and do not necessarily reflect Amnesty International's policy. For information on Amnesty International's input into the international discourse on business and human rights, please visit www.amnesty.org.

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Introduction

This handbook provides information, practical methods, and tools that civil society organisations (CSOs) and community rights advocates can use to accompany and empower people to prevent or mitigate harm, or to obtain adequate remedy for the harm resulting from business activities. This relates to all business sectors – including energy or power, mining, infrastructure, manufacturing, agriculture, tourism, telecommunications, banking, and insurance.

CSOs and community rights advocates play a critical role in assisting people affected by business activities to assert and defend their rights. They also help ensure that affected people's voices, complaints, and other relevant evidence of human rights violations are heard by those in power (government) as well as those operating the projects (international and local businesses).

This handbook is Part 2 of the *Biashara na Haki: Impacts of Businesses on Human Rights* series. Part 1, Knowing Your Rights, introduces businesses and their impact on human rights, setting out the different types of businesses, the pressures they face to respect human rights, and the potential impacts they can have on human rights. Part 1 also provides an overview of international instruments, including the United Nations Guiding Principles on Business and Human Rights (UNGPs), which established the authoritative global standard that all businesses have a responsibility to respect human rights and reiterated the duty of the State as the primary protector of those rights.[1] Part 1 also discusses the human rights-related roles and responsibilities of various actors, including businesses, governments of businesses' home and host states, international organisations, financial institutions, and multistakeholder and industry initiatives. Part 1 concludes by discussing specific human rights issues, including labour rights, environmental harm, access to land, security and armed conflict, corruption, and access to remedy.

Part 2 is designed to help you – CSOs, community rights advocates, and human rights defenders, and the communities you work with – develop your analytical, organisational, and engagement skills. It includes practical tools distilled from (and illustrated by) concrete examples and case studies from a broad range of business sectors. By highlighting and weighing different options for engaging with business actors and government, the handbook encourages you to take an evidence-based, constructive approach to

engagement. Such an approach favours collaborative strategies and tactics such as negotiation, joint problem solving, and campaigning, but does not shy away from more adversarial approaches such as legal action, depending on the specific situation, context, and your defined goals. Ultimately, the affected communities must make an informed decision about which approach to use to reach their goals, with advice and guidance from you.

Throughout Part 2, we address CSO representatives in the first person's narrative, using a direct ('you') style, which is meant to make this handbook more user-friendly and engaging.

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WORKING WITH LOCAL COMMUNITIES

Local communities are often described as a unified group of people, living together in a defined geographic area, that shares a set of socio-cultural norms and values. In reality, communities are made up of people with diverse interests, views, and expectations who move between (or live in) different areas. Some may be in favour of a new, large-scale project such as a mine, dam, or manufacturing plant; others may have strong reservations, while still others may be undecided, entirely opposed, or somewhere in between.
Taking this diversity of views as a starting point, you should start by listening closely and determining how the community functions, assessing how it is likely to be affected by a project, what type of actions are realistic given the context, and how such actions can best be organised. The affected community, whether in whole or in part, or through its (demonstrably legitimate) representatives, should ultimately decide how to respond to harmful business activities or when to seek remedy for human rights impacts.

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BUSINESS AND COMPANY

In this handbook a business refers to an independently owned organisation in which people work to make and sell products or services. This includes small, medium, and large-sized businesses. A company is a particular type of business consisting of a separate legal entity that provides limited or unlimited liability for its owner(s). We use both terms interchangeably throughout the handbook.

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IMPORTANT SUGGESTIONS

We have two important suggestions that apply to all actions and activities discussed in this handbook. First, you should stop and reflect before taking action. Second, actions are more effective when you plan and take them in consultation and collaboration with advocates and allies, whether local, national, or international.

When we see a human rights abuse or violation, our natural tendency is to react immediately, often in the strongest way possible. This is human nature, and it is reasonable in emergency situations where people's lives are immediately at risk and emotions are heightened. This is the case, for example, when a burst pipeline or tanker causes an oil spill, a fire erupts in a clothing factory full of workers, or when security forces violently clash with protesters demanding fair compensation for the loss of their land. In such situations, urgent action is required; anything that can help to persuade or restrain the actor causing harm is essential. Such tragedies also highlight systemic issues that have persisted over time, such as a lack of enforcement of building safety standards, irregular procurement practices, a failure to conduct environmental audits and inspections, or a lack of meaningful public participation.

In many cases, a human rights impact might only occur cumulatively, or it is not entirely clear who is responsible or what caused it. If this is the case, you should first find out what is happening, systematically document the human rights impact (collect evidence), speak to other affected people, seek dialogue with the government and the concerned businesses, and design an intervention strategy as a community and/or with like-minded partners.

Structure of this Handbook

Figure 1 illustrates the structure of Part 2. Chapters 1 and 2 help you prepare, by describing what you need to know beforehand and how to learn more about the businesses that are active in your area. Chapter 3 provides an overview of how to gather evidence to better understand the situation by documenting and monitoring the local human rights situation. Chapters 4 and 5 then go into strategising for action by assessing the risks, setting goals and priorities, and choosing the best tactics to achieve them. Chapter 6 helps you understand which of the many possible recourse mechanisms might be available and useful to help reach your goals.

Chapter 7 shares some examples from real-life cases of how CSOs have addressed the human rights impacts of business activities in East Africa, Kenya, and Nigeria. Chapter 8 invites you to review some of the handbook's key lessons and briefly evaluate how you can apply them to your situation.

The handbook concludes with a list of useful resources for further reading and a glossary of key terms.

FIGURE 1: STRUCTURE OF THE HANDBOOK

Meaning of Symbols

Boxes with this symbol are case studies. They provide examples of how the issues discussed in the handbook relate to real-life events. All of the case studies examined are real examples from Amnesty International's own reports and the reports of other actors.

These boxes provide information on a particular practical tool.

These boxes provide explanations of a particular concept or instrument.

REMEMBER / WATCH OUT

These boxes include important reminders of key points from the text or additional, practical advice.

Boxes with the symbol provide references for further resources (including international standards and literature) relating to the issues discussed in this handbook.

Underlined words are those that are included in the glossary. For instance, if the reader would like to know the meaning of terms such as community protocol or environmental impact assessment, then they can refer to the glossary for an explanation. The glossary is on pages 155-161. Many terms are also explained throughout the book.

The acronym list on page 154 explains the most common acronyms used in the handbook.

1. Analysis: Where to Start?

1.1. Why? Objectives and structure of this chapter

As a CSO or community rights advocate, you want to do as much as you can to fulfil your organisation's mission, contribute to positive change, and help defend and assert people's rights.

This chapter will help you assess the nature and scope of the harm caused by business activities – whether at the community, project, company, or policy level – that you would like to address. It starts with a short overview of information collection methods and then details the different aspects of context analysis, illustrated by a few short case studies. The chapter proposes several tools to analyse your own (and the community's) roles, strengths, and weaknesses, and concludes by discussing how to conduct a stakeholder identification, mapping, and analysis exercise.

1.2. Gathering preliminary information

Gathering information about the business project and the affected community will be an ongoing process. This can be very sensitive for community members, and relies heavily on your maintaining open and trusting relationships with them. Interviewing and asking people what they think about the project, the company (or any other topic) invades their privacy and may arouse suspicion. Therefore, this section briefly introduces several alternative methods you can use to gather information. Chapter 3 explores this topic in more detail.

1. **Online search**
   The company's website is a good place to start in order to familiarise yourself and your organisation with the company, its projects, and its official description of how it operates. You might learn from this search who its main investors are, where it is headquartered, and whether it has faced issues in the past that have been made public.

   You can also search on the internet for the company, and consult profiles of company staff on LinkedIn, the company's Facebook page, CSO and government agency websites, and websites such as www.openlandcontracts.org, www.opencorporates.com https://landmatrix.org, and www.business-humanrights.org. Further resources are presented in Annex IV.

2. **Interviews**
   Interviews are usually conducted face to face with one person – typically someone who is thought to have relevant information to share (these individuals are knowns as key informants). These exchanges provide information about one person's experiences and perspective. Section 1.3 discusses the types of information to seek during an interview.

3. **Focus group discussions**
   Focus groups facilitate a discussion with a small group on a specific topic; they are used to gather information and identify a common understanding of an issue. It is often necessary to conduct separate focus groups in order to create a safe conversation space for different sub-groups in a community to share their opinions. For example, one group of men and one group of women; one group of elders and one group of youth; one group of people employed by a factory and one group of people not employed by the factory, etc.

4. **Media and newspaper articles**
   While there is a wealth of information available in today's social media environment, not all of it is accurate. Make sure that you gather information from multiple credible and professional news sources, and do not rely on only one source.

5. **Direct observation**
   You should closely observe business development and operations, affected communities, the local environment, and more. For example, if you see a new road in or near the village you're working with, you can ask villagers who built or paid for it – it may have been the company.

REMEMBER
All sources have unintentional or intentional biases that may be reflected in the information they provide. Use a variety of tools and sources to establish a comprehensive picture of what might be happening.

1.3. Context analysis: Understanding the project setting

You will want to collect information about the following topics as you familiarise yourself with the situation and consider your possible involvement:

1. **Characteristics and nature of the community:** Consider the defining characteristics and nature of the affected community, including whether it is in an urban or rural setting, their access to land and natural resources, their livelihoods and food security situation, the local environment and public health, the availability of basic services such as water and sanitation, housing, education, labour rights issues, the nature of their participation in local decision-making and access to information, women's rights and prevailing socio-cultural norms, the situation of minorities and Indigenous Peoples, groups that are particularly vulnerable to impacts, etc.

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INDIGENOUS PEOPLES

Although there is no universally accepted definition, Indigenous Peoples are commonly defined as 'those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them'.[2] In Kenya, for example, Indigenous Peoples comprise hunter-gatherers such as the Ogiek, Sengwer, Yaaku Waata, and Sanya, while pastoralists include the Endorois, Turkana, Maasai, and Samburu, among others. In Cameroon, the two largest groups of Indigenous Peoples include hunter-gatherers and the Mbororo. In the DRC, Indigenous Peoples include the Mbuti, Baka, and Batwa. For further information, see the International Work Group for Indigenous Affairs (IWGIA), https://www.iwgia.org/en/indigenous-world.

2. **Governance, conflict & repression**[3]: Are the communities or project located in an area with a strong or weak governance and rule of law culture? In a conflict-affected area or are they experiencing conflict? This could include violent conflict between or within communities.

A recent history of government repression might prevent certain groups from organising or expressing themselves for fear of reprisals, such as arbitrary arrest, the use of force, detention, and similar threats to the security of community rights advocates and human rights defenders.
In a conflict-affected setting it is very important to consider the possible risks (violence, trauma, harm) that you, your organisation, or community members might face and how to mitigate these security threats. Chapter 3 discusses security further.

3. **Local government capacity:** The State has the primary duty to protect human rights within its boundaries. But they often lack the resources, staff, and political will needed to effectively carry out this obligation.
   - *In what instances (and how frequently) do local officials at the village, sub-national, or national level interact with the community?*
   - *How well do local officials understand the law? Do they have sufficient interest and resources to apply the law?*
   - *Does the community trust the local government?*

WATCH OUT!
Government officials sometimes use 'lack of resources' as an excuse not to take action. Sometimes this is true, while at other times it is not. In any case, officials must take action in accordance with your country's law and international human rights law.

4. **Role of traditional authorities:** In some communities, traditional authorities have significant power to enter into agreements on behalf of their community, including conceding or leasing out land. This does not mean they necessarily have the legal or customary authority to do so.
   - *What role do traditional authorities play (if any) in a community, and how might they benefit from business operations in a way that the rest of the community does not?*

5. **What has been the engagement between the company and community to date?** Try to ask a variety of community members for their perspectives on the following questions, because people have different experiences.
   - *Has the company consulted the community? If so, which community members have they engaged with? When did the consultations start?*
   - *Have consultations continued throughout the life of the project? What information has the community received and understood about the project's nature and size? About how long it will operate? About the potential risks to (and benefits for) the community?*
   - *How has the company responded to community concerns?*
   - *Aside from consultations, how else is the company interacting with the community? For example, by hiring local people, building a school, providing clean water, building a road, etc.*
   - *What are community members' opinions on the company's interactions with them?*

CORPORATE SOCIAL RESPONSIBILITY (CSR)

Different terms can be used to refer to a company's interaction with communities, or how they approach social or environmental issues, including CSR, 'responsible business', 'stakeholder engagement', 'human rights'.

CSR usually refers to voluntary initiatives that a company may undertake, such as providing scholarships, building a school or hospital, etc. Responsible business tends to refer to how a company does business, for example striving to comply with the law, avoiding bribery and corruption, and preventing environmental harm.

You should prioritise using terms that reflect the company's legal human rights obligations (such as 'compliance with laws' and 'human rights obligations') rather than terms that are vague or imply voluntary or philanthropic initiatives.

6. **Legacy issues:** Companies refer to events that happened before they started operating in a particular location or before they acquired (bought) the operation as 'legacy' issues. Such historical issues, especially those related to land acquisition, can have significant human rights implications. Legacy issues can be caused by the actions of a prior owner that later sold the property, or by government action, such as a large-scale land acquisition or infrastructure development. These issues are quite common in almost any setting.

WATCH OUT!

Companies may not want to address legacy issues, and may declare that they are not legally responsible. However, resolving past injustices may be very important for a community, and can make good business sense for a company to do so. A failure to address these issues can undermine the company's operations, increase community opposition, cause delays, sabotage, etc. Depending on the nature of the historical injustice, the company may bear responsibility for addressing the issues under its responsibility to respect human rights.

SUGARCANE ESTATES IN MALAWI[4]

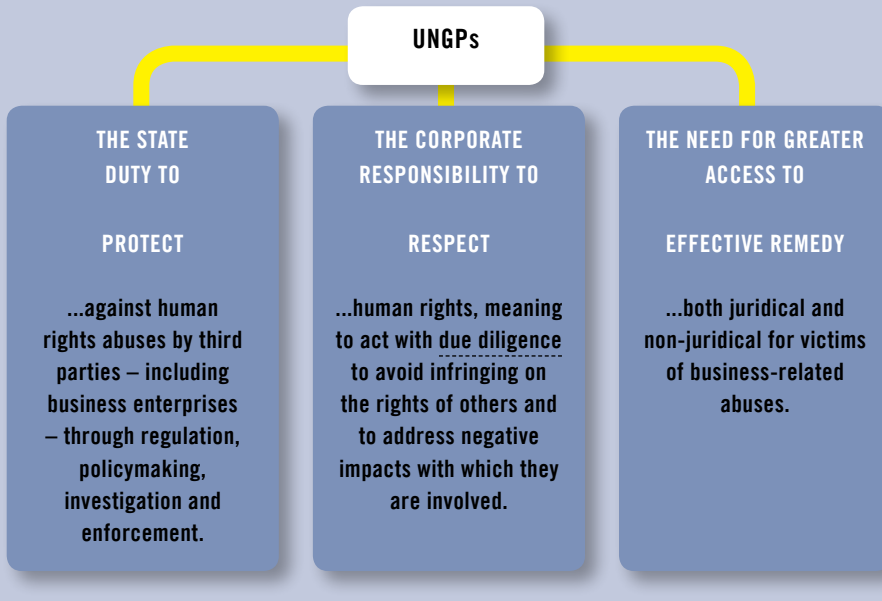
In the 1960s and 1970s, the government of Malawi granted land leases for two sugarcane estates. In the late 1990s, the current operator took over the estates. According to the company, villagers encroached on unused company land over time. Villagers and the company disagreed as to whether the land formed part of the original land leases: the company said the land was part of its lease, while the villagers argued it had been granted to the company's predecessor under a separate, temporary arrangement that had since ended. After villagers blocked its access to the estate, the current company was forced to address the legacy issue of the process of land acquisition.

7. Legal and policy frameworks

It is very important to understand the laws and policies of the country in which the community is located. This legal framework tells the State what it must do, it informs a company what it can and cannot do, and it details the community's legally enforceable rights.

The UNGPs, adopted unanimously by the UN Human Rights Council in 2011, establish an authoritative global standard on the responsibilities and obligations of businesses and States in helping to ensure that companies respect human rights in their own operations and through their business relationships. Figure 2 outlines the three pillars of the UNGPs.

FIGURE 2: THREE PILLARS OF THE UNGPs



The UNGPs established an international consensus on these obligations and responsibilities, albeit without creating new law. While the UNGPs themselves are a soft law, non-binding instrument, the content of the three pillars is derived from (and grounded in) legally enforceable rights found in international, regional, and national laws.

- To learn more about the UNGPs, see Part 1 of the Biashara na Haki series, chapter 2.1. Part 1 also contains information on the applicable international legal frameworks.

National laws, policies, and related documents you should consult in order to understand the legally enforceable rights applicable to the impacts of business activities include:

- the Constitution;
- land acquisition law;
- land tenure and land use laws;
- labour laws;
- mining, oil and gas laws;
- protection laws;
- access to information law;
- investment laws;
- terms of a concession or legal license;
- company policies; and
- memorandum of understanding with the community / government.

When reviewing these laws, search for references to international human rights law; environmental rights; customary land tenure and housing rights; free, prior, and informed consent (FPIC); no-go zones; access to information, requirements for consultation and participation, etc.

REMEMBER

Most large-scale projects with Western companies and financial institutions will have contracts that clearly state that all project partners, in addition to adhering to national laws, must follow relevant international standards for environmental and social sustainability and respect human rights (see Part 1 Biashara Na Haki, sections 2.6 and 2.7 for more information).

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LEGALLY ENFORCEABLE RIGHTS

Not all human rights may be legally enforceable in your country. When you are thinking about an issue a community in your area is facing, it is critical to understand what rights are enshrined in national law.

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NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS

Several African countries – including Kenya, Uganda, Zambia, Tanzania, Ghana, and Nigeria – are developing or have adopted a National Action Plan on Business and Human Rights. These action plans are policy documents in which a government articulates its priorities and the actions it will take to support the implementation of international, regional, or national obligations and commitments related to business and human rights. Importantly, it is an opportunity for Governments to engage in an inclusive and participatory process to develop such plans: they review the extent of their implementation of business and human rights frameworks, including the UNGPs, at the national level and identify gaps and legal or other reforms to enhance their implementation of those frameworks. For more information about National Action Plans on Business and Human Rights, see https://globalnaps.org.

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STATE REPORTING GUIDELINES ON ARTICLES 21 AND 24 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS RELATING TO THE OPERATIONS OF EXTRACTIVE INDUSTRIES, HUMAN RIGHTS, AND THE ENVIRONMENT

Article 62 of the African Charter on Human and Peoples' Rights provides a reporting mechanism to monitor the implementation of the rights guaranteed in the charter and clarifies what is expected of States under the charter. In October 2018, the State Reporting Guidelines on Articles 21 and 24 of the African Charter on Human and Peoples' Rights Relating to the Operations of Extractive Industries, Human Rights and the Environment were adopted. Article 21 guarantees the right of all peoples to freely dispose of their wealth and natural resources, and Article 24 ensures the right of all peoples to a general satisfactory environment that is favourable to their development. These rights are at the core of concerns surrounding the protection of rights relating to the extractive industries in Africa. These reporting guidelines were developed over several years, under the leadership of the African Commission Working Group on Extractive Industries, the Environment and Human Rights, and involved consultations with a wide range of actors across the continent. The guidelines are designed to improve the information reported by States and focus their attention on an area that is too often subject to secrecy and a lack of transparency.[5]

- To learn more about the business case for respecting human rights, see Part 1 of the Biashara Na Haki series, chapter 1.2.3.

1.4. Self-analysis: Understanding the role and strengths of your organisation and community

You need to get a sense of your organisation's own potential role, the dynamics between you and the community you will work with, and potential allies and opponents. It is not easy but it is important for you as a CSO to identify your own particular incentives or underlying preferences or biases to frame things in a certain way, as well as your preference for certain strategies over others. Communities will likewise have their own preferences; it is critical that the community decides on its own priorities and what strategy and tactics to use.

Self-analysis should enable you to assess the extent to which your organisation and the community can engage in the following strategies and tactics:

- engage the government to apply the laws, regulations, and policies;
- community empowerment and legal education;
- community visioning;
- advocacy for legal and policy reform;
- reactive use of media;
- direct action; and
- negotiation with the company and/or litigation.

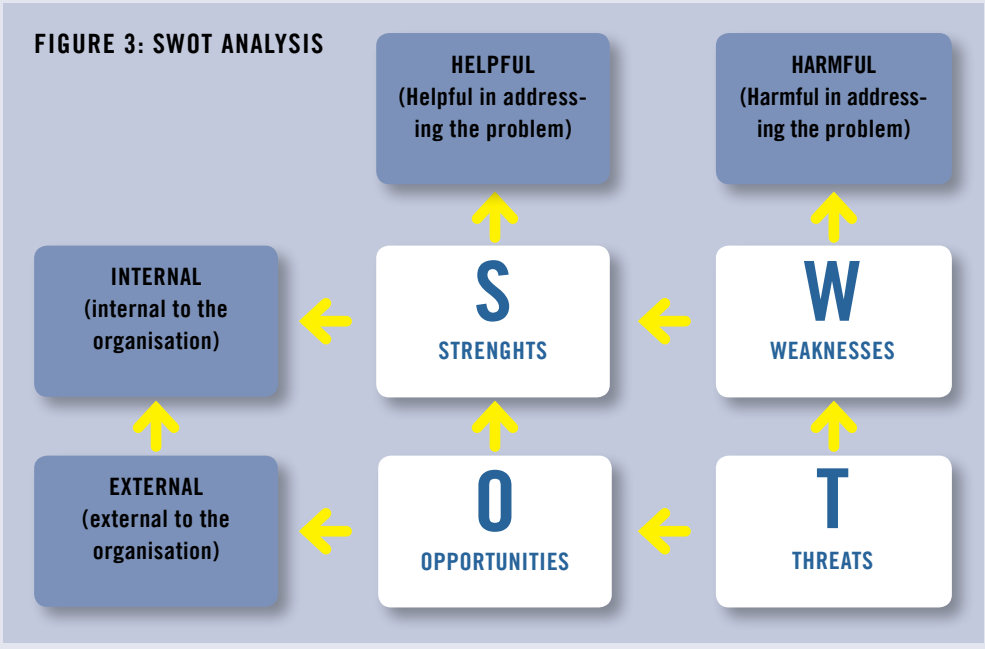
REMEMBER
It is okay to say 'no' if you think your organisation does not have the resources (money, people, time) or skills to effectively engage, or if the timing is just not right for you. You can refer a community to another CSO, if one is available, or you can choose to engage in a limited way. In any case, you have to communicate this clearly to the community.

PRACTICAL TOOL 1: STRENGTHS, WEAKNESSES, OPPORTUNITIES AND THREATS (SWOT) ANALYSIS

A common tool for assessing the type of role your organisation might be able to play in a particular case is called a SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis (see Figure 3)[6]. Every SWOT analysis is different, depending on the community and the problem addressed.

- ***S****trengths* are the internal strengths of the organisation, such as its experience and expertise (number of staff, people with specific skills, knowledge / experience of working in a particular area and community).
- ***W****eaknesses* refer to the organisation's internal weaknesses, such as a lack of planning or campaigning skills, or insufficient financial resources.
- ***O****pportunities* are the external opportunities that the organisation can benefit from, including stakeholders who could be allies, government policies that promote human rights, and technological advances that facilitate communication.
- ***T****hreats* are the external threats to the organisation, such as stakeholders who oppose your work, or discriminatory cultural practices and traditions.

FIGURE 3: SWOT ANALYSIS



WATCH OUT!
If you have previous experience with a particular community, you might unintentionally make incorrect assumptions about what certain members of the community think about the specific business and human rights issues, based on your previous interactions with them. This is called confirmation bias. Make sure you consult the relevant community members on this specific issue rather than make assumptions.

As you think about your strengths, weaknesses, opportunities, and threats, some questions to ask yourself include:

1. **What is the community's strategy, and what skills can we contribute?**
   Some organisations will be very good at organising direct action to stop a project; some will be able to help communities take legal action to enforce their rights; others will have specialist technical skills that make them better at negotiation.

2. **Who does the community seek to influence, and what strengths do you have to help make that happen?**
   What external actors do you have connections with? Are those connections relevant to those the community seeks to influence? How old is your organisation, and what type of reputation and track record does it have? Have you ever worked on this type of issue before? If you have few connections or little experience with these actors, look for other organisations or people who do have the required connections and experience.

3. **What is our involvement with the community?**
   If you have a long-standing working relationship with a community, you likely already have a good sense of how you work together, including what works well, what is difficult, and whether certain groups within the community feel more comfortable than others about working with you. Keep in mind that this dynamic may change depending on the issue, and it is important not to make assumptions.
   If you have not previously worked with a community, then seek out others who have, and proceed with caution until sufficient trust has been built. You should not act as if you represent a community if it has not explicitly asked you to.

4. **Who are the main groups and decision-makers within the community? What do the different groups in the community know and think about the business project? What is our relationship with each group?**
   Previous involvement with the community may be an advantage, but it can also pose challenges for your organisation. For example, if the community is divided over the issue, all groups might not see you as a neutral organiser if you have a pre-existing strong relationship with a particular group in the community. In such a case, you should engage the full community or make an informed decision to work primarily with one particular sub-group.

5. **Does the community have a shared vision of how they would like their community to look in the next 5 to 10 years?**
   Some communities may have already collectively discussed how they would like their community to develop, including how their natural resources should be used. This broad vision is independent of any specific business project or proposal. If the community you are working with has not done this yet, you might be able to facilitate such a discussion.
   A shared vision of the community's future can build social cohesion, unite community members around shared goals, and help build solidarity in the face of the 'divide-and-rule' tactics companies often use to weaken community opposition.

- For more information on 'community visioning', see: Namati, 'Community Land Protection. Facilitator's Guide' (2016), pp. 61–63. Natural Justice, 'Community Protocols Toolbox' (2016).

Preventing harm

This handbook discusses ways to prevent harm from occurring, as well as ways to seek remedy from harm that has occurred, and the many steps in between. Major development projects that are known to cause significant human rights impacts require preventive action wherever possible. The Early Warning System database, which is hosted by a group of organisations working on accountability in development finance, contains information about proposed and existing projects that warrant such preventive action. The database is available online at https://ews.rightsindevelopment.org.

Several activities and tools can provide guidance on how to develop a strategy

to prevent business activities from jeopardising the human rights of local communities:

- gather as much information as possible about the project, its life cycle, and all actors involved (see chapter 2);
- enhance the community's understanding of their rights under national and international law (see part 1);
- organise consultations within the community, eventually establishing a local information centre;
- facilitate the development of a shared vision of the community's future development;
- conduct participatory mapping of community lands and natural resources;
- document the community's customary land tenure rights;
- develop and adopt a land use plan;
- support demonstrably legitimate community leadership and local authorities;
- develop and adopt a community protocol (see section 4.4);
- support robust public participation in Environmental and Social Impact Assessment (ESIA) processes (see section 2.6);
- assess the risks of harmful business project impacts on human rights (see Practical Tool 11); and
- conduct research on the project's investment chain (see Practical Tool 5).

1.5. Analysing stakeholders, their interests, influence and position

Where there is human rights harm caused by business, different key actors are involved. Because some of these actors will be familiar to you and others may be new, it is important to identify and analyse those stakeholders. In this section we introduce a series of tools to help you with this analysis.

PRACTICAL TOOL 2: STAKEHOLDER IDENTIFICATION AND MAPPING

There are four main groups of likely stakeholders to consider: communities, government agencies, the private sector, and other (non-State) actors. We discuss each group in turn.

Communities

It may be that one community (for example, a village or other specific locality) is affected by a project and wants your help. But often a business project affects more than one village in either similar or different ways. The 'community' may therefore not be defined by geographic boundaries; instead it could be a distinct group impacted by a project, such as factory workers who come from different areas. Within the community there will also be different groups of stakeholders, each of whom has different interests, influences, and goals. These groups might self-identify based on their religion or culture, occupation, role within the community, age, or gender. Certain groups also experience impacts differently from others and are more vulnerable to harm. Section 1.4 in Part 1 provides an overview of how projects can affect migrants, children, women, Indigenous Peoples, and human rights defenders in different ways.

You should recognise this diversity and engage the full community to ensure you have a full understanding of the wide range of community needs, interests, views, and concerns. You may need to facilitate dialogue and help resolve conflicts within the community before supporting them to engage outsiders such as the company.

If the number of affected communities is unmanageable for you given your time and resources, you will have to develop some criteria to select the communities with which you can most effectively engage, and which are most likely to have positive knock-on effects for other affected communities.

Some specific community groups to consider include:

- traditional or administrative leaders;
- religious or spiritual leaders;
- teachers;
- women;
- youth;
- labourers, including people currently employed by the business project and potential future employees;
- respected persons and elders;
- land owners and users;
- minority groups, based on religion, ethnicity, people with disabilities, etc.; and
- Indigenous Peoples.

Government agencies
A State is generally run by three branches of government: the legislature (Parliament or National Assembly), the executive branch (head of State and central administration, ministries, and agencies), and the judiciary (courts and tribunals). Each branch is made up of many offices, each of which has a distinct role to play. They have different interests in supporting or challenging a company operating within their jurisdiction that causes harm to local communities.

This group could include local officials who interact with a project site and with the community or national government actors (such as ministries, investment commissions, anti-corruption agencies, environmental management agencies, courts, National Human Rights Institutions, Members of Parliament, etc.) who set policies, give permissions, or are responsible for enforcing the law. It could also include State-owned enterprises, which often have State obligations to protect, respect, and fulfil human rights. For foreign companies, you might also consider the embassy of the country where it is headquartered. In all cases, it is most effective to identify persons who are open to, and recognise the value of, directly engaging with civil society and communities.

Private sector
The private sector consists of many different types of companies and actors, including the company operating a project, the operator's parent company, the contractor that built the infrastructure, a supplier that provided parts, the security firm guarding the project site, buyers or clients who will use the project's goods and services, a bank or group of banks that provided a loan or credit, shareholders of the parent company, insurance companies protecting the project against risks, and an industry association (created by a group of businesses that operate in a specific industry) that might have a code of conduct in place for its members.

Chapter 2 goes into more detail on how to identify the many actors in a business project's investment chain. Part 1, chapter 1.2 gives a good overview of the different private actors that may be involved in a business operation.

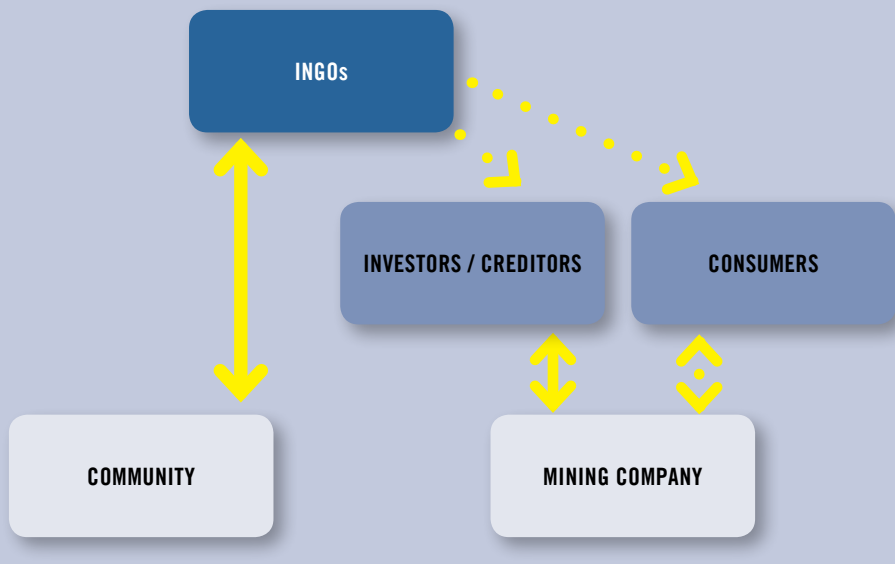
Other (non-State) actors
Non-State actors might include other CSOs, international NGOs, media organisations, and international financial institutions (IFIs). Ask the community you're working with what other types of stakeholders are involved in the project. Part 1, chapter 2 provides further details.

Once you have identified the variety of stakeholder groups and specific persons or organisations within each group, you can analyse their different interests and ability to influence outcomes. Start by assessing the visible and hidden power relationships among the stakeholder groups and the community. Understanding these power dynamics will give you and the community insights about who (and how) you might be able to pressure to get what the community wants, and where divisions could further weaken the community's position. We call this **stakeholder mapping**.

Figure 4 provides an example of a simple visual map you can use to identify relationships and potential 'external actors' who might be able to influence the company, government, or other stakeholders of interest. We've illustrated it here with a conflict between a local community that has been displaced and a multinational mining company.

You would start by drawing the main conflict, which in this case is between a mining company and a community that refuses to be displaced.If you were to stop there, you might think there is no way to influence the outcome, because these two actors are on different sides of the issue. But if you think for a moment about the other stakeholders that are involved, you'll soon see that there are different ways to influence these two actors through their relationships with others. For example, the community has a committed leader who has a strong relationship (represented by a thick, solid line) with experienced international NGOs. These international NGOs in turn have relationships with several investors and creditors of the company (dashed lines), and a few of these investors and creditors have a strong relationship (thick line) with the company. One or more of the investors and creditors may be able to play a strong connecting and influencing role by advocating the interests and rights of the displaced community with the investors and company. If the investor can link respect for the community's rights to continued financing, the investor can try to use its leverage with the company to help resolve the conflict between the mining company and the displaced community.

FIGURE 4: STAKEHOLDER MAP



REMEMBER
You might not immediately know what the relationships are like between different people and organisations, or whether they have any relationship at all. That's normal. It is still a good idea to put all the actors on your map: as you collect more information, you may be able to add or change the relationship lines. Putting them all down on paper will help remind you to figure out those relationships as you continue to collect information.

After you and the community have worked together to identify (and map) all the relevant stakeholders, the next step is to analyse them in order to understand their role (or responsibilities), their interest in the project, their level of influence over the project, and how likely they are to support your actions or work to block them. We suggest using a power analysis tool such as the one shown below.

PRACTICAL TOOL 3: POWER ANALYSIS (INFORMATION PROVIDED ARE EXAMPLES)

Stakeholder group[7]	Decision-making status	Interests	Capacity to influence (high, medium, low)	Position on the project (in favour, neutral, against)	Relationships with other groups
Impacted community	Limited decision-making	Employment	L	neutral	Supported by local NGO
Ministry of Economy	National-level decision-making	Tax income	M	In favour	Working closely with other ministries and financial institutions
Company	Power to take direct decisions to change the situation in specific ways	Access to resources	H	in favour	Part of industry association

You should regularly update your stakeholder analysis, because new stakeholders emerge, and others disengage.

REMEMBER
Your understanding of the context will evolve over time. Update the stakeholder list and power analysis table as you learn more.
Companies can have both positive and negative impacts on a community. When you are assessing dynamics, try to understand both types of impacts.

2. Understand the business: Who and what are you dealing with?

2.1. Why? Objectives and structure of this chapter

This chapter takes a closer look at businesses. The main objective is to give you a better understanding of how businesses are organised and how they run their activities. This will be helpful in later chapters when you are looking for entry points for action.

The chapter starts with a short overview of the different types of businesses, and then explains how business projects are structured and developed over time. Next it describes some of the key tools and documents businesses use, and the decisions they make based on such information. The section concludes with advice on how you and community rights advocates can assess whether businesses respect human rights.

2.2. Different business types and sectors

As explained in Part 1, a business is set up to make a profit for its company owner or shareholders by selling goods or services. There are many different types of business, from one-person businesses to medium-sized, large, and even global businesses ('multinationals').

Almost all companies benefit from special legal protections. When a company is created, it becomes a separate legal entity from the people who run it, and the company is treated as a natural person. This means that the company, rather than the individuals who formed or operate it, is legally responsible for its activities and impacts. This arrangement limits the legal liability of the individuals who own or operate it from facing the consequences of their actions.

Companies are active in different business sectors. In some sectors, two or more (private and State-owned) businesses may decide to share ownership, risk, and profits. This set-up, called a joint venture, is common in the oil and gas sector, which features high potential benefits and high costs.

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A BROAD RANGE OF BUSINESS SECTORS

- **energy/power, including oil and gas, nuclear, wind, solar, and hydro;**
- **mining, including coal, gold, diamond, copper, sand, and other construction materials;**
- **infrastructure and construction, including roads, bridges, ports, and dams;**
- **manufacturing, including chemicals, textile/clothing, and electronics;**
- **agri-business, including palm oil, soy, sugarcane, and cocoa;**
- **tourism, including hotels, resorts, and golf courses;**
- **telecommunications;**
- **banking; and**
- **insurance.**

These industries can be classified into three broad groups: capital-intensive, labour- and knowledge-intensive, and informal industries.

- *Capital-intensive* industries use a lot of heavy machinery, tools, and other expensive equipment to extract raw materials and build their product;
- *Labour- and knowledge-intensive* industries deliver goods and services through people or modern technology; and
- *Informal sector* industries engage in a broad range of activities that are usually not regulated or taxed by the government. Artisanal mining is an example of an industry in the informal sector: individuals or communities extract minerals with basic tools or by hand, often without a legal permit.

- International Federation for Human Rights, 'Corporate Accountability for Human Rights Abuses. A Guide for Victims and NGOs on Recourse Mechanisms' (2016).
- Sustainable Development Institute and Namati, 'Community Guide. Getting a Fair Deal from Companies and Investors' (2013).

2.3. Risks of impacts related to business activities

Environmental risks are ways in which the company's operations or project may harm the environment. These risks can include the pollution of water, air, or soil, and the loss of biodiversity. A social risk is the impact of the company's operations or project on people, their relationships, and other social issues. Social risks can include risks to the community's livelihoods, housing, or social cohesion through land acquisition and resettlement. They can also include specific ways that a project might affect women and men or elders and youth differently.

Environmental and social risks are interconnected: reduced access to a river causes social strain on women and children, who face greater challenges collecting water. Similarly, an influx of people to a project site puts a strain on water, electricity, and other basic services that may have already been inadequate to serve the local community.

Companies and the State are responsible for identifying the risks and the likelihood that they will occur. They must design and implement plans to mitigate each of those risks using the following hierarchy: avoid the risk, minimise it, restore, and remedy

RISKS TO WHOM?

Keep in mind that when companies speak about risks, this could mean:

- risks to their *business project*, such as a road blockage, workers' strike, interruption or suspension of operations, injury, violence or kidnapping of their staff, damage to company reputation, lower profitability, etc.; or
- risks to *local people and the environment*, often referred to as environmental, social, and/or human rights risks.

- For more information, see Part 1 *Biashara Na Haki*, sections 2.4 and 3.2.1.

GOLD MINING IN MALI[8]

The presence of large-scale gold mines in Mali has caused a host of interrelated environmental and social risks. These projects have brought farming to a halt by taking away hectares of farmland and grazing land without adequate compensation. They have also destroyed the landscape, worsened road and soil conditions, strained groundwater sources, and significantly increased air pollution and the presence of toxic waste. These environmental impacts have caused health problems, including high rates of respiratory illnesses and contaminated water in stagnating cesspits, and affected livelihoods with reduced levels of fish. Frequent dynamite explosions have increased the stress levels of community members and caused cracks in local houses.

The allure of a job at the mine has encouraged school dropout and idleness, especially among local young people who tried and failed to get a job with the mine. The appeal of the large mining projects has also attracted migrants to the area. This has led to overpopulation, triggered widespread price increases, health problems, and a breakdown of the social fabric, including the effects of high levels of alcohol and drug consumption, unwanted pregnancies, rape, and other forms of violence against women.

REMEMBER

The term that companies usually use to describe these types of environmental and social impacts is 'risk'. The company's goal in managing these 'risks' is to ensure the smooth operation of its project. If you can help to explain why a current or potential impact poses a risk to the company (for example, it is against the law; it violates company policy; it is likely to cause social unrest in the affected community) this can often help influence a positive outcome.

2.4. Business project structure: Who is involved and has influence?

Whether it is a mine, a wind farm or an oil palm plantation, business projects often involve many different actors, including:

- **government:** provides the legal permit or licence for the project to go ahead, and in some cases is a partner in the project;
- **company and its business partners:** the project company, its investors, financiers, and a range of subcontractors that supply labour, equipment, food, security, and other services needed to implement the project;
- **local communities:** the people living where the project is located, and those working at the project's operations, such as a plantation or factory; and
- **buyers and consumers:** the people (or businesses) who buy the products or services produced by the project; they may be local or international.

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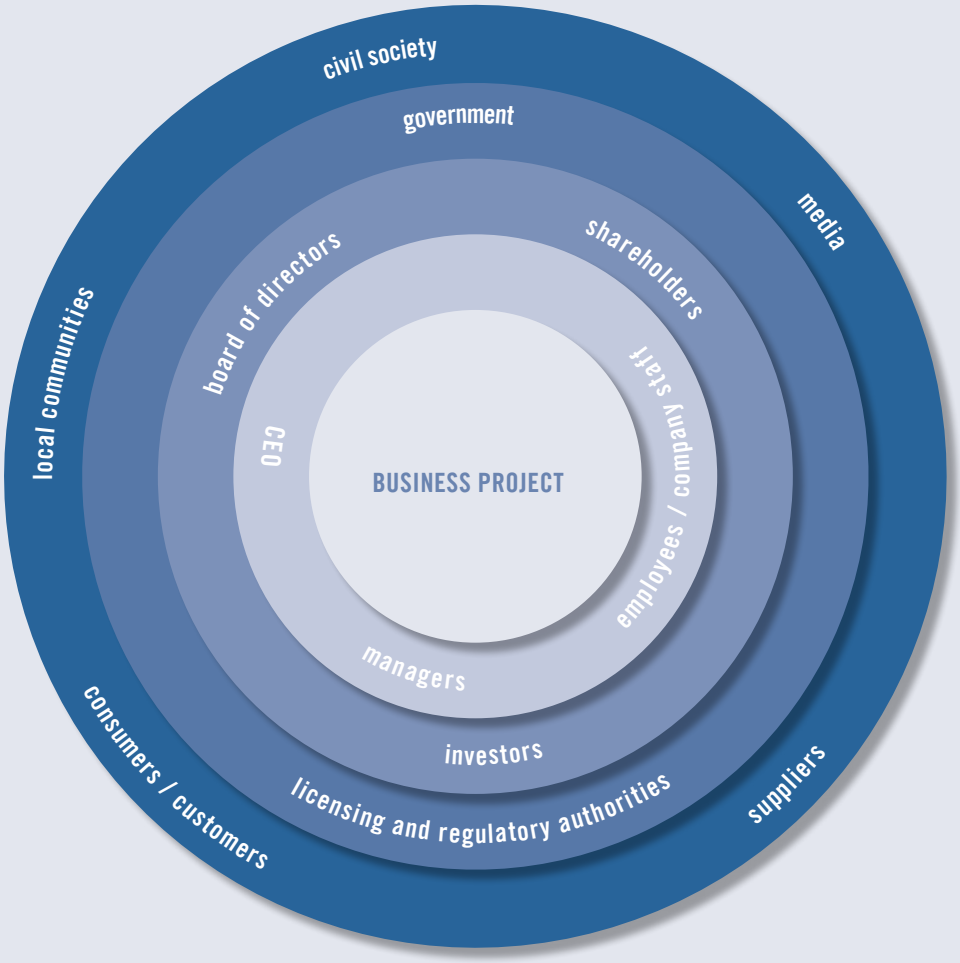
PROJECT STAKEHOLDERS

The many actors connected to a business project are often collectively referred to as 'project stakeholders', as each of these actors has an interest ('a stake') in the business and can either affect the project or be affected by it.
***Internal stakeholders* are persons or organisations that are part of or work in (or for) the business, such as company staff, managers, and owners.**
***External stakeholders* refer to those who are otherwise connected to or affected by the project, such as local communities, suppliers, government, consumers, civil society, and the media.**

Due to the complexity of what is being produced (and how), and because there are so many different actors involved, business projects can often be difficult to understand, particularly for a local community with limited access to information. Practical Tools 2 and 3 mentioned earlier as well as Practical Tool 4 below help to map and analyse the various stakeholders.

PRACTICAL TOOL 4: STAKEHOLDER ONION

A simple visual aid can help represent project stakeholders. For example, think of a project as an onion that consists of different layers; each layer represents a different type of stakeholder.



While the stakeholder onion diagram is a good place to start to map project stakeholders, research on the company's investment chain can give you a more detailed and nuanced understanding of 'who' and 'what' drives a project.

PRACTICAL TOOL 5: INVESTMENT CHAIN RESEARCH

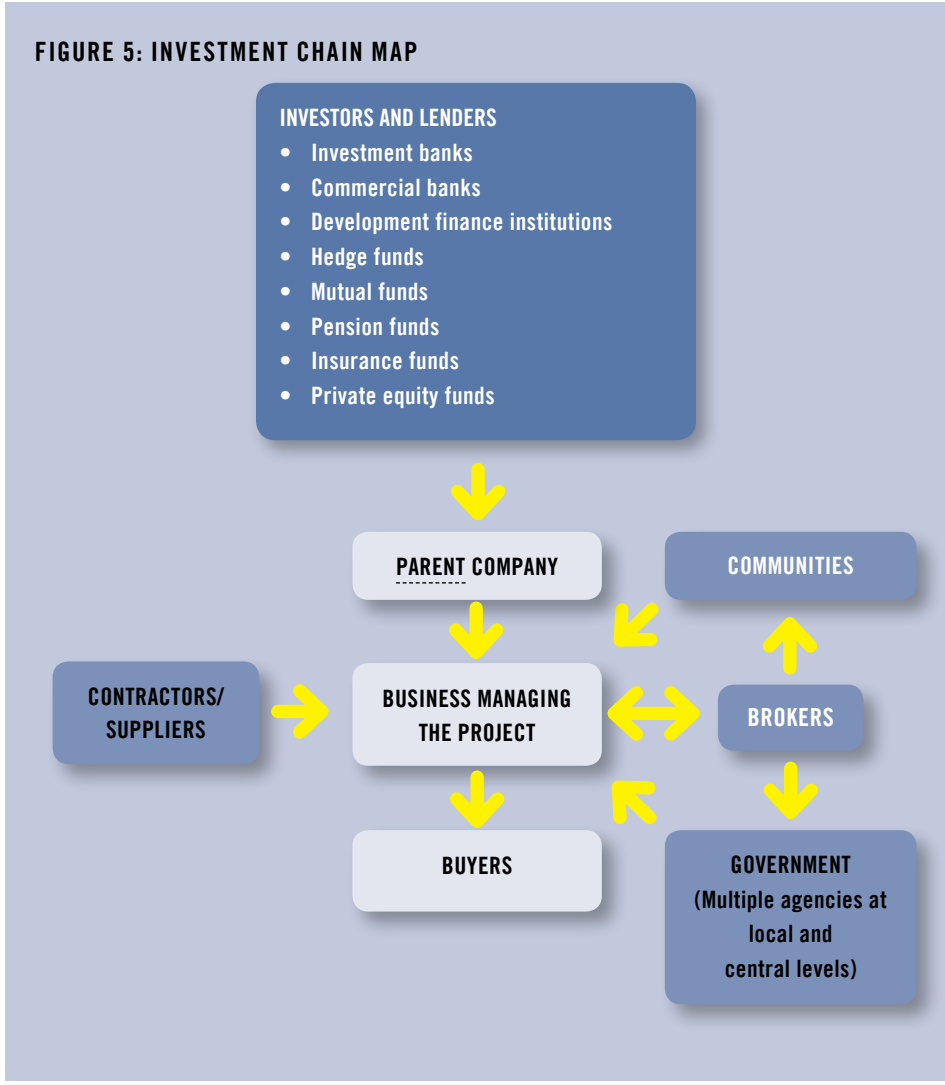
Investment chain research reveals the connections of all actors involved in an investment project, including the project operator, its parent company, investors or shareholders, lenders, governments, brokers, contractors, and buyers.

The key actors who make a project possible include:

- **the company managing the project** ('operator' or 'project company'): responsible for the day-to-day management of all project activities, including overseeing the work done by the other companies involved in the project (subcontractors);
- **parent company:** owns the company managing the project;
- **lenders:** banks, funds, insurance firms, or other financial institutions that lend money to the project or a key company to pay for key activities, with the expectation that the loan will be repaid, with interest;
- **investors and shareholders:** own (and trade) shares in the project company with the expectation of making a profit;
- **government:** 'host governments' give out ('grant') land to the business managing the project and allow the company to be registered and operate in the country, while 'home governments' (where the business or parent company is registered) are supposed to regulate and ensure they are accountable;
- **communities:** live in the project area and are impacted by the project in different ways;
- **brokers:** individuals or organisations that facilitate the investment by helping to secure a land lease or business licence. For example, when securing a land lease, the broker might be the one to conduct face-to-face negotiations with community members;
- **contractors and suppliers:** carry out the actual project work on the ground, for example engineering design and construction, and provide the necessary supplies to keep the project running, such as catering, electricity and water, and sometimes security;
- **buyers:** buy the material or goods produced or processed by the project.

Each of these main project actors will have an official contractual relationship with the operating company. The investment chain maps the connections among the actors: their relationships, and how money and other types of influence move between them (see Figure 5). For you and the affected communities, mapping this information can greatly improve the effectiveness of your advocacy and relative bargaining power by revealing 'pressure points' at which it is possible to influence a business, its behaviour, and impacts on human rights. A strong pressure point is an actor along the investment chain who is responsive to advocacy and who has the ability to influence. In Chapter 5 we will explore tactics to use to engage these pressure points.

FIGURE 5: INVESTMENT CHAIN MAP



Source: Blackmore, Bugalski and Pred (2015) Following the Money, p.16[9]

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SEEKING ASSISTANCE

While investment chain research can be a powerful way to identify effective pressure points for advocacy, it can be very challenging to do this research without outside assistance. At least two organisations can provide such research assistance: the Centre for Research on Multinational Corporations and Inclusive Development International's 'Follow the Money to Justice' initiative.

For more detailed guidance on how to 'follow the money' in projects and use an investment chain in your advocacy strategy, see:

- Inclusive Development International, 'Follow the Money to Justice' https://www.followingthemoney.org.
- Blackmore, Bugalski and Pred, 'Following the Money. An Advocate's Guide to Securing Accountability in Agricultural Investments' (IIED and IDI, 2015).
- Centre for Research on Multinational Corporations, 'How to Use the UN Guiding Principles on Business and Human Rights in Company Research and Advocacy. A Guide for Civil Society Organisations' (2012)
- Inclusive Development International, 'Safeguarding People and the Environment in Chinese Investments' (2017).

If the project has funding from the International Finance Corporation (IFC) and you want to better understand its policies and obligations, see: Inclusive Development International, 'Community Guide to IFC' (2017).

WHY MAP AN INVESTMENT CHAIN?

A 2006 public inquiry conducted by the Kenya National Commission on Human Rights (KNCHR) in Kilifi County, Kenya helped to document the negative impacts of salt mining, especially irregular land allocation, environmental degradation, and labour rights. The commission's report made a number of recommendations to the duty-bearers (i.e. the government and the salt companies)[10], but they have not been implemented. A local alliance of community-based organisations, the Malindi Rights Forum (MRF), successfully petitioned the National Land Commission to verify the boundaries of land claimed by the salt companies, and to assess the blocked routes and beach access routes. The MRF also obtained several injunctions against the salt companies. In its advocacy work, the MRF has primarily engaged with local and national government authorities and local company representatives, and has had only limited success in securing effective implementation of the KNCHR recommendations. By researching the investment chain, such as the buyers of the salt, distributors, branded consumer companies, investors, and financiers of the salt companies, the MRF may be able to find new pressure points to escalate their advocacy.

2.5. Business project life cycle: Recognising the phases

A business project normally goes through several phases, which collectively are referred to as the 'project life cycle'. Although there are some differences depending on the sector, a project typically goes through six phases, each characterised by different activities. Each phase is described in more detail below.

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THE BUSINESS PROJECT LIFE CYCLE

- **Identification (scoping):** the company will conduct field visits and initial studies to determine the main (economic) opportunities and (socio-economic and environmental) challenges associated with developing a project in a particular area. This information will be used to formulate a business plan and obtain financial resources. During this phase there is little visible activity on the ground, except for some consultants or company staff talking to people and perhaps taking pictures, etc.
- **Preparation and planning (exploration):** the company will undertake more detailed studies to see if the project is profitable, exactly where the resources (for example, minerals, oil, gas) are located, and how the project processes should be organised. In this phase, you might see people in your area taking soil and water samples as well as special trucks (or ships) that make unusual sounds while carrying out 'seismic surveys'. An Environmental Impact Assessment (EIA) might be conducted during this phase.
- **Appraisal and design:** the company will try to find out how much material (for example, minerals, oil, gas) can be produced in the specific location(s) and what the appropriate design and layout for the required infrastructure should be, including the specific type, size, number, and location of dams, roads, wind turbines, factories, etc.
- **Construction:** the company will build infrastructure that helps them to gain access to the product they need (for example, extracting oil or gas from the ground) and to transport inputs and products (for example via roads, railway lines, pipelines, airports, etc.). During this phase, you will see a large number of trucks, equipment, and building materials entering your area. Normally, this is the time when there will be a large increase in the number of workers, including (but not exclusively) from the local community.

- **Operation (production):** when the specific project is fully functioning, for example a factory is now working and producing clothes, a dam is storing water and using it to generate electricity, a deep-sea port is ready and receiving ships, etc. During this phase the project should be operating at full capacity and everything should run smoothly; however, in practice things can still go wrong and pollution, fires, or other problems might occur.
- **Completion (closure):** when the activities have stopped and the project ends. This is when the company should remove all equipment and buildings, clean up any remaining waste, restore the land to its original state, and ideally, evaluate what went well and what could be improved in future projects. Many projects are simply abandoned without proper clean-up or restoration. It is important to remain vigilant around old project sites and to inform the relevant government agencies of any problems.

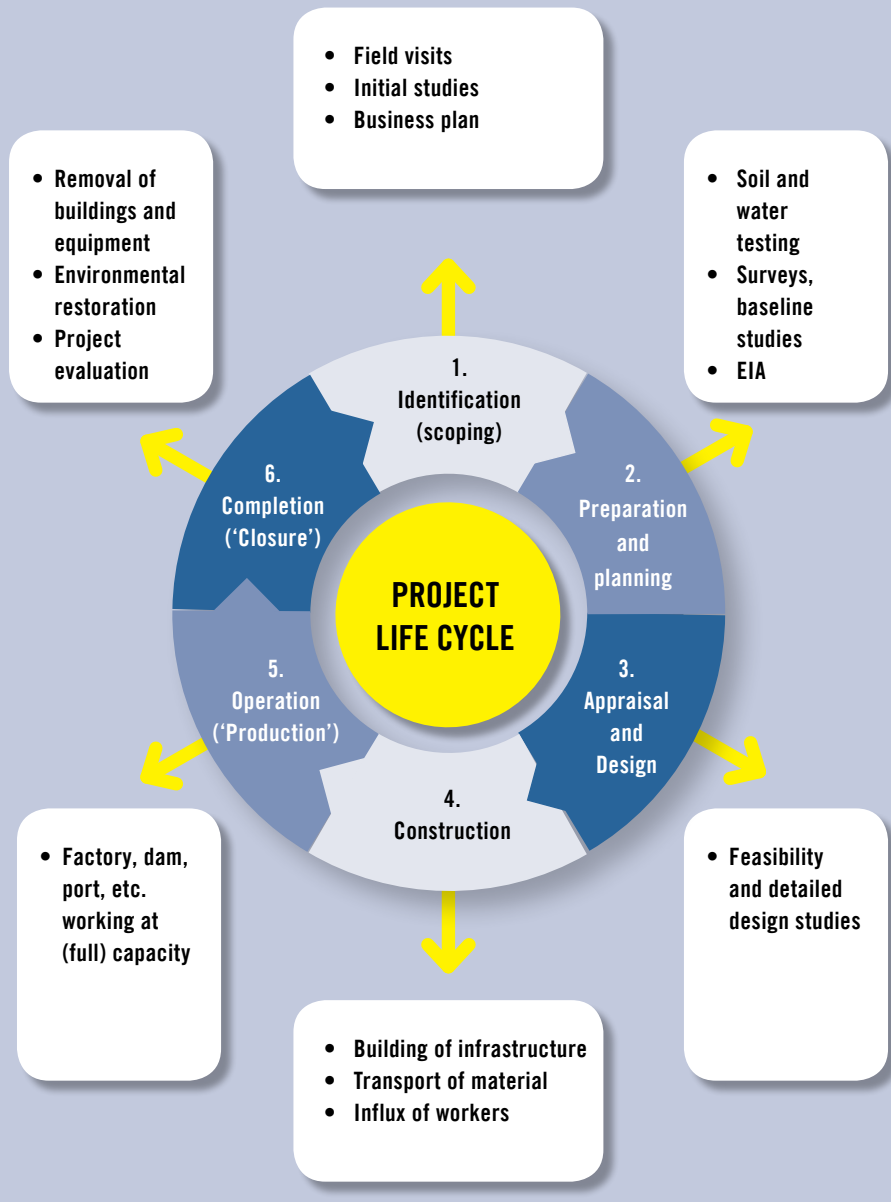
For local communities it is not always clear which phase the project is in; this can easily create confusion or misunderstanding, for example regarding why many trucks or foreign workers have suddenly appeared in their area. Understanding the project life cycle is one way to avoid such confusion.

The best way to determine which phase a project is in is to directly observe what is happening and to ask a range of company or government representatives how long it will take, and what the next steps are in the project's development. Depending on the specific country law, a company usually needs to get a legal permit (licence) from the government for several or each of these phases.

Knowing which phase a project (see Figure 6) is important for understanding when certain company decisions will be taken (see section 2.6) and to help choose the best engagement strategy, which will be discussed in chapter 5.

REMEMBER
A business project often has a different schedule and pace of activities than community life and activities. When you engage with companies and communities, it is important to create a shared understanding of these differences and agree on how to solve conflicts that might arise.

FIGURE 6: PROJECT LIFE CYCLE



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COMMUNITY INTERACTIONS THROUGHOUT THE LIFE CYCLE OF A MINING PROJECT[11]

Phase	Description
Exploration (2-10 years)	• Company makes initial contacts with the community, negotiating land access in order to conduct prospecting, geological research, and mapping. This is a challenging time, because communities want full information disclosure and a long-standing relationship, and exploration teams want to keep their data confidential and will move on if there are no promising prospects for follow-up. • Communities should start preparing their internal communication structures, and should access as much information as possible about the proposed project from the companies and government agencies, and ask how the consultation process will be organised. • Communities should map and document their land rights, including tenure and use of natural resources, and build their capacity on their rights under international and national law, especially FPIC. They should consider a community protocol process to define their vision for development, consultation processes, and engagement with outsiders (see section 4.4). • See section 1 for further actions about preventing harmful impacts.
Development (1-5 years)	• Company conducts extensive technical studies (including ESIAs) and consultations with government and local stakeholders. It begins drilling and building infrastructure, negotiates land access, and may resettle the community. • Communities should fully participate in public consultations related to the ESIA, request an independent review of the ESIA, and use any opportunity to change the project design to avoid negative impacts on the community. When facing the prospect of resettlement, communities should fully participate in the development of the Resettlement Action Plan (RAP) and seek legal assistance for all phases of the resettlement process. • Communities should negotiate with the company about its policy on 'local content' and joint monitoring of environmental and social impacts. They should negotiate a Community Development Agreement (CDA) with the company (see section 4.4) or seek ways to ensure they receive an equitable share of the long-term benefits beyond any short-term job.

Phase	Description
Construction (1-10 years)	• Company conducts the most intense set of activities during the project's life cycle, with a high spike in short-term labourers (3 to 6 months) hired to construct the operational infrastructure and transmission lines. There is likely to be a high volume of detonations, plant and pumping system construction. • The influx of construction workers can be highly traumatic for the community, placing large strain on water, electricity, and basic services. This phase often introduces significant cash into the community, which may cause negative impacts including increased drug and alcohol use, prostitution, and gender-based violence. • Communities should actively monitor company activities and seek legal and other assistance as needed to demand that companies and government agencies comply with national and international laws and standards, as well as company plans and policies, including the ESIA, the RAP, local content policy, CDA, etc.
Production (7-200 years)	• Company conducts activities, closing pits and rehabilitating them, and extending its operations to new areas within its concession to open new pits in order to continue and expand its production. It conducts emissions control, water management, biodiversity, and flora management. • Communities should actively monitor company activities and seek legal and other assistance as needed to demand that companies and government agencies comply with national and international laws and standards, as well as company plans and policies, including the ESIA, the RAP, local content policy, CDA, etc. Communities should also use local development assistance to foster the creation of an economy that is independent of the mine. • Communities should hold the company and State accountable for the transparent management of resources and revenues at the national and local levels, push the government to take responsibility for development projects, and monitor and highlight any negative project impacts. • Companies should begin supporting post-closure alternative income-generation measures and encourage the government to sustain the delivery of social services. Communities should demand to participate in any plans related to mine closures. The government and local development partners have critical roles in planning for such closures.

Phase	Description
Closure (2-10 years)	• Companies rehabilitate all remaining open pits, conduct clean up and stabilisation operations, and treat and revegetate the site. • Closure will result in a significant decline in community income and the local government's tax base. • Communities should monitor compliance by company and government on their responsibilities to implement closure plans, particularly regarding health and safety and environmental rehabilitation
Post-closure (in perpetuity)	• Monitoring of environmental impacts and social conditions continues indefinitely. This requires a clear allocation of responsibilities for monitoring and rehabilitation regarding any post-closure impacts. • The State is responsible for monitoring and inspecting the site. Communities monitor closed mine site(s) and follow up with the government and companies on any remaining or new environmental and social impacts

For a more detailed overview of how communities can prepare themselves for the different phases and aspects of extractives projects, see:

- Cordaid, 'When Oil, Gas or Mining Arrives in Your Area: A Practical Guide for Communities, Civil Society and Local Government on the Social Aspects of Oil, Gas and Mining' (2016).

2.6. How business is conducted: Key documents and decision-making moments

Large-scale projects cost a lot of money. The people, companies, and financial institutions that have invested in the project want to make sure they will not lose any money and, preferably, make a profit. To achieve this objective, every single project activity will have to run smoothly, according to the planned timeframe and budget. Any problem or unexpected development is likely to cause delays. For complex projects such as oil, gas, and mining that hire expensive equipment and specialised staff, each day of project delay might cost tens of thousands of dollars. If there are many such delays, a project can lose a lot of money and in extreme cases might have to shut down. This is a situation all companies want to avoid, which is one of their main motivations to stick to their plan and timeframe.

Therefore, companies will spend of lot of time (and money) to conduct several detailed studies to help them better understand and address potential risks. These studies have historically not taken human rights issues into account, but this is slowly starting to change.

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KEY PROJECT DOCUMENTS

- **Feasibility study:** used to find out if the project is technically, legally, and financially do-able.
- **Business plan:** summarises most of the initial project information, as well as the strategy to develop the project. It is designed to convince company owners and other investors to start the project.
- **ESIA and management plan:** studies a project's effects ('impacts') on local residents and the environment, and develops steps and plans that can be implemented to reduce the negative and increase the positive effects of the project. ESIAs are often supplemented with other studies and plans for health impacts, emergency response, resettlement, cultural heritage, Indigenous Peoples, and – increasingly – human rights impacts.[12]
- **Process and technical design studies:** analyse how best to organise the project, what types of equipment and material are needed, what the costs of these items will be, etc.

For companies, these studies are critical in helping them decide what, how, and when actions need to be taken to make the project succeed. This and other information are usually collected before key decision-making moments. Impact assessments are usually required by law before a company can start construction, but in practice the government may not enforce this requirement.

For you and communities, advocating that the required impact assessments are completed, and having access to (and being consulted on) these project documents will help you understand what the project is about and what can realistically be expected. Some documents may be available on company or government ministry websites, or through local contacts. But whereas feasibility studies, business plans, and design studies are usually internal documents that are difficult for non-company staff to access, ESIAs often need to be publicly disclosed; in many countries they are available from environmental regulatory agencies, financial institutions, or project websites.

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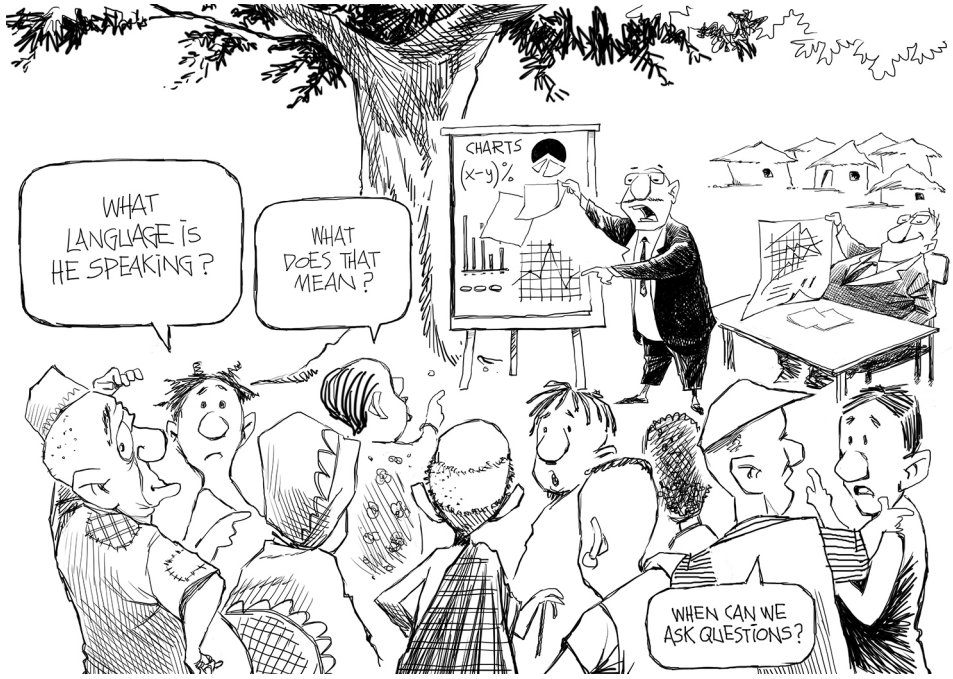
ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT

One of the most important documents, at least from a community perspective, is the Environmental and Social Impact Assessment (ESIA) report. During the development of this report, companies are meant to use specialised consultants to organise several consultation meetings with a broad and inclusive range of community representatives to present the expected positive and negative impacts of the project and ask the community for feedback. In practice this does not always happen, or the company may only consult with a few handpicked supporters. The community and supporting CSOs must remain vigilant to ensure that input is properly solicited and recorded. This is a good opportunity for community representatives to share their views, fears, and expectations and to provide their recommendations on how the project can make a positive contribution to their lives.



It is important to recognise that ESIAs can be highly flawed. Much depends on the integrity of the company, which can modify the studies prepared by the subcontractor or treat the study as a mere administrative formality. The subcontractors who conduct the studies often lack local knowledge or only have economic/financial interests; conflicts of interest may prevent them from fully identifying the project risks. Finally, most studies provide for only weak (if any) implementation mechanisms, such as capacity-building measures and institutional resources, especially for managing social impacts.

You might not need to know all the specifics of these long and often very detailed studies (reports can be more than 1,000 pages!) that are mainly written for a technical audience. Nevertheless, a basic understanding of the summary findings and conclusions can help you to understand more about the project, as well as the company's position and perspective. You should always ask the company to explain the studies in a language and manner that is accessible to you and the local community.

Influencing environmental and social impact assessments (ESIAs)
Local communities can demand information during any public participation process, and seek technical assistance to critique the ESIA.

You can influence the ESIA at different stages of the process, such as:

- during scoping, to ensure key issues important to the community are included in the consultant's terms of reference;
- using participatory approaches during the information collection phase to challenge the consultant's findings when they present their draft report for review, if necessary;
- asking a specialist to conduct an independent review of the ESIA from the community's perspective to highlight gaps and identify recommendations that you can use in your advocacy;
- preparing community participants before the public consultation phase to ensure their priority messages are recorded and addressed;
- using the commitments in the ESIA management plan to hold the company and State accountable for implementation, monitoring, and updating of the management plan. If the ESIA and management plan have already been approved, you can still ask a specialist to do an independent review of the documents to highlight gaps and identify recommendations that you can use in your advocacy.

The relevant government agency must often approve the ESIA study before construction can begin. So if a large part of the community objects to the project, or if key community groups do not agree with the measures proposed to reduce the negative environmental and social effects, these views have to be recorded in the ESIA report.

You should closely monitor the ESIA report drafting process to ensure that all community views are actually documented in the final report. Once mentioned in the ESIA report, these views need to be considered in the decision by the government to either approve or reject the report, or to ask the company to change its design or management plans. Again, it is important for you to monitor that the government takes the prevailing community views seriously, and to strongly advocate on the community's behalf if it does not.

LOCAL COMMUNITIES IN GHANA PARTICIPATE DURING THE ESIA SCOPING PHASE

In 2010, when an engineering consultancy arrived in the Upper West region of Ghana during an ESIA scoping for a mining project, the Centre for Indigenous Knowledge and Organizational Development (CIKOD), a local NGO, approached them to learn about what they were doing in the area. CIKOD had been working with the traditional authorities in nearby villages to develop a biocultural community protocol that documented community rights under customary, national, and international law, as well as their internal decision-making processes and their shared vision for development. CIKOD was concerned about the project's significant impacts and worried that the consultancy was not considering the community's key concerns, especially those related to their health and sacred sites.

To respond to this threat, CIKOD facilitated well-being assessments of the four communities that would be affected by the mining company's operations. CIKOD organised community forums and stakeholder consultations and gathered testimonies. They organised radio programs for community members to share their experiences. This community assessment revealed several impacts that the consultancy had overlooked, which it reported during a meeting in the ESIA scoping phase. As a result of CIKOD and community advocacy, the ESIA's terms of reference were modified to include these concerns.[13]

To learn more about supporting community participation in ESIAs, see:

- EarthRights International, 'Environmental Impact Assessment in the Mekong Region' (2016)
- North-South Institute, 'ESIAs Practical Guide for IPs in Guyana' (2011)
- Access Initiative, Handbook for Public Participation in EIA (2014)
- Van Clay et al., 'Social Impact Assessment: Guidance for Assessing and Managing the Social Impacts of Projects' (2015)

To seek outside technical support for an independent review of ESIAs, see:

- Environmental Law Alliance Worldwide: http://www.elaw.org
- Center for Science in Public Participation: http://csp2.org
- Source International: https://www.source-international.org/en/
- E-Tech International: https://www.etechinternational.org/

2.7. Compliance and reputation: Is the company following the 'rules of the game'?

To better understand the company's human rights reputation, you should research it and its past activities. In most situations, some information will be available about the company and its past activities, including its human rights reputation. The internet, newspapers, social media (Twitter, Facebook), radio, and TV, are all good places to check. However, for many communities, particularly those in remote, rural areas cut off from the outside world, such information can be difficult to access or might not be available in a language or format that communities can easily understand.

You can help communities access such information by pushing companies to share relevant documents, helping to translate the information into a local or more easily understandable language, or by seeking help from an international NGO to gather this information. Based on the available information, your organisation can conduct its own human rights check on the company (or group of companies) that plans to start a project in your area (see Practical Tool 6 below).

PRACTICAL TOOL 6: COMPANY HUMAN RIGHTS CHECK[14]

1. Check company policies

- What are the company's policies regarding land, the environment, communities, human rights, and corruption?
- Is it possible to determine who in the company is responsible for ensuring these policies are respected?
- Is company staff aware of the policies you have identified?
- Does the company belong to any industry associations or multistakeholder initiatives with relevant codes of conduct?
- Does the company participate in a voluntary reporting initiative?
- Is the company a member of, or certified by, an industry certification initiative?
- Does the company receive funding from an international financial institution (IFI)?

2. Check the company's human rights performance

- Use your knowledge of the local context and experience with human rights risks in the same or related sectors to check if the company has identified and addressed these risks in the current project.
- Did the company undertake an ESIA with or without a special focus on human rights, and were the concerns of potentially affected people included in the report and addressed?

3. Check the company's formal complaints process

- Does the company have a formal complaints process in place for affected people, such as a project-level grievance mechanism?
- Do affected people use and trust the grievance mechanism? Is it easily accessible? Predictable? Equitable? Transparent? Based on dialogue?

4. Check the company's past compliance with laws and standards

- Have any complaints been filed in your country or internationally against the company, such as inspection reports, warnings, lawsuits, or other complaints? Is the company associated with any other projects that have had harmful impacts on communities and the environment?

You should always consider more than one source of information about a company's human rights performance, and try to get understanding from as many angles as possible to avoid outlier or biased views. It is worth investing the time and effort required to undertake a thorough study, since this information will help you check if the company is generally 'following the rules' and has a good or bad human rights reputation. This knowledge will prepare you and the community you are supporting for your interactions with company (or government) officials. It is valuable to be able to provide concrete examples of issues that the project should avoid and/or better plan for based on the company's past experiences (in your area or elsewhere).

You can look to your broader network for assistance in conducting this research. Ask around in your area or your country's capital for CSOs that have experience in human rights issues and in dealing with companies. Annex IV lists human rights resource organisations.

- Centre for Research on Multinational Corporations, 'How to Use the UN Guiding Principles on Business and Human Rights in Company Research and Advocacy. A Guide for Civil Society Organizations' (2012).

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STEPS THAT COMPANIES TAKE TO RESPECT HUMAN RIGHTS

Companies that are serious about their responsibility to respect human rights will engage both internally and externally. Internally, they will define a human rights policy, build staff capacity, seek buy-in to embed the principle of respecting human rights across the company, and build systems for cross-collaboration on human rights issues across their departments and regions. Externally, such companies will have staff (or even whole departments) dedicated to 'stakeholder engagement'.[15]

Such companies will try to meet and discuss the project and its impacts with all stakeholders on a regular basis. They do this in part because the law requires it, but also because they recognise the importance of what they call a 'social licence to operate', i.e. broad community support that facilitates the smooth running of the project, their reputation, and ultimately their business success. Unfortunately, however, many companies are still focusing mostly inwards, on internal stakeholders and maximising profit while minimising costs.

3. Document the Alleged Abuse or Violation

3.1. Why? Objectives and structure of this chapter

This chapter aims to provide guidance and reference on how to monitor, document and report on the human rights impacts of businesses on communities. These processes can help affected communities better understand their situation, and to partner with like-minded organisations that can support them. If these reports are made public, they can pressure the company to change its policies and practices, which should lead to an improved situation over time. And finally, information that is gathered may also be used as evidence in court cases.
This chapter explains:

- what are monitoring, documenting, and reporting;
- how to work with communities in monitoring, documenting, and reporting human rights violations; and
- how to remain safe while documenting human rights violations.

3.2. What are monitoring, documenting and reporting?

Human rights monitoring, documenting, and reporting processes generally refer to the systematic and active collection of human rights impact data, analysis of that data, and the dissemination of information to interested parties for their use. Monitoring, documenting, and reporting reinforce and complement each other in order to:

- establish a record of potential or actual human rights abuses and violations;
- communicate effectively about (and raise awareness of) the human rights situation;
- lend greater credibility to community advocacy, ensuring that claims are not understated or exaggerated by carefully considering the sources consulted and the accuracy of the information;
- pressure the government, company, or other actors to address abuses and violations;
- enhance the local capacity to protect human rights; and
- provide written and other evidence in any potential legal or other complaint.

Monitoring
Monitoring involves gathering information in a systematic and regular manner through a variety of sources in order to assess changes over time in a human rights situation. The key objective is to create an atmosphere that promotes respect for human rights and to reinforce both the State's obligation and the company's responsibility to protect human rights.

An important part of monitoring is establishing a baseline to provide a point of reference against which to assess changes over time – ideally, prior to the start of the business project. Before you undertake a baseline assessment, first determine what changes you want to assess (for example, water and the environment are especially important for communities), what comparisons you will need to make, and the geographic area of focus.

Documenting
Documenting refers to several activities: determining what information is needed and how to acquire it; recording the information found (such as taking notes, drawing maps, audio taping interviews, photographing, video recording) and storing it in documents; gathering existing documents that contain important information; organising documents to make them more easily accessible; and effectively conveying the documents to users who need the information.[16] Documenting human rights impacts involves timely and accurate collection, organising, and analysis of the data and reporting it to the relevant authorities.

Documentation of incidents requires fact finding to establish whether the incident occurred, and what type of violation is alleged to have occurred. At a minimum, data collected at this stage should answer the five W's and one H (who, what, when, where, why, and how). More questions can be asked depending on the type and complexity of the incident.

After you document the incident, you then have to analyse the allegation to establish whether it constitutes a human rights abuse or violation by checking it against applicable human rights standards, including national laws. It may turn out to be a grievance that does not necessarily constitute a violation. This determination will help you decide what action to take. You may also find that you have gaps in the information and thus need to gather additional information.

You can then use this documentation as a basis for long-term monitoring, to prepare a complaint that can be communicated to the company or government for remediation, or to seek support from other organisations, such as to launch a campaign. All of these processes are considered reporting activities.

TIP

Communities and the CSOs working with them should always request a copy of any document that a company has presented to be left with them. They should also insist that they receive a copy of any documents that community members have signed, even if it consists of minutes of a consultation meeting. This helps promote an even playing field and creates a shared record for both company and community to be able to refer back to.

Reporting

Reporting involves writing and disseminating reports to the target audience, which could include government, company, the general public, or other national or international bodies. The reporting process aims to encourage decisive action to prevent or mitigate human rights abuse(s) and violation(s); thus the report should have actionable recommendations.

Because different actors have different responsibilities to address human rights violations, the objective and target audience of the report should be clear. If the report is intended for multiple audiences, the actions required of each should be clearly categorised. An impactful report should be timely, accurate, neutral in language, evidence based, clear, and concise, and have clear objectives and a specific call to action.

For guidance on monitoring, documentation, and reporting generally, see:

- Amnesty International, 'Monitoring and Reporting Human Rights Violations in Africa. A Handbook for Community Activists' (2002).
- Amnesty International and CODESRIA, 'Ukweli: Monitoring and Documenting Human Rights Violations in Africa' (2000).

For guidance on how to use video for monitoring, documentation, and reporting, see:

- WITNESS https://fe.witness.org/

3.3. How can you work with communities to monitor, document, and report on human rights impacts?

A wide variety of practical tools can be used to work with communities to monitor, document, and report on human rights impacts caused by businesses. We highlight several tools in this section, and then provide some general advice.

Methods for data collection

Depending on the type of incident and the circumstances, you can collect data using a variety of approaches including site visits, meetings and interviews with individuals and groups, observations, surveys, analysing documents, audio-visual and mapping tools, and a range of participatory techniques. Having a checklist of the information you need to gather in the form of interview questions or a site visit report template ensures consistency in documentation and makes it easy to organise and analyse your data (see Practical Tool 7 below). You should also have a plan to ensure the security of your data and the safety of your informants and witnesses in case there is a threat against them linked to the incident.

PRACTICAL TOOL 7: CHECKLIST FOR HUMAN RIGHTS ABUSE DOCUMENTATION

Annex I provides a checklist for human rights abuse documentation developed by the International Network for Economic Social and Cultural Rights and the Business and Human Rights Resource Centre. It is a useful framework for collecting the information you need to document a case of human rights impacts caused by business activities.

PRACTICAL TOOL 8: BASELINE STUDY QUESTIONS[17]

You can use the following questions to develop a baseline study, as well as the categories in Tool 1 (chapter 1):

- What do we already know about the community? For example, how many people in which groups (women, youth, farmers, etc.) risk being affected by the business activity? What is the history of the community? What are their livelihoods?
- What are the education, health (e.g. recurring illnesses), and housing conditions? How might these conditions affect community members' ability to obtain employment? What are the capacities of CSOs on land management, education, etc.?
- Which aspects of its culture, society, economy, and environment does a community most want to protect?
- What are the community's strongest points, and in which ways are they most vulnerable?
- What has the community learned from prior similar experiences (development, negotiations, etc.)?
- What do we know about the future desired by the community? What work remains to determine the objectives or vision for its future?[18]

A baseline study can help communities and civil society demonstrate the severity, scale, and scope of a project's negative impacts by providing proof of how their situation changed between the start of the project (the baseline) and the situation during or after business operation (the change).

PRACTICAL TOOL 9: COMMUNITY-LED HUMAN RIGHTS IMPACT ASSESSMENT

One type of assessment that communities can be supported to undertake is a *community-led* human rights impact assessment (HRIA), which captures the human rights concerns of individuals and groups whose voices may otherwise be overlooked by company-led processes such as ESIAs. Unlike the latter, a community-led HRIA puts community questions and concerns at the centre of analysis, uses participatory research and communication methods, and recognises local knowledge and authority to manage resources that affect people's livelihoods.

A community-led HRIA:

- involves the community as active participants in gathering and analysing information to identify the salient risks (and community concerns), and determine the likelihood and severity of the impact;
- designs responses based on community ideas on how the arising issues should be prevented or addressed;
- engages company and government officials to take action to respect human rights based on the findings; and
- increases the community's knowledge and understanding of human rights.

Just as with community protocols (see section 4.4), a community-led HRIA can play a key role in resolving or managing conflicts within communities by identifying the range of groups and interests within a community concerning a project and providing a forum to discuss and address them.

If you work in a community where a project is already underway and no baseline study was conducted, there are still several sources of information you can use to gather background information. For instance, in many countries, local municipalities carry out socio-economic surveys or assessments as part of their local development planning process, while other government authorities collect statistics on poverty and development. Other potential sources of information include the project's ESIA (if it is publicly available), government statistics, existing survey results and research reports, and journal and newspaper articles.

Regardless of where you start, you should collect and update your information regularly. This means you will need to have a simple format for data gathering and reporting that should be shared with your contacts.

- Rights and Democracy, 'Getting it Right: Human Rights Impact Assessment Guide' (ND) http://hria.equalit.ie/en/
- Oxfam and International Federation for Human Rights, 'Community-based Human Rights Impact Assessment: The Getting it Right Tool: Training Manual' (2009).

ADVICE FOR EFFECTIVE MONITORING, DOCUMENTATION AND REPORTING

- **Create a diverse network**
  As a CSO working with communities, you may not always be present on the ground; the project area might be too large to realistically cover the entire territory. Therefore, it is important to create and maintain a large and diverse network of informants who can provide you with regular, real-time information from various segments and groups of the community. You can use this information to verify and cross-check your understanding of the situation to make sure you have an accurate, reliable understanding of what is happening on the ground.
- **Build trust**
  While your networks are your ears and eyes on the ground, they must also trust you with the information they give you. Engage in open communication with your network of informants to demonstrate that they can trust you to safeguard the information they provide to you. For example, supply them with regular progress updates on ongoing cases.

- **Manage expectations**
  Inform the community about what you intend to do before you start: explain your mandate and interest, as well as what the community stands to gain. This is especially important for your network of community advocates, who may have to explain it to other community members repeatedly. Also communicate rules and guidelines for your network of community advocates that explain their role and how they are supposed to play it. This includes being clear about benefits, if any.
- **Build the capacity of your network**
  Equipping people with the right skills, knowledge, and tools is a form of empowerment that will also improve the quality of the data and information they gather on your behalf. Capacity building and learning are continuous and happen over time. Moreover, when community members benefit, there is an added bonus of building local, accessible expertise that the community can benefit from after CSOs exit.
- **Be prepared to 'walk the walk'**
  Documentation and reports of community human rights impacts have often opened dialogue with duty bearers, especially companies. Such dialogues can present an opportunity to discuss ways to increase accountability for human rights impacts, including how to prevent future harm. Be prepared to support communities to participate in these discussions and to articulate their demands, and to make suggestions about how to make things better. This support could entail advising, representation, or coaching, but always with the goal of empowering the community to speak for itself.

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TIPS ON INTERVIEWING / GROUP DISCUSSION

- do your homework on the subject matter of the interview. This will make you more confident as an interviewer, enhance the quality of your questions, and make the interviewee comfortable;
- understand the interviewees' cultural background. This will help you in your choice of words, ice breakers, dress code, etc. so that you do not offend the interviewees;
- seek the consent of your interviewees to participate. Explain the objective of the interview and what the information will be used for – and, most importantly – how their personal data and information will be secured;

- **conduct the interview in a private space where the interviewee feels comfortable and safe;**
- **when using a translator from the community, do a background check on the person, including their inclinations and affiliations, to ensure neutrality and that he/she can be trusted to keep information confidential;**
- **try to put your interviewee at ease before asking questions;**
- **be well prepared with your questions and be aware that the interviewee may want to push his/her own agenda;**
- **remain focused on the goal of your interview. This will help you keep the interview on track while being mindful of the interviewee's time;**
- **during the interview, listen carefully and be present and show interest in what your interviewee is saying;**
- **always ask for elaboration whenever you get a short 'yes' or 'no' answer;**
- **be respectful of the interviewee and his/her opinions;**
- **when conducting a focus group discussion, be prepared to facilitate a conversation of ideas while ensuring that no one dominates the discussion; and**
- **when interviewing individuals or groups, observe non-verbal cues. This may help indicate if the person has understood your question, when they have something to contribute, etc.**

3.4. How can you remain safe in this work?

Human rights work is often risky for those involved, and the risks can be different for community human rights defenders and CSOs. CSOs working with communities are responsible for the security of their network of community informants as well as that of their staff. CSOs must also think about protecting data, information, and other assets. It is important to understand the risks in order to put in place preventive and reactive measures.

PRACTICAL TOOL 10: PREVENTIVE SECURITY

- conduct regular risk assessments with your colleagues (and community informants) and integrate the findings into your operating procedures;
- identify the best strategies, from being open to being discreet, depending on the situation. For example, if you suspect that some of your community informants might be threatened for talking to you, interview them away from the community, privately in a discreet place;
- join national and international networks of civil society and other like-minded organisations. This is useful for sharing lessons and tips from similar experiences and for providing logistic, moral, and/or financial support, especially if you face threats;
- recruit people you can trust;
- be wary of new supporters: conduct background checks and request references; do not assign them sensitive cases or grant them access to sensitive documentation right away;
- ensure that some members keep a low profile: for example, not all the field research teams should be out in the field at the same time. You can have a separate team working primarily on desktop or literature reviews and analysis that does not go to the field;
- create and use channels that can alert you to security threats;
- build relationships with sympathetic members of the international community;
- educate your family and friends (and encourage your community informants to do the same) about risk prevention and how they should react in case of problems, e.g. arrest;
- enhance your security – e.g. always have a fully charged phone when going to the field, do not travel after dark, always conduct interviews in pairs, require all team members to check in at the end of each day; and any other measures relevant to the type and level of threat faced.
- keep your data safe and discuss the importance of this with your community informants. Make copies of important documents and store the originals in a different location.

Human rights practitioners have developed numerous guides that provide detailed guidance on possible strategies to use. Be sure to train your community informants and staff on security matters, create a security system, and ensure that they know how to use it.

- Frontline, 'Protection Handbook for Human Rights Defenders' (2007).
- Protection International, 'New Protection Manual for Human Rights Defenders' (2009)
- International Service for Human Rights, 'A Human Rights Defender Toolkit for Promoting Business Respect for Human Rights' (2015).
- East and Horn of Africa Human Rights Defenders Project, 'STAND UP! Security Manual for African Human Rights Defenders' (2017).

- Additional resources on protecting human rights defenders in a digital world can be found at: https://freedomhouse.org/article/protecting-human-rights-defenders-and-journalists-digital-world.

4. Set Objectives and Prioritise

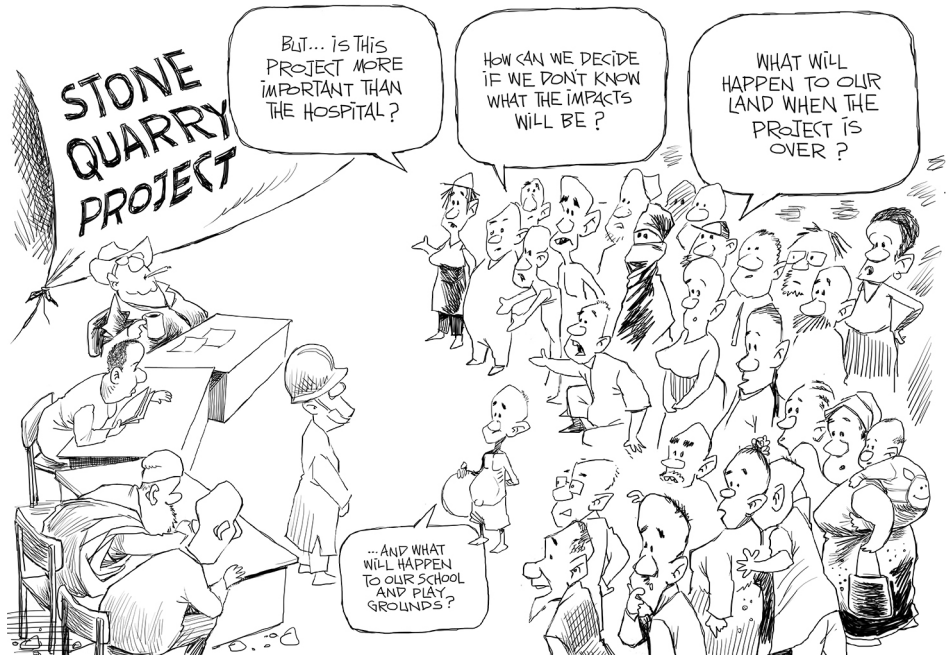
4.1. Why? Objectives and structure of the chapter

This chapter aims to help you reflect on the types of business-related human rights issues to focus on, and to think about what 'success' in the context of human rights action looks like. It starts by highlighting the importance of prioritising issues and goals. It then explores some of the possible outcomes of actions and how we know when we're being successful. The chapter concludes with practical guidance on community organisation and informed (i.e. evidence-based) decision-making.

4.2. What matters most? Salient human rights issues

When communities are affected by business activities, they often feel anxious and have many different questions: 'what is the project about?', 'what will happen to our land and livelihoods?', and 'who can answer our questions?'. As community members hear more about a new project, or face more severe impacts from it, their concerns often grow wider and/or deeper. Although some individuals may have positive expectations regarding employment, better infrastructure, and service delivery, these are often outweighed by the negative human rights impacts caused by large-scale projects, with few (if any) short-term benefits.

When supporting a community to take action, it can be challenging and overwhelming to address every issue at once with the same energy and intensity. It will help you focus and set realistic goals when you have both an overall sense of the issues and an understanding of the key priority issues that will form the cornerstone of your advocacy work. Therefore, the goal is to identify "salient" human rights issues rather than objectively rank them, which is contrary to the fundamental definition of human rights, as all are interrelated, interdependent and indivisible.



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SALIENT HUMAN RIGHTS ISSUES

Salient human rights issues focus on the risks to people (not to the company) that are likely to cause the most severe negative impacts based on the dimensions discussed in Practical Tool 11 (described below). Human rights impacts are considered severe when they are of a grave nature, widespread, and/or almost impossible to reverse or put right.

The practical tools described in chapter 3 related to monitoring, documenting, and reporting can help you identify many of these issues. You can complement these studies by assessing the human rights risks related to the project along several dimensions, such as significance, scale, remediability, and vulnerability in order to identify the key issues, as described in the practical tool on assessing risks of harmful impacts, below.

PRACTICAL TOOL 11: ASSESSING RISKS OF HARMFUL BUSINESS PROJECT IMPACTS

Once you have identified the sector and type of business that is active in your area, you can assess the potential human rights risks associated with those activities. Understanding these risks can help you develop appropriate actions. The table below provides a template to help you with this risk assessment.

You should assess the nature of human rights impacts (section C in the table), along several dimensions, including:

- **significance** – the degree of harm to people as a result of the impacts (high, medium, low)**;**
- **scale** – the number of people affected (large, medium, small);
- **remediability** – the degree to which the impacts are easy or difficult to solve or rectify (high, medium, low); and
- **vulnerability** – the degree to which certain groups are vulnerable to the impacts (high, medium, low).

A. Basic information about the business project

Fill in as much as you can

Name of the project:				
Project description: What is the project's purpose? How big is it? How long will it be active?				
Name and address of the company operating the project:				
Name and address of the parent company:				
Size of the parent company (number of employees and annual turnover)	Small	Medium	Large	
Legal structure of the parent company	Sole trader	Limited liability company	Partnership / joint venture	Other:

B. Business sector and key activities				
Energy / power	Oil & Gas	Geothermal	Nuclear	Wind
	Solar	Hydro		Other: _____
Mining	Coal	Copper	Gold	Diamond / precious stones
	Sand	Tin / Tungsten / Tantalum	Cobalt	Other: _____
Infrastructure & construction	Roads	Bridges	Ports	Other: _____
Manufacturing	Chemicals	Textile / clothing	Electronics	Other: _____
Agri-business	Palm oil	Soy	Cocoa	Other: _____
Tourism	Hotels	Apartments	Golf course & sports complex	Other: _____
Other Sector:	_____	_____	_____	_____

C. Assessing risk of harmful business project impacts onpeople and environment[19]				
Category of Risk	Nature of the impact (describe along dimensions of significance, scale, remediability and vulnerability)	Likelihood of impact occurring within one year	Severity of impact (extreme, high, medium, low)	Affected stake-holders
LAND				
Land and natural resources				
Livelihoods				
Food security				
Displacement				
ENVIRONMENT AND PUBLIC HEALTH				
Health				
Living environment				
Community safety				
Biodiversity				
Climate change				

INDIGENOUS PEOPLES AND CULTURE				
Self-determined development and FPIC				
Indigenous lands, territories and resources				
Cultural rights, heritage and practices				
BASIC SERVICES				
Water and sanitation				
Housing				
Education				
Social security				
LABOUR				
Decent work				
Freedom of association				
Child and forced labour				

PARTICIPATION, INCLUSION & ACCOUNTABILITY				
Access to information and engagement				
Freedom of expression and assembly				
Non-discrimination				
Gender equality				
Persons with disabilities				
Sexual orientation, gender identity and gender expression				
Grievance and redress				
CONFLICT & SECURITY				
Governance				
Conflict				
Gender-based violence				
Privacy				
Reprisals				
Use of force or detention				

REMEMBER

Human rights due diligence

The risk assessment tool described above is an example of human rights due diligence that a government, company, or financier of a project should undertake, but can also be conducted by CSOs. For companies, a human rights due diligence on-going process is expected under the UNGPs to identify, prevent, and address any adverse human rights risks and impacts related to their business activities. The Coalition for Human Rights in Development (a global coalition of social movements, CSOs, and grassroots groups working together to ensure that development is community led and that it respects, protects, and fulfils human rights) has developed a **human rights due diligence toolkit**, which includes an online human rights risk analysis tool that guides the user through a series of steps to identify relevant human rights risks against a set of human rights-informed standards and to modify the project design to address these risks.

This toolkit is available at: https://rightsindevelopment.org/human-rights-due-diligence-project/human-rights-due-diligence-toolkit/

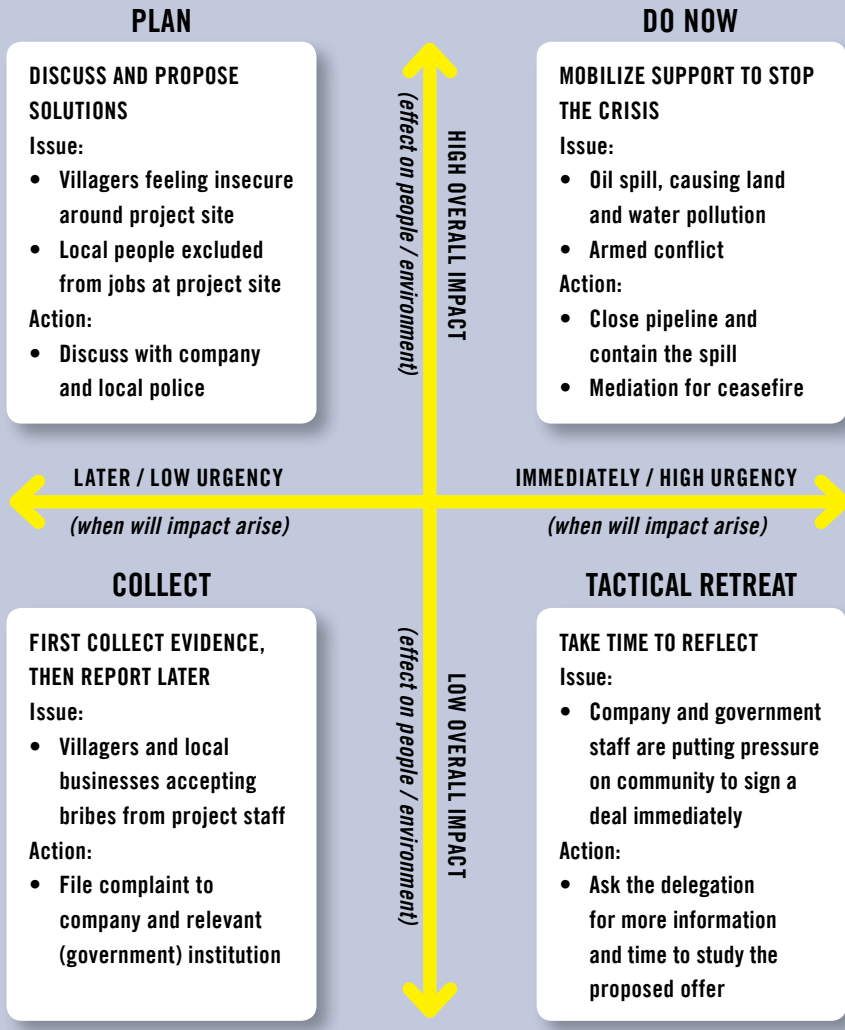
PRACTICAL TOOL 12: STEPS TO IDENTIFY KEY ISSUES FOR ADVOCACY

The best tools to use are participatory and highly inclusive. A simple method is to go through the steps below with a representative group of community members. You should adapt your activities to ensure that groups such as women, youth, and minorities have an equal voice, for example through focus groups, inclusive ground rules, structured role play, etc.

1. **List:** ask each community member to list their concerns about how a business or project will impact them and their environment; write the answers on sticky notes and put them on a large piece of paper;
2. **Cluster:** group similar or overlapping concerns together (rephrase them if necessary);
3. **Rank:** discuss which issues are most important to community members. Ask questions to encourage them to identify and 'score' issues based on key criteria, such as the significance (level of harm), scale (number of people affected), remediability (easy/difficult to solve or rectify), and vulnerability of particular groups to the issue. Try to develop a list of 'top 5' or 'top 10' concerns based on which issues are scored highest and/or mentioned most frequently;
4. **Sort and identify urgent vs. important:** place the concerns in a matrix by identifying which issues need immediate attention (urgent), which can wait (not urgent), which will have severe negative impacts (are important), and which are less likely to have severe consequences (less important). Use the prior discussions of significance, scale, remediability, and vulnerability to help guide these choices;
5. **Identify objectives:** help the community summarise the overall objective of actions to be taken on the issues identified in each of the four matrix boxes; and
6. **Be flexible but remain focused:** as the situation evolves, people's views and priorities may change. You should remain focused on the issues that matter most to the wider community.

To avoid bias and hidden agendas in group processes, it helps to jointly establish clear criteria to identify in advance what is 'important' and what is 'urgent'. Figure 7 provides an example of a community-led prioritisation matrix. The matrix focuses on the severity of the impact and urgency, but many other criteria can be considered, such as the scale of the impact (number of people affected), cost, and available resources.[20] This exercise can help you encourage communities to focus most of their time on issues that are both urgent and important, however they define 'important'.

FIGURE 7: PRIORITIZATION & RESPONSE MATRIX



4.3. What do you want to achieve? Defining 'success'

Once the salient or key issues have been identified, you should work with the community to determine exactly what they want to achieve by taking action related to a human rights impact. The overall objective is usually to seek a solution (or 'remedy' in human rights language) in response to a particular human rights violation or abuse, or to prevent harm from occurring. Particularly in the early phase of a business project, it is important to identify the types of harm that, with the right mitigation measures, can be reduced. Prevention of harm is therefore a critical measure of success.

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TYPES OF REMEDY[21]

- **Apologies:** when the actor causing the harm confesses that they were in the wrong. They should accept they are responsible, guarantee they would not do it again, and show understanding of the level of harm caused. This may already relieve the community to a certain extent.
- **Restitution:** restoring the victims' situation (for example, standard of living, quality of living environment, etc.) to the same condition as before the harm occurred;
- **Rehabilitation:** similar to restitution, but focused more on restoring people's well-being by providing medical, legal or psycho-social support services;
- **Compensation (financial and non-financial):** money or something else of value given to someone that is equivalent to the size of the loss. Experience shows that monetary compensation can increase tensions within communities and often leads to quick spending and subsequent impoverishment, particularly when compensation is provided as a one-off lump sum with no appropriate investment advice or financial literacy training. To avoid such problems, non-monetary compensation, such as replacement land, livelihood training and support, as well as payments in several instalments over a longer period of time and/or initiatives that benefit the entire community (as opposed to individual compensation) are worth considering on a case-by-case basis.[22]
- **Punitive sanctions:** a form of punishment enforced by courts or other judicial bodies for the company, institution or individual that causes the human rights impact. This can consist of a fine, dismissal, or even imprisonment. The sanction should be high (punitive) enough so that the wrongdoer is sufficiently motivated to respect human rights;
- **Prevention of future harm / guarantee of non-repetition:** measures to ensure that the human rights violation does not occur again.

HUMAN RIGHTS REMEDY IN PRACTICE: A HYPOTHETICAL EXAMPLE

During roadworks for a wind farm project, a company truck has an accident that severely injures a child and destroys a farm next to the project site. At a minimum, the company's fault should be recognised in an apology from the truck driver and the company (*apologies*). The company should provide access to specialised medical services to ensure the injured child's full recovery. It should also offer counselling or other psycho-social support to the victim and his/her family (*rehabilitation*). The destroyed farm should be repaired and restored to its original state (*restitution*). The victim, his/her family, and the farm owner should receive adequate payment for the bodily injuries and farm damage (*compensation*). If the accident was caused by speeding or any other violation of the law, the company could be fined and the driver disciplined (*punitive sanctions*). To ensure such accidents do not happen again, the company should fit its trucks with speed limiters and use health and safety personnel or clear barriers in areas near farms (*prevention of future harm / guarantee of non-repetition*).

If you are in a situation of preventing harm from occurring or worsening, work with the community to identify what success would look like: no displacement, reduced number of people displaced, improved livelihoods, etc. What information would you need to substantiate the outcomes? What consultations or processes would be needed?

As explained in Part 1, States have a duty to provide Access to Remedy to victims of human rights violations or abuses. According to international standards, victims must have access to different types of remedy.

Human rights can only be realised when victims have access to a procedure or institution, such as mediation or a court, that can end the violation and, most importantly, repair any harm done. This process must not be too expensive and should not take too long. Moreover, the procedure to obtain remedy should be impartial, non-corrupt, and free from political or other attempts to influence the outcome.[23]

Different remedies can help repair the harm caused, but some damage is often left unrepaired and can take a very long time to heal. Affected communities should decide for themselves what counts as 'success' when taking action against a human rights violation or abuse. To have some chance of success,

they must remain focused on their agreed goal. Strong community organisation, a clear community vision of what it wants to achieve (or prevent), and informed decision-making significantly help with this, as the next two sections discuss.

WATCH OUT!
Sometimes a community's goals or definition of 'success' may differ from those of your organisation. For example, it might be the first time the community has experienced a human rights issue and they simply want a quick fix to stop it, whereas your organisation has seen the same type of abuse in many different communities and thinks that now is the time for 'bigger' action (for example, lobbying government and pushing for legislative reform). Therefore, make sure you are clear about whose goals you are pursuing.

- United Nations, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (2005).
- General Assembly resolution 60/147 of 16 December 2005.
- UNHCHR, 'UN Guiding Principles on Business and Human Rights', Principle 25 (2011).

4.4. Community organisation and representation[24]

When a new business project is launched in an area, many rumours may circulate about who is behind the project and what the benefits or negative impacts may be. For projects that have been operating for many years, community concerns and positions towards the company may be entrenched. In some cases, the people behind the project will try to divide the communities in the area whenever they pursue a sensitive activity that might not be popular with all groups in the community, such as if they want to secure access to land. They may meet with only a few community leaders (for example, the village head or chief) and try to negotiate a deal without involving the whole community. Threats and bribes can also cause tensions and divisions. This weakens the community, because usually only a few people will benefit from the deal, which can easily lead to conflict.

WATCH OUT!

Resisting company tactics to 'divide and rule' communities

Community solidarity is especially important for resisting company tactics to divide communities. In addition to the activities described in this section, the following activities can help communities to resist such tactics:

- sensitisation and awareness raising;
- identifying opportunities for benefit sharing;
- submitting complaints to the government about its delivery of basic services such as health, education, and water and sanitation (instead of complaining to the company);
- creating an association that is accountable to the community; and
- setting up community savings and loans associations to increase local residents' income and reduce incentives to accept bribes or payments.

Community solidarity behind collective demands is a critical tool for successful advocacy against powerful businesses. You should assess the **community's governance** structures and support them to self-organise if needed. Not everyone in the community will have the same opinion or want the same result. Some may want money, while others may prefer to receive replacement land, a job with the company, or better housing. You can help community members, or as many as are willing and interested in advocating for their rights, agree on a few key objectives to pursue. If a community has been divided for years, you can try to support intra-community dialogue and conflict resolution to build solidarity.

Support communities to speak with one voice by encouraging them to select **demonstrably legitimate representatives** who they trust and who will effectively represent their message in interactions with companies. The roles and responsibilities of those representatives should be clearly defined, such as when they are empowered to make a decision, how the community will be consulted, and when decisions can only be made in community forums. Even if the community already has a traditional leader, it will have a stronger negotiating position if that leader is accompanied to meetings by a small group of democratically elected community members. This group should be inclusive and representative of the different groups in the community, including youth, women, and other marginalised or vulnerable groups.

Similarly, **regular and open community meetings** are an important way to share relevant project information with all community members, to discuss the situation, to ensure people understand their advocacy options, and to give everyone an opportunity to ask questions and share their ideas. It also encourages the selected community representatives to report back and consult the wider community on any meetings with company or government staff.

Another way to support social cohesion and community solidarity is by **training community members to systematically collect information** about what's happening in their area and what other community members think about these new developments, and to share and discuss this information in the open community meetings. By strengthening their research skills, community members will have a more detailed understanding of the perceived and real project impacts as well as the various community opinions about the project. Having such information available to everyone makes it easier to counter rumours and misinformation and to develop a broadly supported community negotiation strategy.

Finally, a community can become stronger when it is linked to other similarly affected communities and to legal aid groups or CSOs. Meeting and sharing experiences with members of other communities that have gone through similar situations makes both communities stronger. Because of their skills and broad networks, CSOs and grassroots legal advocates ('community paralegals') can provide useful advocacy and basic legal advice to support community actions. Signing petitions, writing support letters, joining community protests, or developing a **community protocol** or **community development agreement (CDA)** (see below) strengthens the voice of communities, and makes it more difficult for the company or government to ignore.

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COMMUNITY PROTOCOL

Developed through a highly participatory, bottom-up approach, a community protocol is a charter of rules, procedures, and priorities defined by a community. For instance, such a protocol can identify the affected communities; their decision-making procedures; their rights according to customary, national, and international law. Community protocols can also map the communities' use of lands and natural resources, legitimate representatives, values and vision for the future, consultation procedures important to the community, and development priorities.
Every process of developing a community protocol is unique as it must be endogenous, inclusive, empowering, and primarily based on the community's own resources and diversity of knowledge, competencies, and experiences.
A variety of methods and tools can be used, including self-determination, endogenous development, documentation and communication, social mobilisation, empowerment or legal capacity building, strategic advocacy, and reflecting on monitoring and evaluation. Despite these many differences, the process of developing a community protocol generally involves four steps: (1) preparing and deciding to develop a protocol, (2) holding consultations within the community to gather information, (3) developing a draft protocol, (4) finalising the protocol, and (5) popularising and disseminating the protocol.[25]

MOBILIZING DIVERSE COMMUNITIES IN KENYA

When the Government of Kenya announced a giant infrastructure construction project of several billion dollars on Lamu Island, the local communities of fishermen, religious chiefs, concerned residents, and CSOs came together in solidarity. They engaged in a process of meetings, consultations, and visioning sessions, which concluded in a decision not to oppose the project, but rather to assert that their recognised rights under international, regional, and national law must be respected. They emphasised issues of procedure, such as the right to information and to participate in decisions that affect them, and to have impartial impact assessments. The case illustrates the growing critical mass of civil society in Kenya.[26]
See the full case study on Save Lamu's work in Kenya in chapter 7.

- Natural Justice, 'Community Protocols' https://naturaljustice.org/community-protocols/
  Natural Justice, 'Community Protocols Toolbox: Community Protocols in the Context of Extractive Industries' (2016).

COMMUNITY DEVELOPMENT AGREEMENT

A CDA – sometimes referred to as an 'impact-benefit agreement' – is a contract agreed among local communities (and sometimes the State) and the project developer that aims to avoid and minimise a project's negative impacts, compensate local communities for unavoidable impacts, and ensure that local communities receive a share of the project's benefits that they would otherwise not receive. CDAs are increasingly common in large-scale mining projects throughout the world, and have become mandatory by law in places such as Canada, Australia, Mongolia, Guinea, Sierra Leone, Nigeria, and Papua New Guinea.

- Gordon Foundation, 'IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements' (2015).

Community protocols and CDAs also have their challenges. For example, they can take a long time to develop and/or negotiate; enforcing the protocol and CDA provisions can be problematic; and the distribution of benefits (between the company and community as well as between different community groups) might not always be as equal as originally planned. In some cases, it may even harm the community, as a CDA can contain language that prevents a community from pursuing external options like litigation to address grievances after signing a CDA. Nevertheless, with the right measures these challenges can be addressed. Most importantly, compared to the prevailing top-down (usually one-sided) concession agreements that governments grant to companies, community protocols and CDAs are more empowering (can help to strengthen the community's negotiation position), more equitable, and more community friendly.

4.5. Managing tensions, disagreements and emotions

There is often an enormous power imbalance between companies and communities. Companies control and have full access to information and knowledge about the project, more financial resources, access to legal experts, and (in almost all cases) government support. By contrast, communities usually have limited information and technical knowledge on the project, far fewer legal and financial resources, and may be labelled by the company and government as 'trouble makers'.

This power imbalance can be intimidating and make the community afraid to take action, which can create divisions. If such a situation occurs, it will need to be dealt with first before launching any action.

Supporting community solidarity

When divisions occur within a community, you can try several of the following approaches:

- always have an inclusive approach to decision-making that includes diverse sub-groups, and transparency from representatives or spokespersons;
- facilitate near-constant communication between your CSO and your community partners, and directly involve community members in performing necessary tasks and reporting back;
- acknowledge the existence of the situation and listen carefully to what people are saying. Misinformation spreads quickly. Find out the facts related to the contentious issue and quickly quash any false rumours;
- establish the source of the problem and the reasons why it has arisen:

there may still be pockets of doubt in the community, suggesting a lack of information and the need for more engagement, or interference from the company or government;
- act early before the problem compounds: provide information to create a shared level of understanding. If the problem is due to external interference, address why it might be happening and explain in case it is designed to shut people up and divert attention from the real problem;
- In dealing with emotions, be principled, not defensive; develop a message of what you believe in and communicate it clearly and consistently in order to build trust; and
- work on confidence building by mapping all actual and potential resources that are accessible to the community in support of the action either directly or through networks; remember: community unity is the greatest resource.

4.6. Informed decision-making: Evidence and strategy

In addition to organisation, successful community action requires informed decision-making. This means that decisions should be based on systematically collected and verified (cross-checked) information, and communities should be made aware of this information through participatory methodologies. You likely have participatory tools that you already use with communities. Additional examples include community-led impact assessments, ground-truthing, or other participatory action research methodologies. 'Ground-truthing' entails comparing data, statements, and maps in official documents to observable facts in a particular location. Communities can then use this information (such as photographs, video, GPS coordinates, and water sample surveys) as evidence in investigations or ongoing monitoring of project impacts. Communities need clear, documented evidence of a human rights violation in order to successfully seek remedy.

- Inclusive Development International and Equitable Cambodia, 'Avoiding Forced Displacement. A Community Guide to Negotiation and Advocacy. Participant's Manual. Southeast Asia Edition' (2017).
- Center for Policy Research and Namati, 'Ground Truthing. A Note on Methodology' (2016).

5. Take action…Wisely

5.1. Why? Objectives and structure of the chapter

A strategy is the overall framework or plan of action that you will use to address the priority human rights issues and goals for you and the community you are working with identified in chapter 4.

Each case you work on will require a custom-made strategy that reflects the unique issue, context, community–company relationship, and internal community dynamics. It is important to have a strategy to connect what you do (tactics or advocacy actions) with who you are trying to influence (the stakeholders) in order to achieve your goals. This strategy will evolve over the course of engaging with the community and company.

We recommend that you design a phased or sequenced strategy: decide which tactic(s) you will use first, and which you will move onto only once these have not delivered the desired result. For example, it is advisable to start with a collaborative approach in order to collect as much information as possible and develop a degree of trust with business and/or government actors. Taking an adversarial approach too quickly may jeopardise your ability to achieve results through collaboration. Recognising that you will often use several advocacy actions at once, designing a phased strategy from the start ensures that you and the community you are working with have carefully thought through the pros and cons of different approaches and have a clear plan of action.

In this chapter, we will use the following terms:

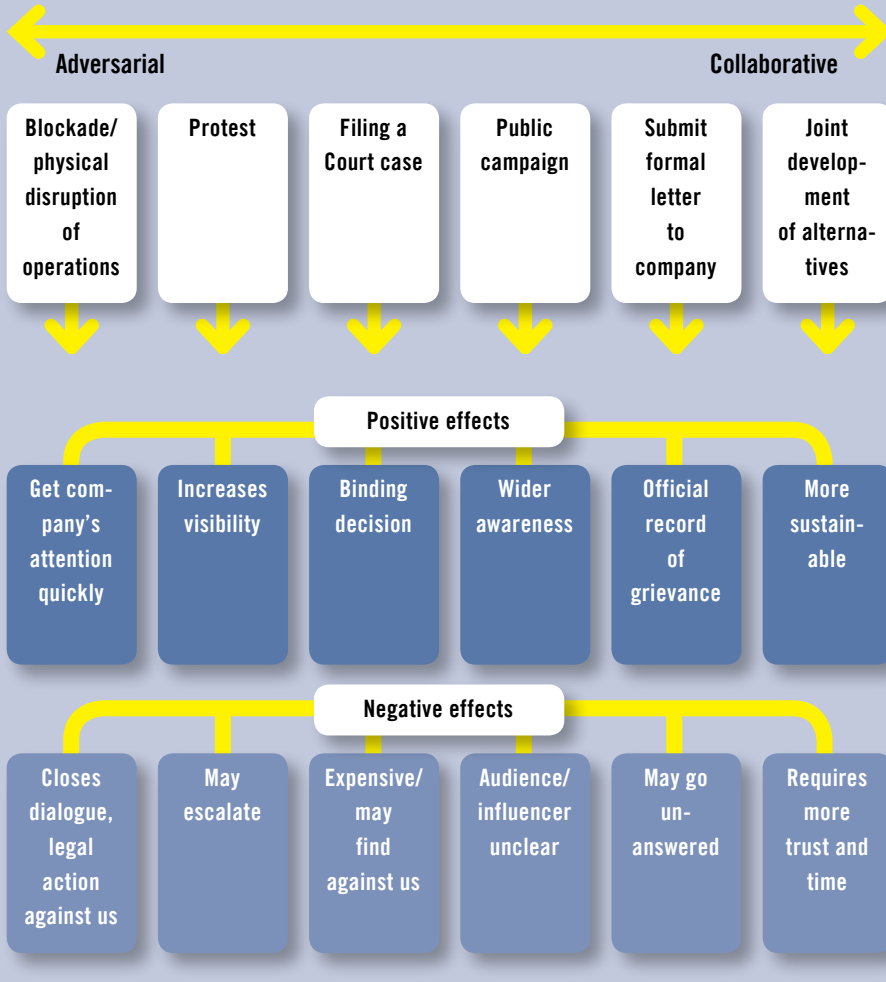
- **Goal**: the objective you want to achieve;
- **Strategy**: the path or approach you will take to achieve your goals, which often consists of a series of planned tactics; and
- **Tactic**: the concrete action you will take.

5.2. A spectrum of tactics

Your organisation or the communities you work with are likely already familiar with (and have probably used) different approaches to try to influence another group before – the government, a company, or maybe just another community or family member.

The type of relationship a community has with a company should inform the general approach chosen, such as adversarial, collaborative, or somewhere along the 'spectrum of tactics' (see Figure 8). Choosing an adversarial tactic to engage with a company that has good communication with the community can sour the relationship and bring more harm than good. But using an adversarial tactic when engaging with a difficult company can demonstrate that you are serious. These approaches are not mutually exclusive: they can be used together to reinforce each other. For example, sometimes the threat of an adversarial action can bring a company to the negotiating table.

FIGURE 8: SPECTRUM OF TACTICS



Many types of actions can make up an advocacy strategy. For example, peaceful **direct action** (protest, sit-in, etc.) can quickly get the attention of a company or business. While such actions carry security risks, when phased and implemented peacefully they can form an effective pressure strategy, especially when combined with a public media campaign.

In a **negotiation**, the outcome is decided among the negotiating parties, typically the community, its advocates, and the company. You might use an independent **facilitator** or mediator to help improve communication during the negotiation process by addressing some of the power imbalances in the process and ensuring the negotiations are rights based. However, it can be challenging to find a qualified mediator, and communities should still seek legal assistance to ensure any mediation respects their rights and does not cause further harm. Practical Tool 13 (below) offers guidance on developing terms of reference for a dialogue or negotiation process.

Unlike a negotiation, a **campaign** is a 'court of public opinion'. The primary objective of a campaign is to bring together the voice, interests, and resources of influential actors to apply pressure on decision-makers to either (a) make

the decision you want them to make or (b) negotiate with you in good faith. A campaign and a negotiation can often be used in tandem to reinforce these strategies.

Another advocacy tactic is **legal action** or a formal complaint, which we define as bringing the case to a judge, arbitrator (or panel of arbitrators), or another form of formal complaint handling, at which you present your side of the case and the company presents its side. The external actor (judge or arbitrator) decides the outcome.

REMEMBER
Conducting **investment chain research** (Practical Tool 5) is an effective way to identify pressure points and the most effective advocacy tactics to include in your strategy, including an escalation strategy. This research can highlight opportunities to file complaints with accountability mechanisms of previously hidden actors involved in the project, to engage financiers directly by writing letters or launching a public media campaign, to conduct a consumer-facing campaign for the buyers of the products, etc.

PRACTICAL TOOL 13: TERMS OF REFERENCE FOR DIALOGUE WITH A COMPANY

When you begin negotiations with a company, it is recommended to develop written **terms of reference** for the negotiations. Terms of reference define the purpose and structures for meetings between representatives of the community and the project developer, and should be mutually accepted. Key aspects to take into account in the terms of reference include:

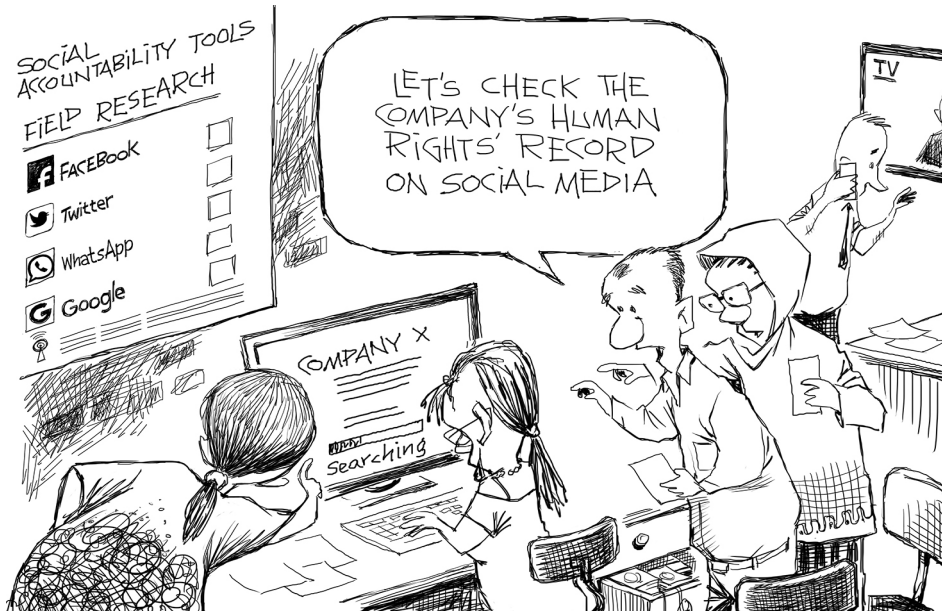
- **Time limits**: Define reasonable time limits for community representatives to consult their communities. This helps avoid tension and prevents a company from unfairly using time pressure at key moments in the negotiations.
- **Confidentiality**: Even if confidentiality allows some parties to speak more openly, it can also be counterproductive because it blocks transparency and accountability to the broader public. This problem can be addressed by using a third-party observer or agreeing that the results of the negotiation must be subject to public scrutiny even if the negotiation process remains confidential.
- **Waivers**: Try to always refuse waivers (a renunciation of certain rights, such as the right to seek judicial remedies) in the terms of reference for negotiations, or in any other agreement with companies. If the company insists on a waiver, there are four elements of **fair and relevant waivers**:
  1. They should be mutual.
  2. They may only extend to issues that are directly addressed in the negotiations or the agreement.
  3. They should only bind parties during negotiations and after, solely when an agreement has been reached. Where negotiations fail and are ended, the waiver no longer has any reasonable justification.
  4. They may not extend to criminal actions. Prosecution of criminal offences cannot be the subject of private negotiations; it instead constitutes a duty of the State in the public interest.[27]

Using media

Any strategy you develop will need a communications and (most likely) a media engagement strategy. The media is an important and powerful tool that can easily reach people across a large geographic area. Used properly, the media can be used to inform the public about a particular situation, mobilise support, and even reach government and company decision-makers. Making human rights violations public can also exert pressure on duty bearers to address the situation while

giving right holders a voice. In addition, media exposure can sometimes result in protection of threatened human rights defenders, and through investigative journalism, media practitioners can help to uncover further (hidden) information.

Successful use of media requires thoughtful planning and strategising. It is important to understand the different media options available and what type of media strategy to employ, from traditional print and broadcast media to internet-based social media platforms, such as Whatsapp, Facebook, Twitter, Instagram and blogs. The development of a clear strategy should precede any engagement with media. A media strategy should address key issues such as the purpose of media engagement, the key messages and other content to convey, channels and frequency of communication, responsibility for communication, etc.



Resources for media engagement

- How to write a press release: https://knowhownonprofit.org/how-to/how-to-write-an-effective-press-release
- Learn to write an op-ed: https://www.theopedproject.org/oped-basics/
- Give a persuasive interview on the radio or to a journalist: https://conversations.marketing-partners.com/2013/06/10-tips-for-media-interview-preparation/
- Develop a communication strategy for your organisation: UNAC, 'Understanding and Engaging the Media for NGOs' (2007)
- USAID, 'Social Networking: A guide to strengthening civil society though social media' https://www.usaid.gov/sites/default/files/documents/1866/SMGuide4CSO.pdf
- UN Women, 'Virtual Knowledge Centre to End Violence against Women and Girls' http://www.endvawnow.org/en/articles/1244-media-strategy.html

LEVERAGING CONSUMER PRESSURE: THE CAMPAIGN AGAINST DEL MONTE IN KENYA

In November 1999, a group of civil society actors launched 'parallel, but related' campaigns against Del Monte Kenya Limited in Kenya and Italy. The campaign concerned the company's labour rights violations, which included discriminatory pay, labour exploitation, and poor working, healthcare, and housing conditions for workers on the plantations.

The campaign represented the culmination of human rights monitoring conducted at the company since July 1998 by the Kenya Human Rights Commission (KHRC), a local NGO. Through their union representatives, workers at the company had sought the assistance of KHRC for intervention on their behalf to advocate for better working conditions. Thus, workers' rights became an obvious entry point for the campaign. Based on the belief that these rights are not the sole responsibility of unions, KHRC mobilised other organisations into a coalition that strengthened the union representatives.

KHRC worked with an influential Italian NGO, Centro Nuovo Modello di Svillupo, to map the buyers of Del Monte Kenya Limited's pineapples in Italy. One such buyer at the time was COOP Italia, one of the country's largest food retailers. COOP Italia had recently signed up to the social accountability certification standard SA 8000 that covers workers' rights, which served as a strong pressure point for consumer-facing advocacy. The coalition partners engaged the media in Kenya, and sent postcards to Del Monte's majority shareholders and COOP Italia. In Italy, the partners also sent letters to sensitive consumer groups across the country. In the following months, the campaign gained momentum and directly engaged Del Monte International on the issues in order to reach an agreement.

In their concluding report KHRC shared the following insights from their experience:[28]

- **do your homework:** prior research to support the case was conducted;
- **map the value chain** from shareholders, investors to buyers and identify the weakest link – in this case COOP Italia – which was targeted on the basis of its relevant certification;
- **build networks, nationally and internationally if possible:** the Kenya campaign was supported by a coalition, while a reputable and experienced NGO led the Italian work. If working in a coalition, have a leader;
- **think about the safety of the victims**; and
- **build the capacity of victims and civil society allies to engage:** strengthening trade union leaders/activists at Del Monte and the local office of the Central Organization of Trade Unions was a key strategy of the campaign. This created ownership among trade union leaders and workers, and gave the campaign a workers' face and legitimacy. Furthermore, it underscored the critical role of trade unions in promoting labour rights.

KHRC and the campaign's coalition partners mapped the company's stakeholders and identified what they thought would be an effective pressure point – the fact that the main buyer of Del Monte's products, COOP Italia, had just signed onto social accountability certification standard SA 8000, which covers workers' rights. The company's history of dismissing striking workers meant that strikes and blockades may not have been an effective tactic to drive lasting change; this contributed to the decision to opt for a consumer-oriented tactic instead.

5.3. How can you weigh your options?

The best strategy for your case will depend on what your goals are, your relationship with the business, your access to information, influential decision-makers and recourse mechanisms, and your available resources.

You have already collected information to help weigh your options, especially with the stakeholder map and the investment chain map that identified strong pressure points (sections 1.5 and 2.4). Remember, various project stakeholders may have different interests and be influenced by different tactics. For example, you can begin a negotiation by bringing the issue directly to a company or by sending a petition laying out your concerns to its lenders, investors, or shareholders. Your investment chain map will have identified what type of leverage you can exert on different parts of the investment chain.

In this handbook, we focus mainly on options for constructive engagement. Yet we recognise that non-violent resistance including protests, blockades, boycotts, or other actions can be an important part of campaigning and engagement.[29]

Designing a strategy is more an art form than a science: each factor needs to be considered and weighed against others. No toolkit can tell you what approach to take: you will have to decide together with the affected community which combination of tactics has the highest chance of achieving your goals and vision. Practical Tool 14 (below) provides a few ideas about the types of questions to ask yourself, and the possible implications of different answers. These questions will help you identify entry points for action, but they will depend on the context. Therefore, always consult with other organisations or legal experts if possible to confirm and/or inform your thinking. Chapter 5 provides more detail on the actions themselves.

i

DEFINING A STRATEGY

To help you define a strategy, we strongly suggest reaching out to allies with relevant experience, such as legal, environmental, and human rights NGOs. Annex IV provides a list of resource NGOs that can provide such support.

PRACTICAL TOOL 14: GUIDING QUESTIONS TO IDENTIFY ENTRY POINTS FOR ADVOCACY

Guiding questions	Implications	Implications
Factors relevant to the company[30]		
1) What is the nature of the company's relationship with the community? Is it mostly positive, neutral, or adversarial?	**Mostly positive.** Start with a less adversarial approach (e.g. negotiation).	**Adversarial.** The community and company may not be able to resolve this issue without the involvement of external actors, e.g. through a campaign or legal action.
2) Is this specific project very important to the company's overall portfolio, and has the company made a long-term investment?	**Yes.** A company will likely be motivated to continue operations of an important project: this will likely make them more open to negotiating improved relationships with the community but also willing to put a lot of money and resources into litigation if necessary to keep the project going.	**No.** If the project is less important and/or the company is planning to leave after a few years (e.g. exploration companies) then the company is unlikely to invest much time in developing a strong relationship with the community. More adversarial approaches might be needed earlier on.
3) Does the company present itself publicly as being socially and environmentally responsible?	**Yes.** A company that presents itself this way may be more open to addressing grievances related to infringement of principles, rather than just national law. They may be influenced by campaigns or negotiation.	**No.** A company that does not present itself this way may only be influenced by evidence that it has broken national law and/or if its consumers can be influenced to care about these issues. It may primarily be influenced by legal action or campaigning with consumers (abroad).
4) Is the company publicly listed?	**Yes.** Publicly listed companies are more likely to be sensitive to human rights impacts that could damage their reputation. A bad reputation can affect their share price and financial earnings.	**No.** Private companies may be less sensitive to potential reputational damage, because they are not listed on a stock exchange, and so are unaffected by a potential drop in share price from reputational harm.

Guiding questions	Implications	Implications
5) Is the company State owned or part of a public–private partnership?	**Yes.** If the company is State owned, it means that public funds are being used for the project, and so the investment can be subject to public scrutiny.	**No.** If public funds are not actively invested in the project, it may be more challenging to rely on government involvement as an advocacy entry point.
6) Does the company have internal standards, policies or codes of conduct?	**Yes.** These policies are public commitments and can be used to hold companies accountable, harming their credibility and reputation when demonstrating that the company is failing to implement its policies and standards.	**No.** If no public commitment is available on the company's website or other public document, it will be more challenging to shame the company for failure to respect its policies.
7) Does the company have a strong brand or consumer visibility?	**Yes.** A company with a strong brand and consumer visibility will usually be very sensitive to attacks on its reputation and bad publicity, because this can cause consumers to stop buying its products, and may deter investors.	**No.** If a company has a weak brand or few connections with consumer-facing companies, it may be more challenging to damage its reputation to reduce its sales.
8) Is the company registered or based in an OECD country?	**Yes.** Companies in an OECD country are subject to a standard called the OECD Guidelines for Multinational Enterprises. National Contact Points (NCPs) in OECD countries monitor compliance with these Guidelines, and can receive complaints from people suffering harmful impacts from companies subject to the Guidelines. OECD countries may have strong laws and effective court systems, which may also make it possible to pursue legal action (see chapter 6).	**No.** If the company is registered in a non-OECD country, you can still research whether that country has an ombudsman or other office that monitors overseas investment. If the country has strong laws and regulations, you can seek legal advice to assess the possibility of bringing a legal action.
9) Is the company a member of or certified by an industry certification scheme?	**Yes.** Industry certification or audit schemes serve to assure consumers that products were produced in accordance with a set of agreed standards. These certification bodies increasingly have grievance mechanisms that allow affected communities to file complaints when standards are not adhered to. Examples of industry certification schemes include the Roundtable on Sustainable Palm Oil, FairTrade, Bonsucro, Forest Stewardship Council, Initiative for Responsible Mining Assurance, Aluminium Stewardship Initiative, etc.	**No.** If the project company is not a member, then check to see if another company in the investment chain might participate.

Guiding questions	Implications	Implications
10) Is the company associated with any other projects with harmful impacts?	**Yes.** If the company is causing harmful impacts at other sites in your country or internationally, it may be possible to join in a collective campaign to increase media and other pressure on the company.	**No.** If the company itself is not involved in other reported projects causing significant harm, consider the impacts of the sector to assess the possibility of joining forces in a sector-wide campaign.
Scope of issues		
1) How many people are affected by this project? Dozens? Thousands?	**Dozens.** A complaint letter detailing the project's negative impacts, with a request to senior company staff to meet with the small group of affected people, might be appropriate and effective if the changes or resources required to fix the problem are modest. Litigation may still be required if the harm is severe.	**Thousands.** It may be easier to launch a campaign/public support against a project that affects many people, rather than only 'a few' people.
2) Are many people in your country affected by a similar issue (even if related to a different company or project)?	**Yes.** You may be able to join a related sector-focused campaign.	**No.** More one-on-one action (negotiation, litigation) may be necessary.
3) Has a specific national law been broken?	**Yes.** If the country has an effective court system, this may be a strong case for legal action, which may generate a lot of public attention. The government and/or (opposition) politicians will find it difficult to ignore the campaign and will be more open to (quickly) addressing the issue.	**No.** Even if a law hasn't been broken, companies are typically responsible for the damage they cause to others. However, it may be more difficult to enlist the government itself in the remediation process.
4) Has the company or government failed to uphold a principle of an international treaty that your country is a party to?	**Yes.** You might want to start with a campaign to raise awareness, possibly supported by (an offer of) negotiation to encourage action. In very serious cases, international legal action could be an option but will take long (think years) and is usually very expensive.	**No.** If the community would like a change in company behaviour, but the company has broken no treaties or laws, then negotiation may be your best option. Negotiation, rather than escalating the problem, will help you and your requests appear reasonable, even if not required by law or principle.

Guiding questions	Implications	Implications
Factors relevant to the community		
1) Does the community believe they can benefit in at least one way from the project?	**Yes.** The community may be more inclined to negotiate constructively and try to maximise any potential project benefits (employment, improved infrastructure and service delivery).	**No.** The community has 'less to lose' by using more 'aggressive tactics in its negotiation style or by launching a negative campaign or even legal action.
2) Is the community opposed to the project?	**Yes.** The community has 'less to lose' by using more 'aggressive' tactics in its negotiation style or by launching a negative campaign or even legal action.	**No.** If the community is interested not in stopping but rather altering the terms of engagement, constructive negotiation will be important to building a positive long-term relationship with the company.
3) Is the community interested in a positive relationship with the company?	**Yes.** The community will be more inclined to negotiate constructively and to try to maximise any promised potential project benefits (employment, improved infrastructure and service delivery).	**No.** The community has 'less to lose' by using more 'aggressive' tactics in its negotiation style or by launching a negative campaign or even legal action. The community needs to be aware that this might also dissuade other potential investors from establishing new projects in their area.
4) Is the community trying to seek compensation or remedy for harm caused by the company?	**Yes.** • If you have a very strong relationship with the company, then you could approach it and try to negotiate a solution. If you have a CDA, this might spell out options for redress. • If you already have strong connections to other CSOs and the media, you might choose to raise public awareness of and support for the issue. • If you do not have either of these relationships or the grievance is very serious, judicial action may be appropriate.	**No.**

Guiding questions	Implications	Implications
Scope of solution		
1) Does resolution of the problem require a change in government policy or law?	**Yes.** This will likely take a long time, lots of resources, and strong coordination with other CSOs, legal support, and government officials. A campaign or strategic litigation are likely the most effective tools to use. In the meantime, you can try to negotiate improved terms with the company, possibly by citing international examples.	**No.**
2) Does resolution require action (or stopping an action) by only this company or at only this project site of the company?	**Yes.** In this case, you can go back to analysing your relationships with the company and other actors, and decide between negotiation or judicial action depending on the grievance.	**No.** If there is a history in your country or area of many companies committing similar harm, then there may be public support for a campaign. A campaign could help improve your negotiation position with the company that is directly affecting your community partner.
Required resources		
1) How much money (financial resources) can you and the community you're assisting devote to this case?	**A lot.** You're lucky! If you have sufficient resources, then none of your strategy options are limited by resource constraints. Remember, though, that court proceedings can become more costly than anticipated.	**A little.** Most organisations are constrained by resources. That doesn't mean you cannot act; you just need to think carefully about how to use your scarce resources. • **Legal proceedings** are usually the costliest option, because they require lawyer fees and possibly a filing fee for bringing a claim. • **Negotiation** usually requires strong human resources/expertise in order to ensure that the negotiation does not result in poor agreements that don't respect community rights. • **Campaigns** require a moderate amount of financial resources (in the form of materials and possibly travel costs) but a lot of time and people to convince others to join and support your cause.

Guiding questions	Implications	Implications
2) How much time do you have to reach an outcome? (e.g., is a community facing eviction in one month's time, or is the company just beginning to explore a possible project in your area?)	**A lot.** If you have more time, then you can carefully weigh up your options, your relationship, and design an 'escalation' strategy.	**A little.** You need to weigh how serious the issue is, and how strong your relationships are. • If you have a very strong relationship with the company, then you could immediately approach it and try to negotiate a solution. • If you already have strong connections to other CSOs and the media, you might choose to use some campaign tactics – not a full-scale campaign but raising public awareness of and support for the issue. • If you do not have either of these relationships but you have legal support, you might choose a court action such as an injunction – i.e. seeking to legally stop the action.
3) Do you have a pre-existing, strong network of government or NGO allies?	**Yes.** This means you are well-positioned to join or begin a campaign if other factors are also in place (for example, if it is an issue that affects many people or project sites).	**No.** If you have a lot of time, then you can work on building these connections. If not, then negotiation may be the most effective option.

WATCH OUT!
You can usually tell that a project is particularly important to a company if it:

a) **contributes a large share of the company's revenue;** this may be publicly available information if the country has signed up to the Extractive Industries Transparency Initiative (EITI), for example. If it is an oil/gas/mining project, check your country's EITI report at www.eiti.org.
b) **is the company's first project in your country;** the company has probably invested considerable time and resources in building new political relationships, aligning its financial and management policies, and other efforts to secure the project. The company is likely testing how things work to see if it wants to make additional future investments.
c) **is a legacy or flagship project;** this means the company is particularly proud of the project. This could be because it is one of the company's longest-running projects, or because it involves a new technology or multiple investors. Flagship projects are often highlighted on a company's website.

5.4. Opportunities for action

Throughout the course of the project, there will be different opportunities for action. In some cases, external processes will determine the timing of these opportunities; in other cases, the community must capitalise on existing opportunities. In any case, it is useful to have your key messages and questions ready for any 'surprise' visits.

Another actor determines the timing of the action
Depending on where in the project cycle (see section 2.5) an investment is, there may be different opportunities and strategies or tactics available (or unavailable) to you, such as:

- ESIA consultations;
- high-level visits by company, government, or investor personnel to the project site; or
- independent review mission (by an NGO, the UN, or consultants).

Community determines the timing of the action

- company grievance mechanism;
- lender/investor grievance mechanism;
- submitting a case to court; or
- community launches a public campaign against the company's actions.

Joint actions can be decided together

Communities and companies can also agree (usually through negotiation) to undertake specific assessments or investigations together. These might also involve government officials. This can be a helpful approach to build trust, and to ensure various stakeholders are working from the same set of 'facts' and understanding of the situation.

For example in Nigeria, for Shell's operations, if an oil spill occurs a 'joint investigation visit' (JIV) is launched, which comprises representatives of the affected communities, CSOs, government regulators, and the oil company in order to jointly establish the cause of the spill. Even though there is still considerable debate about the quality, the conclusions reached, and the effectiveness of these JIVs, the collaborative approach has helped build community knowledge and reduced some of the mistrust.[31]

As mentioned in chapter 4, a CDA is another tool that might help communities and companies build a shared understanding of the project's risks and benefits, and establish lines of communication to address issues as they arise. Negotiating a CDA is a difficult undertaking and may not always be the right decision for a community. If a community has a strong negotiating position, a CDA can help create a win-win relationship.[32] But if a community has a weak negotiating position, then a CDA is unlikely to truly protect and promote its interests.

5.5. Build support for action

Regardless of which strategy you choose, it will benefit from internal cohesion and external support. Each of the methods described below can help to build internal cohesion and external support.

Secure broad-based support within the community[33]

Before taking action it is important that all major doubts and differences of opinion regarding the business project have been considered and frankly

discussed within the community. Therefore, make sure that community members:

- have a shared sense of the problem or goals related to the proposed or ongoing business operations with/within their community (see chapter 4);
- understand the facts of their situation and the results found from the information gathered (see chapters 2 and 5); and
- brainstorm and understand the pros and cons of different strategies to achieve their goals and have an opportunity to consult with external legal or other CSO advisors if desired (see chapter 7, sections 7.2 and 7.3).

Seek specialist advice

Depending on what issue the community is facing, different types of specialist advice can be critical to supporting its objectives.

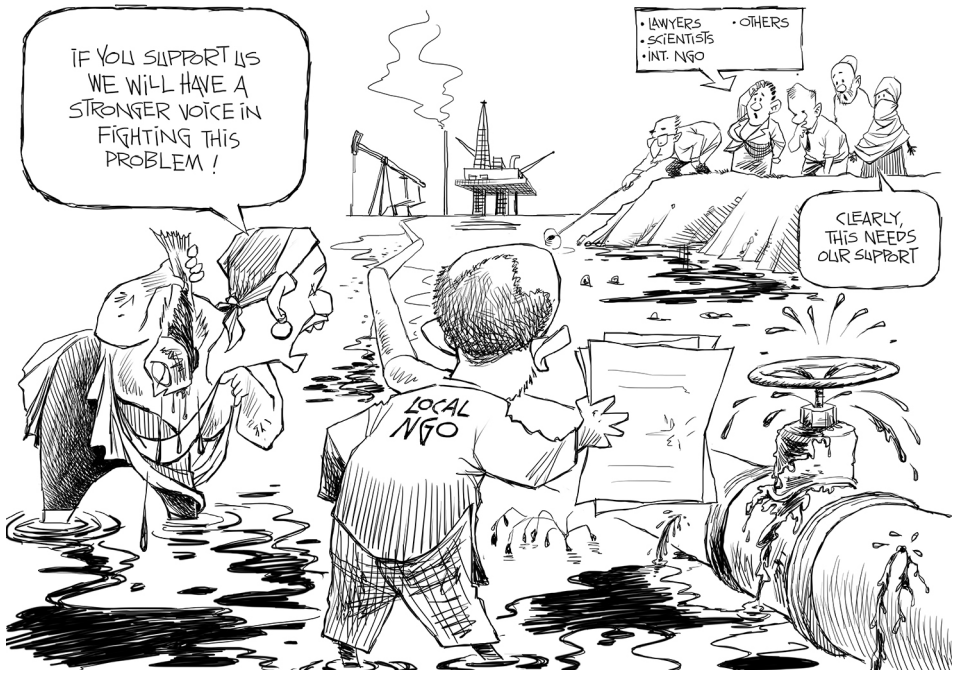
- **Legal expertise**: securing advice from a legal expert can help you and the community understand its rights under national law (for example, rights to participation, consultation, compensation, etc.) and what (if any) laws have been broken;
- **Scientific expertise**: scientific expertise is critical if you are addressing an environmental or health grievance (such as polluted water). The company may have data and tests showing that the water is fine; the community needs to be able to make their case using clear and impartial evidence.

Create external support network

Building relationships with like-minded organisations or allies can add weight to your position in two ways:

- They can support you as part of your 'inside game': they might be able to contribute with resources, expertise, and voice to support your tactics.
- They can support you as part of your 'outside game': they can take on more adversarial tactics to raise awareness of the issue and influence the company and government stakeholders, while your organisation and the community continue to pursue a more collaborative approach.

External support actors could include local and international NGOs, embassies, UN bodies, and sometimes media outlets.



Get to know key company players

As outlined in chapter 2, a variety of company stakeholders will be present at the project site at different times in the project. You and the community may be more familiar with some (such as security personnel or staff who pay the labourers) than with others.

Depending on the issue that needs to be addressed, the company staff that you know best may not have the necessary authority to engage with the community in a robust way to address your concerns. Don't be afraid to ask the staff that you interact with who you need to talk to in order to address specific issues.

Get to know key government players

There are many reasons to engage with government officials, including:

- seeking information about laws or policies related to business operations;
- fact checking rumours that you might be hearing;
- informing them about suspected rights violations; and
- persuading them to defend your rights

Before engaging with officials at any level, it is important to have a clear strategy and to know who the relevant officials are, and what their mandate is.

- use the stakeholder analysis tool from section 1.5 to understand power and interests of various officials; and
- set a goal and objectives for your engagement with officials.

Different ways to engage with local officials include:

- arrange a meeting: make an appointment and visit the official's office;
- ask a trusted person (perhaps a larger NGO or a personal connection) who knows the official well to introduce you and help represent your case;
- write a letter detailing the issue and making a specific, actionable request; or
- invite the official to participate in an event with the community.

These approaches can also be used to engage with higher-level officials or Members of Parliament. However, unless you have a strong personal connection to them, you will likely need to provide a convincing argument for why it is necessary to undertake the action at the regional or national, rather than local, level. Some reasons might be:

- the law places decision-making on your issue at the higher level;
- you have tried to engage at the local level, and they have refused to act; and
- it is a highly publicised issue.

5.6. Making sure you are ready

Before you take action, double check that you know your goals and what advocacy actions you want to take to achieve them. Make sure there is a clear division of labour between different community members and your organisation, and that it is clear to you and the community what the 'red lines' are – that is, the things you definitely will or will not do to resolve the dispute. The following checklist can help you understand your strengths and weaknesses to make sure that you are as prepared as possible before taking action:

PRACTICAL TOOL 15: CHECKLIST TO ASSESS COMMUNITY READINESS FOR ACTION
(Each blank should be filled in and box checked-off before proceeding!)

- ❑ The community's top objectives are: _____
- ❑ The community's secondary objectives are: _____
- ❑ Our primary tactics are: _____
- ❑ If those don't work, next we will try: _____
- ❑ Our main external allies are: _____
- ❑ Our resources match our strategy; for example, if we are pursuing a legal strategy, we have a legal expert in the team.
- ❑ (if relevant) We have gathered and clearly written down strong evidence of how our human rights have been impacted.
- ❑ (if relevant) The community has a copy of community land use maps and policies, and has collectively decided which parts may be disclosed to company or government officials during this engagement.
- ❑ _____ (insert names) _____ are authorised by the community to speak on its behalf in a negotiation, campaign, or legal proceeding.
- ❑ These representatives were selected through a participatory and inclusive process by community members.
- ❑ What, if any, agreements can the spokespersons make (verbally) on behalf of the community without further consultation? (none) or: _____
- ❑ We have the capacity to document all conversations, negotiations, and verbal agreements. We will do this by using: _____
- ❑ If we are planning to contact the media, _____ (insert name of relevant authorised representative) _____ is responsible for doing so.
- ❑ We will keep all community members up to date on how the strategy is progressing by (which method?): _____
- ❑ We will limit risks to our security and that of the community by (which approaches and methods?): _____

- ❑ We are following a human rights-based approach to work with the community.
- ❑ We are respecting the rights of those we work with to participate (or not) in this process.
- ❑ We are protecting the rights of those we work with by ensuring confidentiality and privacy.
- ❑ We have openly explained our skills and limitations openly to the community.
- ❑ We are eliminating discrimination by ensuring that women and other marginalised groups have an equal role in our actions.
- ❑ We have informed those we work with that we accept criticism and complaints and that they are 'in the driver's seat'.

6. Which recourse mechanism to choose?

6.1. Why? Objectives and structure of this chapter

'One of the fundamental principles of the international human rights system is that victims must have access to an effective remedy when their rights have been violated.'[34]

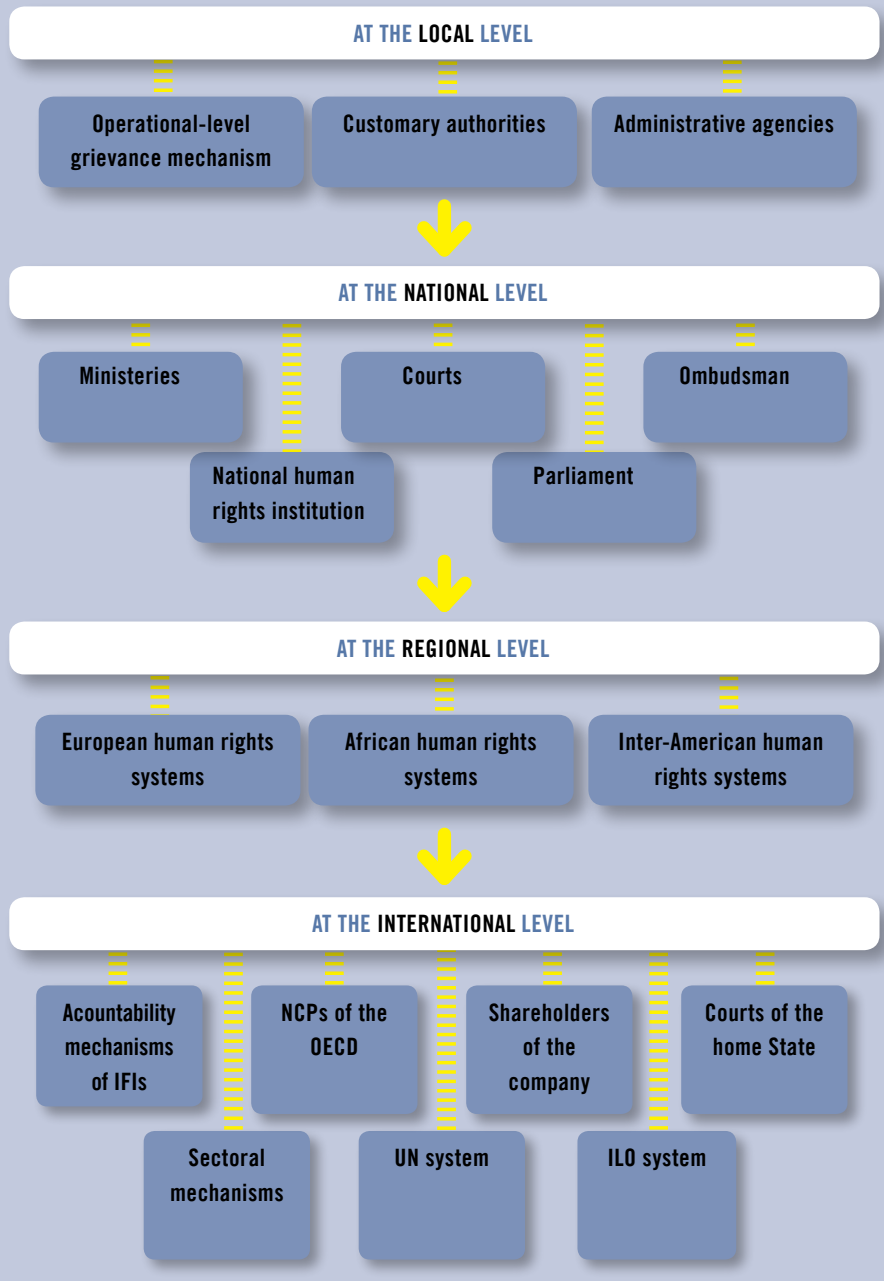
Deciding to demand accountability from a company can be a difficult step; some community members may not support the decision, and others may be afraid to confront the company. Moreover, even if the community agrees on the need to take action, there are a number of options to choose from.

Chapter 4 provided advice and tools for managing disagreements and tensions when helping to organise a community, and chapter 5 helped identify possible pressure points for action, with examples of negotiation, campaigns, or legal action. In this chapter, we look more closely at the possible institutions (recourse mechanisms) where a complaint can be filed in order to seek remedy.

6.2. Overview of possible recourse mechanisms and how they work

In this section we review established recourse mechanisms at different levels before which you can bring human rights violations and community grievances against business enterprises. We describe judicial and non-judicial mechanisms, which are categorised by geographical jurisdiction.

FIGURE 9: OVERVIEW OF RECOURSE MECHANISMS FOR HUMAN RIGHTS IMPACTS RELATED TO BUSINESS ACTIVITIES.[35]



At the local level

- **Operational- or company-level grievance mechanisms:** these are usually established and run by the company itself, and therefore leave the user quite powerless. They range from company hotlines (i.e. dedicated company phone numbers) and complaints offices to well-established mechanisms that include other external stakeholders. It is often best to try to resolve the problem directly with the company first. This may prevent (or stop, if it has already occurred) the harm from getting worse and avoid the expense of taking legal action. Minor grievances that may not in themselves amount to human rights abuses can be resolved in a dialogue-based process, but this approach is less suitable for contentious cases. Cases that may lead to criminal liability and/or amount to gross, systematic, or widespread human rights abuses are not suitable for operational- or company-level grievance mechanisms. These are usually best litigated in courts. Additionally, these mechanisms vary widely in terms of quality and user satisfaction. Therefore, it is important to seek information on previous experiences with these mechanisms.

- **Customary authorities:** traditional community institutions such as councils of elders, chiefs' courts, etc, that usually make their decisions based on customary rules and traditions. Their focus on seeking consensus to restore social cohesion in the community can be an advantage when seeking mediation on issues that are considered divisive within or between communities and/or other actors. However, the rules used by customary authorities do not usually conform to national and international standards on equality and non-discrimination, which means that marginalised groups such as women, youth, and children – as well as non-community actors such as foreign companies – can be disadvantaged.

- **Administrative agencies (directorates, inspections, and other local statutory authorities):** these can be local branches of national government ministries, institutions, or other bodies set up by law (statute) to work on particular issues. Their mandates may include (environmental) monitoring (for example on soil, water, and noise pollution) as well as hearing and/or investigating complaints in case of non-compliance. Depending on their technical capacities, level of funding, and staff commitment, such authorities can sometimes help investigate certain technical issues, but are often under-resourced and subject to (national-level) political pressure. Therefore, have realistic expectations about what such institutions can do for you.

At the national level

- **Domestic or national courts:** the role of courts is to examine a situation and make a judgement as to whether a law has been breached. Therefore, it is important to know which laws regulate the business sector that the community you are supporting is affected by. For example, an oil and gas company will be primarily regulated by a petroleum law, but if the issue at hand relates to environmental impacts, then environmental laws will be important too.

  Court action can also be used to prevent harm from occurring. For example, communities can submit evidence that a planned coal-fired power plant is likely to cause harm and therefore seek to have it stopped or its technology modified to prevent harm. If, after your research, you determine that you have a strong case, you will still require legal advice and even legal representation. As a CSO supporting community action, you will require to discuss this with the community. It will be useful to establish contacts and networks with legal aid organisations in your country and internationally.[36]

  Advantages of court action: creates a precedent (an example or guide), which can influence future cases of a similar nature and hence act as a deterrent. Where courts award punitive (very high) damages, this can persuade companies to refrain from future behaviour that results in negative impacts. It can also reduce violence by building citizens' confidence in their judicial system, which they may believe to be corrupt and weak. In certain situations, indicating that you are seriously considering court action can bring companies to the negotiation table.

  Disadvantages: court action can be long and expensive due to the filing costs and legal fees; impersonal due to its confrontational nature. In addition, courts have language barriers, in some countries courts are not independent, and in other countries the judges may not be familiar with the areas of law that are relevant to business and human rights cases. Furthermore, implementation of court decisions can take a long time, which often leaves communities with the feeling of a 'hollow win'. In such cases, it is important to strategise on how to ensure implementation: think about whose support you can enlist to help execute the court's decision.

- **Domestic quasi-judicial tribunals:** some jurisdictions have specialised tribunals (e.g. on labour or the environment) with the authority to issue binding resolutions similar to courts, and with the possibility of appeal to a court. Such tribunals may be simpler, faster, and less expensive; they may be able to hear the matter at the site of the complaint. However, campaigning may be required to overcome capacity gaps, lack of political will, and a reluctance to regulate corporate activity.
- **National Human Rights Institutions (NHRIs):** have a mandate to promote and protect human rights, and can receive complaints regarding business-related human rights abuses. Always look at the mandate of your NHRI to check if it has the authority, for example, to investigate human rights abuses, and what types of remedies it can offer, since this differs across NHRIs. For more information, see Part 1, section 2.9.

GOLD MINING ACTIVITIES BY DREDGING SUSPENDED IN GUINEA

Gold exploration activities that involved dredging the Tinkisso River (a tributary of the Niger river) in Guinea using very rudimentary tools obstructed the riverbed. Sand dunes formed at various places on the river, the water was polluted by oil spills, and the vegetation on the banks was destroyed. These changes had negative impacts on the local wildlife: the living areas for hippos were narrowed, manatees disappeared, and fish stocks plummeted, which caused a drastic reduction in local fish consumption, reduced revenues for fishermen, and reduction in the clarity and purity of the water, which affected aquatic life in general.
In 2012, after tensions between fishermen and miners, and in response to complaints to the Ministry of Environment lodged by local community members, the ministry suspended all gold mining activities by dredging in the Tinkisso River. The local authorities and affected community members perceived this general suspension as legitimate.[37]

At the regional level

- **African regional mechanisms:** the African Charter on Human and People's Rights creates two important mechanisms, the African Commission on Human and Peoples' Rights (ACHPR), and the African Court on Human and Peoples' Rights. These bodies focus on the human rights obligations of State parties, so you have to make a clear connection between your case and a government failure to protect against human rights abuses by businesses and clearly show which sections of the treaty have been violated. Be sure to check the eligibility criteria and any other rules for submitting complaints. Moreover, keep in mind that their decisions are limited to how States can better regulate corporations within their jurisdictions; these bodies cannot decide on potential human rights abuses by corporations.

ENDOROIS PEOPLE IN KENYA

The Endorois are an indigenous minority community that lives near Lake Bogoria in Kenya. In 1973 and 1978, several hundreds of Endorois people were evicted from their traditional land, which was gazetted for game reserves and tourism. In 2002, a private company was granted a ruby mining concession on land traditionally used by the community.
An ACHPR decision in 2009 recognised that the Government of Kenya had violated the rights of the Endorois, as recognised in the Kenyan Constitution and the African Charter, including violating their land rights as an indigenous population, regardless of the fact that they did not have a formal land title. The ACHPR observed that 'for all development or investment project that will have a significant impact on the Endorois territory, the State has the duty not only to consult the community, but also to obtain their free, prior and informed consent, according to their customs and traditions'. These initiatives led to the termination of ruby exploitation.[38]

At the international level

- **Home country national courts:** filing a court case in the company's home country is often difficult because such courts often claim to have no power or authority to hear cases that arose elsewhere. In addition to legal difficulties, there are also practical difficulties such as distance, language, and high costs. However, such cases attract a lot of attention, and can avoid politically compromised or corrupt local institutions. If you can find the appropriate legal and organisational support, such cases do increase pressure on a company to redress the issue more quickly in order to safeguard its international reputation.

BODO COMMUNITY AND SHELL IN OGONILAND, NIGERIA

IIn 2008, the Bodo community in Ogoniland, Nigeria experienced two major oil spills; crude oil spilled into the area's wetlands and creeks for several weeks before they were stopped. The spills caused catastrophic damage to the area's sensitive mangrove swamps, destroying much of the fauna and flora and devastating local community livelihoods. The Bodo community, like many other communities in the Niger Delta, had been unable to secure adequate compensation through the Nigerian court system. More than two years after the first spill, a Nigerian NGO approached a UK law firm that specialised in environmental and human rights and corporate accountability.
In April 2011, the Bodo community filed a lawsuit before the High Court in the UK. Four months later, the Shell Petroleum Development Company (SPDC) formally accepted liability for both spills in the UK's jurisdiction. Negotiations then took place between the UK law firm and SPDC representatives: the law firm sought compensation for members of the Bodo community and a guarantee that Shell would clean up the devastated environment. However, negotiations broke down and the law firm subsequently filed papers at the High Court in London in March 2012. Finally, in 2015 and four months before the case was due to go to trial in the UK, the law firm reached a £55 million (USD 84 million) settlement with Shell on behalf of the Bodo community – £35m for the 15,600 directly impacted Bodo farmers, fishermen and women, and £20m to be spent on projects benefiting the community as a whole. Chapter 7 discusses the full case study.

- **National Contact Points (NCPs):** National Contact Points (NCPs): under the Organisation for Economic Co-operation and Development's (OECD) Guidelines for Multinational Enterprises, all countries that are members of the OECD or adhere to its standards and guidelines are required to have NCPs. Therefore, most NCPs are located in Europe and America, where the bulk of OECD members are. A complaint can be filed with a NCP if the company is headquartered in an OECD country.

- NCPs facilitate access to consensual and non-adversarial procedures such as conciliation or mediation. They are required to issue a final statement upon concluding the specific instance processes. NCPs from different countries have varying levels of transparency and independence. Moreover, cases filed with NCPs generally have a low chance of success, which means that while they are a possible avenue for remedy, their efficacy is uncertain and the level of satisfaction with outcomes is low.[39]

  OECD Watch, a global network of NGOs that promotes corporate accountability through the OECD Guidelines, has developed detailed guidance to guide CSOs on how to file complaints (see Practical Tool 16).[40]

PRACTICAL TOOL 16: HOW TO FILE A COMPLAINT WITH AN OECD NCP

Annex III contains further instructions for filing a complaint with an OECD NCP.

- OECD, 'Implementing the OECD Guidelines for Multinational Enterprises: The National Contact Points from 2000 to 2015' (2016).

International human rights treaty body mechanisms

These mechanisms are linked to various UN human rights treaties as well the International Labour Organization (ILO). Like regional human rights-based mechanisms, they focus on State obligations but can address the failure of States to protect from human rights abuses by third parties.

There are various UN-based human rights mechanisms that you could use:

- **UN treaty body mechanisms:** there are nine core international human rights treaties. Each provides for the establishment of a treaty body (committee) of experts to monitor implementation of the treaty provisions by its State parties. Under specific circumstances these committees may receive individual complaints. A CSO, with written consent from the complainant, may bring claims provided they follow the required procedures. Through the treaty monitoring and State reporting system, the committee can directly engage with the State and make recommendations for State action to resolve the issue.

- **Thematic experts or special rapporteurs:** these are independent experts appointed to advise and report on a specific theme or country. Examples are the Special Rapporteur on the Right to Food, the situation of human rights in Eritrea, and the UN Working Group on the issue of human rights and transnational corporations and other business enterprises. These may not resolve a specific issue or case but using the special rapporteur mandate can highlight the issue to increase international pressure.

- The United Nations Office of the High Commissioner for Human Rights (OHCHR) has comprehensive information on these bodies: https://www.ohchr.org/

- **ILO Freedom of Association Procedure:** this procedure is established for the ILO Conventions 87 and 98 on freedom of association and collective bargaining and it applies to all its members States. Complaints may be brought by employers' or workers' bodies: where a violation is established, it issues recommendations to the State on how the situation could be remedied; subsequently governments are requested to report on the implementation of these recommendations to the Committee.

- **IFI independent accountability mechanisms:** these mechanisms receive and address complaints related to projects financed by IFIs. Examples include the IFC's Compliance Advisor Ombudsman (CAO), the Multilateral Investment Guarantee Agency (MIGA), the Project Complaint Mechanism of the European Bank for Reconstruction and Development, the Accountability Mechanism of the Asian Development Bank, the Independent Review Mechanism of the African Development Bank, and the Independent Complaints Mechanism that is shared between the Dutch, French and German development banks (FMO, Proparco, and DEG, respectively). These mechanisms can facilitate mediation with a company, and can motivate the development finance institution to take action to prevent further abuse or even provide remedy for damage already suffered.

PRACTICAL TOOL 17: MODEL LETTER OF COMPLAINT TO THE CAO

Annex II contains the model letter of complaint to the Compliance Advisor Ombudsman (CAO), the accountability mechanism of the International Finance Corporation (IFC).

- Accountability Counsel, *Accountability Resource Guide* (8th ed.) contains information about tools for redressing human rights and environmental violations by IFIs, export promotion agencies, and private corporate actors.
  The Coalition for Human Rights in Development maintains a list of tools and guides for using development finance accountability mechanisms: https://rightsindevelopment.org/resource/tools-guides/

- **Industry and multistakeholder initiatives or certification schemes:** these focus on the industry in which the company operates. These mechanisms often include other stakeholders (including CSOs) to develop standards as well as suitable grievance mechanisms to deal with breaches of those standards. They mostly use the threat of expulsion from an industry association or 'naming and shaming' in front of peer companies to enforce compliance with agreed-on standards.[41] Examples are the Fair Labour Association and the Roundtable on Sustainable Palm Oil.

REMEMBER
When deciding which avenue(s) to pursue, you will need to consider many factors. How serious or severe is the issue at hand? How quickly do you need to get results? What resources are available to help you understand the advantages and disadvantages of the avenues? Resources to access them? What is your experience using specific mechanisms? What is the likelihood of success? What sort of remedy are complainants aiming to get – for example, do they want financial compensation, an apology, or things put right? What is the effectiveness of the recourse mechanism?

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CRITERIA FOR EFFECTIVENESS OF DIFFERENT RECOURSE MECHANISMS

The UNGPs outline the following criteria to assess the effectiveness of different recourse mechanisms:[42]

UNGP 31: Effectiveness Criteria for Non-Judicial Grievance Mechanisms

- **Legitimacy**
  Does the mechanism inspire trust from the stakeholder groups for whose use they are intended, and is it accountable for the fair conduct of grievance processes?
- **Accessibility**
  Is the mechanism known to all relevant stakeholder groups, and is adequate assistance provided for those who may face particular barriers to access?
- **Predictability**
  Is there a clear and known procedure with an indicative time frame for each stage, and clarity on the types of processes and outcomes available and the means of monitoring implementation?
- **Equitability**
  Do aggrieved parties have reasonable access to the sources of information, advice, and expertise necessary to engage in a grievance process on fair, informed, and respectful terms?
- **Transparency**
  Are parties to a grievance informed about its progress and provided with sufficient information about the mechanism's performance to build confidence in its effectiveness and serve any public interest at stake?
- **Rights Compatibility**
  Do the outcomes and remedies align with internationally recognised human rights?
- **Lessons learnt**
  Does the mechanism identify lessons for improvement and for preventing future grievances and harm?

- International Federation for Human Rights, 'Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms' (2016).
- Natural Justice, 'Seeking Justice at the International Level: A Short Guide to Regional and International Grievance and Advocacy Mechanisms for Indigenous Peoples and Local Communities' (2014).
- Centre for Research on Multinational Corporations, 'Human Rights & Grievance Mechanisms' https://www.grievancemechanisms.org

6.3. In pursuit of remedy: Practical advice

Know the law

Know the laws and any other regulatory framework on which you intend to base your claim. For national State-based judicial and non-judicial grievance mechanisms, familiarise yourself with the Constitution and the primary legal framework that regulates the project such as mining law, oil and gas law, etc. Study them well and check if the company has committed any legal or constitutional breaches. This could be of a procedural (e.g. omission on the part of the company in obtaining licences or consulting with the community) or substantive nature (e.g. taking and using land without fair compensation). Also examine other related laws, for example on water, the environment, etc., and see if they have been breached in any way. Ask yourself: what do you do once you have established that there is an abuse of rights or a breach of law and have gathered all the evidence? Have any agreements been signed with the company which have binding promises that have been breached? Similarly, look at the relevant international regulatory framework to determine if the alleged behaviour constitutes a breach; for example before approaching the NCP, check for any breaches of OECD Guidelines.

Seek legal assistance

If you do not have this capacity within your organisation, then get legal assistance from a private legal practitioner or another organisation. If you hire a lawyer, it is best to choose someone who has experience handling similar cases and who has worked with communities before. Some CSOs offer legal aid; you may wish to approach them or your local bar association if they have a pro bono scheme (*see also Annex IV – Legal aid and human rights resource organisations*). Preparing a legal brief involves a considerable amount of work, so your lawyer will need to be motivated and committed. Remember to discuss the choice of lawyer with the community and to introduce him/her (or the legal team) to the community – particularly to community leaders.

Working with lawyers

One of your most important tasks will be facilitating communication and contact between the lawyer and the community. It is important that the community is well briefed at all times and that they feel they are in charge of the matter.

Lawyers should be there to serve the community – to help it maintain control of the relationship, expect regular updates, insist that they (and not the lawyers) make the decisions, and seek a second opinion if they are not comfortable with the advice they have received.

It is good for the community to know who is standing with them. Creating that rapport is also important in later stages when guiding witnesses during a trial. It can be helpful to conclude a representation agreement between a community and the lawyer(s) representing or advising them, which includes details such as how frequently the community will receive updates, what (if any) decisions lawyers are allowed to make on its behalf, and when they must consult the community.

Work through the information you have with your lawyer. This will form the basis of any legal proceedings to be filed in court. Together with your lawyer, identify as many issues as possible to bring to the court with specific requests for remedy. However, make sure that you have evidence to support each of your issues. Your lawyer may require additional information before bringing the case to court, and will need help identifying and preparing potential witnesses.

Depending on the outcome of the matter in the first instance, the community may wish to appeal. Your lawyer will help you through the appeal process and in any other subsequent appeal that you might require.

Meeting the admissibility criteria

Check the complaint admissibility requirements of the mechanism that you intend to use. Formal grievance mechanisms such as national courts have established criteria that must be satisfied in order for the grievance to be examined on its merits. Such criteria may include: the complaint must be made by an individual or group of individuals (in some cases it can be made on their behalf by another body with a clear mandate from complainants); complaints must be made within certain time limits; the claim must be sufficiently substantiated; a similar claim must not be pending before another mechanism; international and regional human rights mechanisms require the exhaustion of local remedies first, etc.

- For an easy to understand overview of the UN human rights treaty system and its admissibility criteria, see www.bayefsky.com
- International Federation for Human Rights, 'Admissibility of Complaints before the African Court: A Practical Guide' (2016).
- For the communications procedure for the African Commission on Human and People Rights, see http://www.achpr.org/communications/procedure/

Format of complaint
Some mechanisms have specific formats and procedures that must be followed to file a complaint; these vary quite a bit. Some mechanisms are strict about the procedures being followed, while most international mechanisms try to make it easier for unrepresented parties to have their complaints considered.
Annexes II and III include two example complaint formats from the CAO of IFC/MIGA and the NCP of the OECD. Where there are no prescribed formats, there are some common elements that your complaint should include:

- What happened?
- Where did it happen?
- When did it happen?
- Who was involved?
- What is the impact?
- What action do you wish the company to take?
- Within what time should the action be taken?
- What is your name and how can people reach you (contact details)?
- What evidence do you have of the impact, preferably a photo or video (with a time / date stamp), or a small drawing explaining the situation.
- If possible, include the names and contact details of any witnesses who can support your complaint, provided this can be done safely and does not put people at risk of reprisal.

Clearly state the remedy that you seek
It is also important to state what you want done to right the wrong (i.e. what specific remedy are you asking for) and to consider whether your choice of mechanism has the authority to grant it. Your lawyer can help you frame the remedies you are seeking. So if you are seeking financial compensation, quantify it. If you want another form of compensation such as replacement land, be specific. Always think beyond compensation to additional remedies that push towards sustainable changes in company behaviour.

Retain a copy of your complaint
If possible, always send your complaint letter and other relevant documentation by registered mail so that you have evidence that it was sent. Remember to keep a copy of the letter/documentation and note the date and any other relevant details of when and to whom you sent it.

Media strategy
Develop a media strategy, but be aware that there are limitations. For example, for matters that are before a court of law, there are rules about what can be discussed publicly; if broken, this can lead to legal action against you.

Also, sharing details of a petition to the government with the media before giving the State an opportunity to resolve the matter is usually not appreciated by officials and could damage your case.

Witnesses
Secure protection for any of your witnesses who might be threatened. Some countries have independent State agencies for witness protection, which you could use. Otherwise you will need to organise it yourself. In very serious cases, you may have to call on your international partners.

Attending and following proceedings
Where possible, organise community members to attend court or other proceedings related to the complaint. This boosts ownership, exposes them to court or other procedures, and provides an opportunity for them to see how the company defends itself. Having community members in attendance might also present an opportunity to engage with the media, based on your media strategy.

Establish alliances
Create alliances: start local, then go global. Business and human rights issues are challenging to pursue in court; creating alliances with those who have experience is beneficial for learning and exchanging ideas. Moreover, such partners may help you with specific inputs such as research, sourcing expert witnesses, fundraising to finance your case, or even organising witness protection. Moreover, international partners may also offer you a platform to help bring the matter to the international stage, which can increase pressure on the company.

7. Learning from others: Business and human rights case studies

7.1. Different cases, different actions

There are many examples of local communities taking action to prevent or respond to human rights impacts resulting from business activities in their area. This chapter presents three real-life cases in Africa, each of which highlights a different type of strategy used by CSOs and local community members in response to a particular human rights impact:

- **Negotiation**: resolving a labour dispute between local workers and an international oil company in East Africa;
- **Campaigning**: broad-based campaign by a local coalition of CSOs focusing on human and environmental rights issues in the context of a large-scale infrastructure project in Kenya; and
- ***Legal action***: court case by the Bodo community related to oil spills by local Shell subsidiary SPDC in Ogoniland, Niger Delta (Nigeria).

After a brief introduction of the context, each case describes the strategy used by the affected communities and their CSO partners, highlights the key actions taken, and concludes with the main results achieved. Each of the three cases illustrates what a community action could look like and will hopefully provide useful ideas and lessons learnt. They are not a template for your own cases, but some of the lessons might be relevant and possible to adapt to your particular context.

The final section of this chapter we invite you to review the 'step diagram' that summarises all the steps discussed in this handbook. It is designed to prepare you and the community you're working with to discuss and develop a more detailed, tailor-made strategy for your situation.

7.2. Negotiation: Local workers and an international oil company in East Africa

Context

Since the start of its activities, an oil exploration company operating in East Africa had a tense relationship with the host community. Pressure for jobs and other benefits such as local contracts was high as the community sought to capitalise on the company's arrival into the very poor and underdeveloped region. Despite community engagement efforts backstopped by local

community liaison staff, roadblocks and protests were common as the community felt that those were the only ways to get the company to address their concerns [and expectations]. A year after the company announced its successful exploration in the area, the local community staged a large protest. During the protest, one of the company's camps was overrun, company property was damaged, and staff had to be evacuated; the company's activities were eventually suspended.

Engagement strategy and actions

During the shutdown, which lasted a little over two months, the company and community were forced to come together to resolve their differences, including those related to jobs for local residents, and to chart a way forward for future engagement. This negotiation process involved political, administrative, and traditional leaders from the community, senior-level company representatives, and national and local government officials. The discussions culminated in an agreement that detailed how the present conflict and future grievances on key issues would be resolved; all parties signed the agreement.

Learning from this incident, the company reviewed, redesigned, and strengthened its internal grievance mechanism process. In addition, it allocated more staff and finances to grievance management. The new team set out to raise awareness, internally amongst company and contracted staff and externally to the host community and other interested stakeholders. They used a variety of approaches, and took into consideration the key barriers to engagement such as low literacy levels and cultural barriers. The aim was to raise awareness of the mechanism's existence, educate people on how it works, and encourage them to use it – and to discourage protests and roadblocks in order to minimise disruptions to the company's operations.

Putting the system to the test

A year later, the global oil industry downturn forced the company to significantly scale down its operations. This led to many redundancies, which at the time only affected the staff employed by the subcontractors. All affected workers were notified in writing, including information about their entitlements and their right to raise any queries on any matter related to the redundancy through the individual subcontractor's grievance mechanism or that of the operating company. The key issue raised by many of those affected by the redundancy was related to their termination packages; these queries were recorded as grievances under the company's grievance mechanism.

A special committee was set up to handle these grievances through negotiations with the complainants. The field grievance committee was expanded to include relevant functions such as human resources, legal, and other external

stakeholders such as labour officials. It comprised representatives from the operating company, including the grievance management team, relevant subcontractor company, and national and local government representatives including labour officers. Political leaders were not included but could join at the invitation of the complainants, which rarely happened. The mechanism utilised a dialogue approach; persons with registered grievances could bring another party into the dialogue if they wanted to. Although the dialogue took place in a public space, the negotiations were conducted behind closed doors due to the confidential nature of employment matters (focusing on redundancy packages). Complainants had the option to speak first in order to present their grievance verbally even though this was already recorded. According to the company, the mechanism was used to resolve over 100 complaints. A close-out document was created for each case, and the operating company followed up to ensure implementation of the agreement reached.

As part of the dialogue process, the complainants were provided with the relevant information, including a copy of the agreement reached after the suspension of operations the previous year. That agreement was relevant to the current redundancy negotiations as it included clauses on labour matters. It was thus an important basis for the redundancy negotiations; the fact that the operating company and political and community leaders had jointly drafted the agreement gave the community confidence that the process took their views into account. All matters were resolved peacefully, unlike in the past when the mere announcement of redundancies would have been greeted with protests and demonstrations. Moreover, by electing to resolve their grievances peacefully, the former workers left employment with a good record, meaning they are re-employable.

Key success factors

- The system was anchored in the engagement and community relations functions within the company; it had a mandate to maintain relations with the community and relevant stakeholders through outreach, sensitisation, and targeted engagements.
- The presence of a grievance officer, who was the focal point for receiving complaints, gave the community trust in the system and demonstrated that the company was finally taking meaningful steps to address complaints.
- Issuing acknowledgment forms when local residents registered a grievance meant that the company was willing to be held accountable, which boosted community members' confidence in the process.
- The mechanism was backed by senior management, and more importantly, had the full support of field management, which took the final decisions on the close-out of grievances.

Lessons

- Communities and companies should have broad framework agreements (such as a memorandum of understanding or terms of engagement) on the issues that are important to the community. These will serve as a basis for negotiations and are an important reference point when grievances arise.
- Such agreements can also be used as accountability tools to regularly monitor company actions and decisions on matters that are important to communities.

7.3. Campaigning: Save Lamu in Kenya[43]

Context

Since Kenya's independence, land in Lamu, an archipelago off Kenya's north coast, has been categorised as belonging to the State. While under Kenya's new Constitution this land is to be re-categorised as public or community land, a lack of political will and problematic local elites mean that the land rights of local indigenous communities are not secure. Land prices have risen exponentially since the introduction of the Lamu Port-South Sudan-Ethiopia Transport (LAPSSET) corridor project, Kenya's largest infrastructure project, which includes a 32-berth port, a crude oil and petroleum pipeline, an international airport, railway line, highways, and a coal-fired power plant.

The 'Save Lamu' coalition emerged from a community initiative to unite local groups and individual residents of Lamu County in a campaign to save the Lamu archipelago. Registered as a community-based organisation since 2011, Save Lamu consists of representatives of community-based organisations from indigenous communities that are (or will be) affected by the LAPSSET project. The coalition represents over 30 member organisations that work together on human and environmental rights issues related to LAPSSET and other extractive projects to document community concerns about these developments, discuss and explore possible impacts and opportunities, and find ways to mitigate the negative impacts.

Engagement strategy and key actions

Since the coalition started engaging to respond to the LAPSSET project in 2010, Save Lamu has used a number of mutually reinforcing strategies, including a community protocol, several public campaigns, and legal action in Kenya's High Court.

In 2010, Save Lamu began an ambitious process, with support from Natural Justice – Lawyers for the Community and Environment (an NGO based in South Africa), to support 45 villages with different cultural and ethnic backgrounds on the Lamu archipelago to develop a Biocultural Community Protocol (BCP). The objective was to create a single, all-encompassing advocacy document representing a shared vision, which articulated the needs and rights of the whole Lamu community that will potentially be affected by the LAPSSET project. The document called for access to sufficient information, adequate community consultation (and, where relevant, consent), and an independent ESIA. The BCP has allowed the diverse communities to celebrate their similarities and common aims, instead of focussing on their differences. A first draft of the BCP was completed in 2014.

In 2012, during the BCP development process, the LAPSSET project was officially launched at the proposed site of Lamu Port: communities were evicted without consultation or compensation, and construction began prior to approval of an Environmental Impact Assessment (EIA). In early 2013, Save Lamu found out the project developer had submitted an EIA to the environmental agency for public feedback without allowing sufficient time for public comment. In response, two days before the end of the public comment period, Save Lamu launched an online campaign with local and international petitions; the coalition collected hundreds of signatures and presented them to government departments and Members of Parliament. Thanks to the campaign's pressure, the period to comment on the EIA was extended. Save Lamu used the extended period to consult community members and allies in order to review and comment on the EIA. They found that the EIA considered only a narrow slice of the port project, did not provide adequate mitigation measures, failed to disclose the resettlement action plan, and had no Strategic Environmental Assessment (SEA) for the whole LAPSSET project.

Lamu has also been separately proposed as the site of East Africa's first coal-fired power plant. CSOs in Kenya have formed a campaign against coal (the 'deCoalonize' campaign), made up of local, national, and international allies, as well as environmental and social justice advocates, including Save Lamu. The deCoalonize campaign has called on a wide range of investors to pull out of the Kenya coal plant. It has mobilised communities, developed videos and information materials, organised protests, and submitted petitions to the president and Parliament to suspend the proposed coal mining project.

Lamu residents recently won a court victory – in a case brought by the Katiba Institute on their behalf, with support from the Environmental Law Alliance Worldwide – for the government's failure to carry out a Strategic Environmental Assessment (SEA) for the LAPSSET project as a whole. The government was ordered to pay more than USD 17 million to 4,600 fishermen for damages caused by the LAPSSET project. The High Court found that the project developer 'failed to carry out a Strategic Environmental Assessment (SEA) before embarking on the individual components of the LAPSSET Project as they were duty-bound to do'. The judgment remanded the EIA licence to the environmental agency for reconsideration (but stopped short of invalidating it during the review). The court further found violations of the right to information and the need for effective public participation, and ordered the government to 'draw up a Management Plan to preserve Lamu Island as a UNESCO World Heritage Site'.

Outcome and conclusions

The Lamu case shows that developing the BCP provided the community-based organisation with a means of mobilizing and building the capacity of a large number of communities under a common vision. The community protocol process also allowed the coalition to share key information about the LAPSSET project that was otherwise unknown to community members, and to consult with the many communities on their desired benefits and concerns. Importantly, it allowed them to engage communities on all related advocacy work, including several campaigns on the EIA and against the coal plant, which resulted in the victory at the High Court.

The wide range of advocacy actions used by Save Lamu, and the many national and international allies they have been working with, demonstrate the need for a constantly evolving strategy when facing a mega-project to hold decision-makers accountable and demand that the LAPSSET project only move forward when community and environmental rights are respected.

7.4. Legal action: Bodo community and Shell in Ogoniland, Nigeria[44]

Context

The Niger Delta is one of the most oil-polluted areas in the world. According to Nigeria's National Oil Spill Detection and Response Agency (NOSDRA), more than 7,000 oil spills have been reported in the area since 2006.[45] The spills have been caused by corrosion, equipment failure, operational/maintenance error, and sabotage/theft. The amount of crude oil spilt, and the oil companies' failure to properly clean it up, has caused enormous environmental and socioeconomic damage throughout the area.

In 2008, the Bodo community in Ogoniland experienced two major spills; crude oil spilled into the area's wetlands and creeks for several weeks before it was stopped. The spills caused catastrophic damage to the area's sensitive mangrove swamps and destroyed much of the fauna and flora. In addition, the spills ruined the farming and fishing livelihoods of the approximately 69,000 inhabitants of Bodo town, and the lack of clean drinking water put their health at serious risk. A JIV carried out by NOSDRA, Bodo community representatives, and SPDC – the Nigerian subsidiary of Shell International – found that the spills were caused by equipment failure (due to natural corrosion of old pipelines). However, despite official assessment that the spills were caused by equipment failure, the company failed to clean up the spills and rehabilitate the area; the affected people did not receive timely, adequate compensation.

Engagement strategy and key actions

After the spills occurred, the Bodo community made several requests under Nigeria's Freedom of Information Act, but struggled to get copies of the signed JIV reports and maps of the area showing the impact of the oil pollution from the oil company and relevant government agencies. Meanwhile, the Centre for Environment, Human Rights and Development (CEHRD), a local NGO, had investigated both of the spills shortly after they occurred. Its environmental specialists investigated the first oil spill in late September 2008 and published a report the following month. Soon afterwards, CEHRD informed the Rivers State Ministry of Environment about the spill and issued a press statement. In early 2009, the Bodo community tried to secure compensation and sought legal advice from a Nigerian lawyer, which proved unsuccessful. SPDC (Shell) then offered the community £4,000 – an unreasonable amount, which the community rejected.

In June 2009, Amnesty International published a major report on how oil industry pollution and environmental damage had affected the human rights of people in the Niger Delta. In September 2009, CEHRD commissioned a scientific post-impact assessment of Bodo Creek, and campaigned for an adequate clean-up and compensation. Importantly, its assessment was able to compare the situation before and after the oil spill as a result of earlier detailed research in the area.

As the Bodo community, like many other communities in the Niger Delta, had been unable to secure adequate compensation through the Nigerian court system, more than two years after the first spill CEHRD presented its case to Leigh Day, a UK law firm that specialises in environmental and human rights law.

In April 2011, the Bodo community filed a lawsuit before the High Court in the UK. Four months later, Shell (SPDC) formally accepted liability for both spills in the UK's jurisdiction. Negotiations then took place between the UK law firm and representatives of SPDC; the law firm sought compensation for members of the Bodo community and a guarantee that Shell would clean up the devastated environment. However, negotiations broke down and the law firm subsequently filed papers at the High Court in London in March 2012.

Outcome and conclusions

In September 2013, Shell offered to settle the claims during negotiations in Nigeria, but members of the Bodo community unanimously rejected the offer. Finally, in 2015 and four months before the case was due to go to trial in the UK, the law firm reached a £55 million (US$84 million) settlement with Shell on behalf of the Bodo community. This amount was split into £35m for the

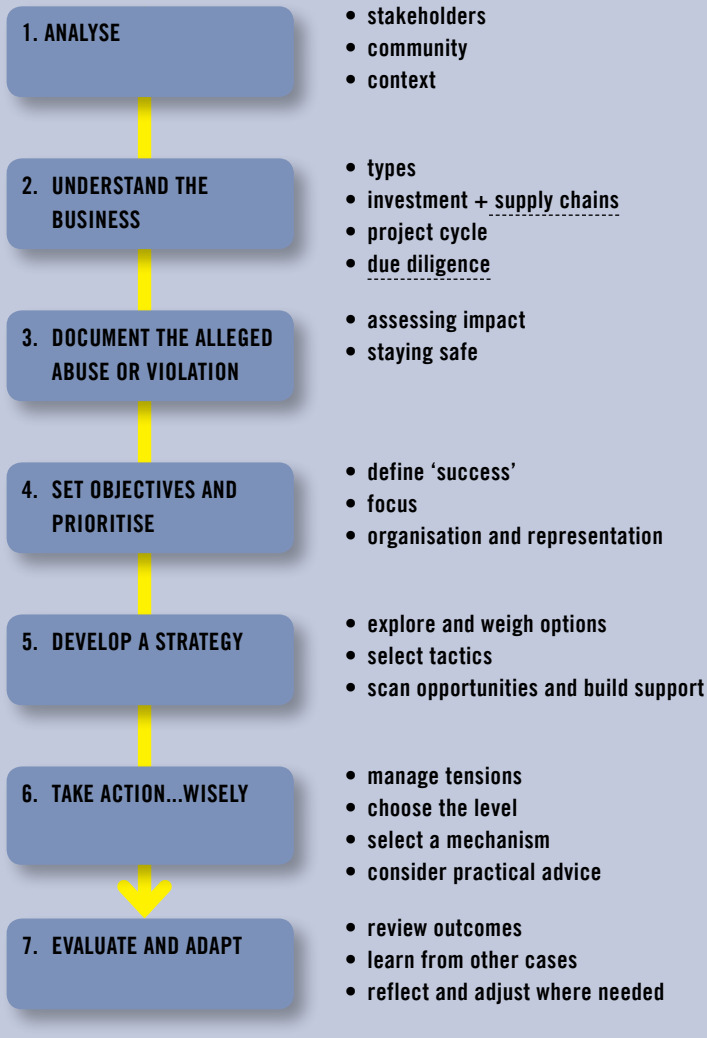
15,600 directly impacted Bodo farmers, fishermen and women and £20m to be spent on projects benefiting the community as a whole. According to a UK media article, 'it is thought to be the largest payout to any African community following environmental damage and the first time that compensation for an oil spill has been paid directly to affected individuals rather than to local chiefs'.[46]

The Bodo case shows that, even in extreme circumstances, it is possible for a project-affected local community to take a large, powerful company to court and receive compensation (even though this case was eventually settled out of court). It also shows that court action can take a very long time, is expensive (unless you can find the appropriate legal advice on a 'no cure no pay' basis), and requires clear evidence of wrongdoing based on systematically collected data. Moreover, whereas court action resulted in a successful payment of financial compensation, it did not immediately solve the problem of environmental pollution and community development. At the time of writing (April–August 2018), the oil spill clean-up in Bodo community is still ongoing.

7.5. Now over to you…

The above-mentioned cases as well as the previous chapters will hopefully have given you several ideas about how to take action to prevent and/or remedy human rights impacts in your area. The next step is to think about and develop your own set of actions, based on your specific context. Figure 10 summarises the key steps presented in this handbook, which can help you develop a coherent action strategy:

FIGURE 10: STEPS FOR YOUR ACTION STRATEGY



8. Evaluate and Adapt

8.1. Why? Objectives and structure of this chapter

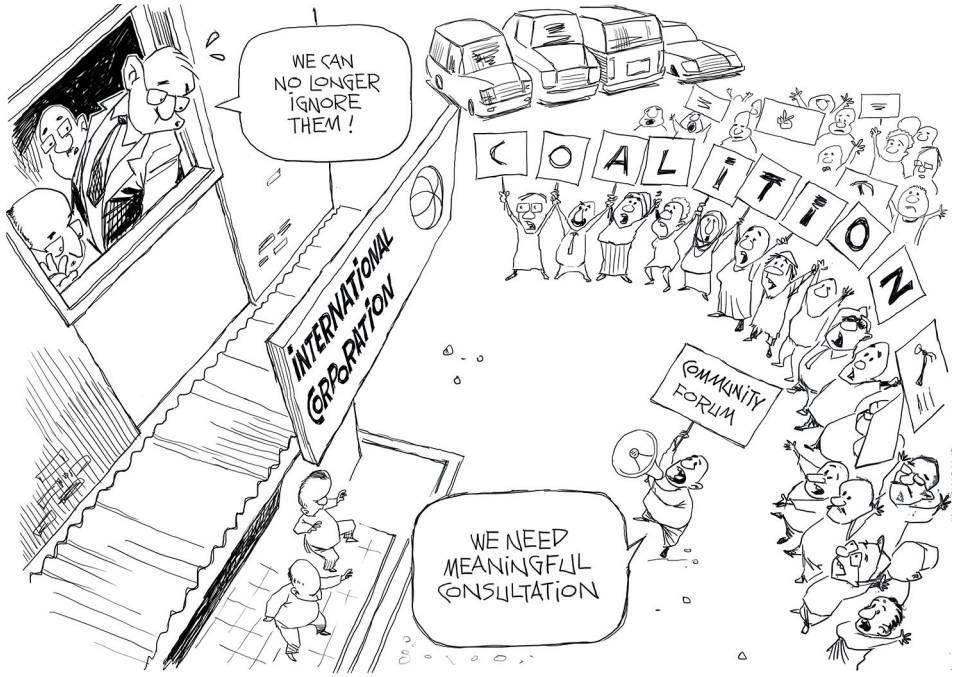
Reflecting on what you have achieved, and what impact your various strategies and tactics have had, is an important part of deciding whether additional work is needed. It will also provide valuable lessons for your organisation and others facing similar challenges.

8.2. Reviewing outcomes

Assess your outcomes in terms of your/the community's interests. Practical Tool 18 suggests 'success indicators' that can help you identify what you have achieved in multiple strategies and parts of the process.

PRACTICAL TOOL 18: EVALUATING YOUR STRATEGY

Preparation steps you used	Possible success indicators
Community organisation	• The community is speaking with one voice (even if sub-groups have different desires or expectations). • Marginalised groups (women, people with disabilities, etc.) effectively contribute to community decisions about the issue. • There are regular, inclusive and accountable community meetings at which information is shared openly and community leaders / representatives report back. • There is transparent information sharing. • The community is in contact with other communities and CSOs that provide support.
Understanding the company	• You have information about the nature, scope, and scale of the project. • You and the community know the project life cycle and the project's current stage in that cycle. • You have information about the company, its structure, its headquarters, and its human rights record at various project sites. • You are familiar with the company's grievance mechanism. • You have a map of the project's investment chain and key pressure points.
Understanding the project setting	• You have an ongoing analysis of the stakeholders involved, their interests, and levels of influence. • You understand the local, national, and international legal and policy framework, including relevant company standards and policies. • You have an assessment of the project's human rights risks, considering a full range of impacts, and can assess these on different dimensions, including significance, scale, remediability, and vulnerability.
Action you used	**Possible success indicators**
Negotiation	• You were able to control the pace of negotiations. • The community did not sign any agreements until they had time to reflect and consult with legal advice, if desired. • Community interests were met, even if not in the way that was originally envisioned. • A new forward-looking mechanism has been set up to facilitate future negotiations.
Campaign	• You were able to get public attention for your issue/cause and the community. • The company and government no longer ignore you and are now sharing information. • The company and government have invited you for talks. • Community members were directly involved in campaign activities.
Legal action	• The case was successfully filed in a court of law. • Community witnesses/victims had a chance to speak in front of a tribunal and present their evidence. • The case survived the initial stages of the proceedings. • The company offered a settlement.



8.3. Self-evaluation

The following set of questions can help you evaluate your own work:

- What do you think made other groups (organisations, media, powerful individuals, etc.) join your cause? For example, was it a powerful story, upcoming election, a large protest that demonstrated how many people were affected by the business project, a compelling legal argument, or social media?
- When did you take an adversarial approach that was not effective? Do you think a collaborative approach might have yielded a better response?
- At what points did you take a collaborative approach that was not effective? Do you think an adversarial approach might have yielded a better response?
- What skills did you share with the community that will help them in other challenges in the future?
- Are community members more knowledgeable now about their rights and how to claim them?

8.4. Concluding remarks

Ensuring that businesses respect human rights and contribute to sustainable community development is not easy, but it is possible as long as actions are carefully pursued. Experience has shown that waiting until something happens (or doing nothing) causes harm, and that conflict almost always comes at great social, environmental, and economic costs.

This handbook has offered practical suggestions for CSOs, human rights defenders, and other community rights advocates on the sorts of actions they can take to support communities in different scenarios, and how best to organise themselves. CSOs can play an important role in supporting a community to seek remedy for human rights violations, fostering constructive dialogue with governments and companies to prevent harm, and maximising the positive impacts of businesses.

Annexes

Annex I: Checklist to document corporate human rights impacts

This checklist was developed by the International Network for Economic Social and Cultural Rights and the Business and Human Rights Resource Centre. It is designed to help affected communities efficiently document the corporate-related human rights impacts they are experiencing. The checklist is available at: https://www.business-humanrights.org/en/checklist-documenting-corporate-human-rights-impacts.

Security notice: Only answer the questions that you feel safe or able to do so, and that will not pose a risk to others.

Name: [If you wish to provide it]

Organisation: [If you wish to provide it]

Affiliation to the incident or situation: [If you wish to provide it]

The idea of the checklist questions below is that the answers will be public; if there are any answers that you do not wish to be made public, please indicate. Questions 1-3 are sufficient for a local community to conduct initial documentation of an incident or situation. Supporting organisations may wish to also complete questions 4-6.

1. **General details about the incident or on-going situation**
   Note: This could be a single incident, a series of incidents, an on-going situation(s) or a combination of these.
   1.1. *Nature of the incident or situation:* Describe what happened, or what is still happening (if an ongoing situation).
   1.2. *Timeframe:* When did this happen, or when did it begin (if an ongoing situation)?
   1.3. *Location:* Where did this occur / or where is it occurring (if an on-going situation), e.g. name of village, town, country, significant landmarks.
   1.4. *People affected:* How many people are affected? How many people could potentially be affected? Tell a bit about the people affected (e.g. characteristics of the community, or, if an individual, relevant history).

2. Actors involved

2.1. *Business:* Name of the company or companies involved in this incident or on-going situation, and nature of their involvement, if known.

2.2. *Government:* Were / are local or national government officials or security forces involved as well? If so, what specific actions or role did they play, if known?

2.3. *Others:* If you are aware of any other actors involved in this incident or situation? Please describe, for example, foreign aid agencies, international banks, etc.

3. Current and potential threats or danger

3.1. Are there any *threats or dangers* to you, to other stakeholders, or to any advocates who are working on behalf of those who have been harmed? Please describe the nature of these threats.

3.2. Is there any concern that there may be *additional harm* in the imminent future?

4. Desired outcomes

4.1. *Aim:* What outcome are you hoping to achieve, through documentation followed by further steps that are taken?

4.2. *Obstacles:* What are the main obstacles or barriers to achieving this aim?

5. Existing documentation

5.1. Have any *written reports or visual material* been produced or published about the incident or ongoing situation? [please include hyperlinks if possible]

6. Previous steps and communication

6.1. *Communication with business and government:* Have you already communicated with the company or government about this situation, and if so, what was the response?

6.2. *Communication with outside groups:* Have you communicated about the incident with any additional outside individuals or groups? If so, whom and what was the response?

6.3. *Actions (including legal):* Has any action already been taken to address this situation, or is any action underway or planned? If so, please explain what was done, any obstacles encountered, and any outcomes so far. (Examples could include legal action, community organisation, media outreach or others.)

Annex II: Model Letter of Complaint to the CAO

Office of the Compliance Advisor Ombudsman
International Finance Corporation
2121 Pennsylvania Avenue NW
Washington, DC 20433 USA
Tel: + 1 202-458-1973
Fax: +1 202-522-7400
e-mail: cao-compliance@ifc.org

I/we, _____ ,
lodge a complaint concerning the _____ project,
located in _____.
This complaint is made on behalf of _____
_____(ignore if not applicable).

I/we live in the area known as _____
(show on an attached map if possible). I/we can be contacted through the following address, telephone and fax numbers, and e-mail:

Street address: _____
Mailing address (if different from street address): _____
Country: _____ Postal code: _____
Telephone: _____
Fax: _____
e-mail: _____

I/we do not wish our identity to be disclosed (ignore if not applicable).

I/we have been, or are likely to be affected by environmental or social impacts of the project in the following way(s): _____
_____

If possible, please provide the following information:

- A description of the name, location, and nature of the project (provide a map, if possible).
- A description of the actions taken by me/us to try to resolve these issues (include dates or time frame, if possible).
- A list of other person(s) contacted by me/us in an attempt to resolve these issues (attach copies of correspondence, if possible).
- Any other relevant facts to support this complaint.

In addition, please answer the following question:

- I/we would like to see this complaint resolved in the following way: (CAO cannot guarantee to help the complainant achieve this result, but this information will help focus on problem-solving approaches.)

Attach copies of any relevant documents and other material.

Note:
CAO will keep the identity of complainant confidential if requested to do so, but will not accept anonymous complaints. Material may also be submitted on a confidential basis to support a complaint and will not be released without the consent of the party that submitted it.
Complainants should be aware that other parties, including the client and IFC or MIGA staff, will usually be informed about the substance of the complaint. Complainants should inform CAO at the very beginning of any discussions or correspondence about any information that complainants do not wish to be disclosed. A process for handling the complaint will be agreed with the complainant.

- http://www.cao-ombudsman.org/howwework/filecomplaint/

Annex III: Instructions for Filing a Complaint with an OECD National Contact Point (NCP)[47]

There is no required format or style for writing OECD Guidelines' complaints. However, some NCPs provide guidance on what kind of information they expect to be included in a complaint, so be sure to check the website of the NCP to which you expect to submit your complaint to see if this is the case.

Identify chapters and provisions of the Guidelines
You need to cite the specific chapters and paragraphs the company is allegedly violating in your complaint and explain in detail how the company is violating specific provisions. It is not sufficient to state an enterprise is violating the Guidelines without explaining who, how, what, why, when and where:

You need to cite the specific chapters and paragraphs the company is allegedly violating in your complaint and explain in detail how it is violating specific provisions – who, what, why, when, where, and how.

- Who (or what) is being harmed by the enterprise's violations?
- What activities or behaviour is the enterprise engaging in that constitutes a violation of the Guidelines?
- Why are the activities a violation of the Guidelines?
- When did the alleged violation(s) occur?
- Where did the alleged violation(s) occur?
- How have the enterprise's activities harmed, among others, the complainants, community members and the environment?

Subsequently identifying the specific chapters and provisions a company has allegedly breached can be difficult. OECD Watch has developed an online case check to help complainants identify which OECD Guidelines a company may have breached. OECD Watch nevertheless strongly advises those interested in filing a complaint to read the full official text of the Guidelines and commentary.

Format of the complaint

OECD Watch has developed a template letter to guide complainants write a clear, concise, and persuasive complaint. You do not need to follow this format exactly, but OECD Watch recommends including the following information:

1. your identity, including a contact person, name or organisation, address, telephone number, fax number, and email;
2. the name and address of the NCP;
3. short introduction to the case, including the company, the problem, and the location of the violation;
4. explanation of your interest in the case and your purpose for writing;
5. company information, including the company's contact details and structure;
6. information about the broader background, context, or location of the violation;
7. list of chapter(s) and paragraph(s) in the Guidelines that the complaint is breaching;
8. detailed information on the alleged breaches and developments to date;
9. other relevant (international) standards the NCP should take into account when considering the complaint;
10. description of previous attempts to resolve the case directly with the company or other relevant actors and/or institutions;
11. outline of complaint goals, demands, and requests from the company and/or NCP. Before filing a complaint, you should ensure that you have a clear view of what outcome you hope to achieve, as well as what results are realistically possible and likely;
12. confidentiality request, such as the names of individuals, sources of evidence, or any documentation that cannot be shared with the company;
13. statement of 'good faith' to engage in the procedure. If you are pursuing multiple strategies, explain why you consider these activities appropriate and why they will not conflict with or undermine the complaint process; and
14. attachments and/or appendices with more detailed information relevant to the complaint.

Language
Complaints should generally be written in English or the national language of the NCP receiving the case. If the complaint will be filed with several governments, consider writing it in a language that is understood by all NCPs. However, if it is too burdensome to write the complaint in another language (or to provide evidence in another language), submit the complaint and evidence in your own language. Keep in mind, however, that not translating the complaint could result in additional delays and the NCP may not be willing to translate (all) documents.

Time and resources
The Guidelines dispute resolution process is often a time- and resource-intensive exercise. The Procedural Guidance recommends that NCPs should seek to resolve complaints within one year, and some cases have been successfully concluded in less than six months. However, there are many more examples of cases that have taken several years to conclude.
The process may require you to spend significant resources, including on personnel, translation, research and investigation, travel, and consultant advice and support. If you are filing a joint complaint (with other impacted stakeholders or CSOs), remember it takes time and effort to coordinate with partner organisations locally and internationally. You may need to travel to participate in meetings with the NCP or company. Many complainants have also had to invest time to follow up and ensure the company is abiding by the agreement and/or recommendations resulting from the specific instance process.

Possibility of using simultaneous strategies
An OECD Guidelines complaint can be one of several advocacy strategies pursued simultaneously; others include lawsuits, public and media campaigns, and shareholder actions. Other institutional non-judicial grievance mechanisms or dispute resolution procedures may also be appropriate.
Keep in mind that the Guidelines' specific instance procedure is largely a mediation/conciliation-oriented process designed to get parties together to resolve disputes amicably. NCPs expect parties to engage with a view to finding a mutually acceptable resolution to the issues. The nature and expectations of this process must be weighed against other actions and instruments that are available to address the problem. A complaint should support – not undermine – existing efforts if simultaneous strategies are pursued.

- See https://www.oecdwatch.org/filing-complaints/instructions-and-templates

Annex IV: Legal aid and human rights resource organisations

Some of these organisations can offer support on specific cases; others have written resources and toolkits, and facilitate communities of practice that may be helpful.

National level

Many countries have NGOs that offer legal aid services. The list below provides a selection of some of the key national-level human rights NGOs. For a more comprehensive overview, see the link below to the International Network for Economic Social and Cultural Rights as well as the Annex in *Biashara Na Haki*, Part 1. Many professional lawyers' associations (bar associations) have members who offer *pro bono* services, thus it is important to also check with them.

- **CAMEROON** – Centre pour l'Environnement et Développement (CED), http://www.cedcameroun.org/
- **CHAD** – Public Interest Law Centre
- **COTE D'IVOIRE** – Groupe de Recherche et de Plaidoyer sur les Industries Extractives (GRPIE), http://grpie.org/
- **DRC** – Action Contre l'Impunité pour les Droits Humains (ACIDH); AfreWatch, https://www.afrewatch.org/; Centre Congolaise pour le Développement Durable
- **GHANA** – Wassa Association of Communities Affected by Mining (WACAM)
- **GUINEA** – Centre de Commerce International pour le Développement (CECIDE); www.cecideguinee.org
- **KENYA** – Katiba Institute, https://www.katibainstitute.org/; FIDA Kenya, https://www.fidakenya.org/; Kenya Human Rights Commission (KHRC), https://www.khrc.or.ke/
- **LIBERIA** – Green Advocates, http://greenadvocates.org/; Sustainable Development Institute (SDI), https://www.sdiliberia.org/
- **MALAWI** – Citizens for Justice
- **MALI** – Groupe d'Etude et de Recherche Sociologie et Droit Appliqué (GERSDA), Fondation pour le Développement du Sahel (FDS)
- **NIGERIA** – Environmental Rights Action (ERA), http://erafoen.org/; Social and Economic Rights Action Centre (SERAC) ; Centre for Environment, Human Rights and Development (CEHRD), https://cehrd.org.ng/
- **SENEGAL** – Lumière Synergie pour le Développement (LSD)
- **SIERRA LEONE** – Network Movement for Justice and Development (NMJD), http://www.nmjdsl.org/

- **SOUTH AFRICA** – Legal Resources Centre, http://resources.lrc.org.za/; BenchMarks Foundation, http://www.bench-marks.org.za/
- **TANZANIA** – Association for Law and Advocacy for Pastoralists (ALAPA), http://alapa.or.tz/alapa/; Lawyers' Environmental Action Team (LEAT), http://www.leat.or.tz/
- **TOGO** – Alliance Nationale de Consommateurs et de l'Environnement (ANCE), https://www.ancetogo.org/
- **UGANDA** – Advocates Coalition for Development and Environment (ACODE), https://www.acode-u.org/; Initiative for Social and Economic Rights (ISER), https://www.iser-uganda.org/
- **ZIMBABWE** – Zimbabwe Environmental Law Association (ZELA), http://www.zela.org/; Zimbabwe Lawyers for Human Rights (ZLHR), https://www.zlhr.org.zw/

International level

- **AMERICAN BAR ASSOCIATION RULE OF LAW INITIATIVE** – provides pro bono technical assistance, www.americanbar.org
- **AMNESTY INTERNATIONAL** – conducts research into human rights violations, uses its analysis to influence governments, companies, and decision-makers. Through petitions, letters, and protests, supports campaigners worldwide in pressing for action from the people and institutions who can make change happen, contactus@amnesty.org, https://www.amnesty.org/en/
- **BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE (BHRRC)** – provides comprehensive resources and guidance on business and human rights and helps amplify the voices of affected communities by taking up cases of abuse directly with companies and tracking their responses, contact@business-humanrights.org, https://www.business-humanrights.org/
- **CENTRE FOR RESEARCH ON MULTINATIONAL CORPORATIONS (SOMO)** – investigates the impacts of multinational corporations on people and the environment and provides support (research, training, consulting) to CSOs, info@somo.nl, https://www.somo.nl/
- **DANISH INSTITUTE FOR HUMAN RIGHTS (DIHR)** – through research, tools, and partnerships with key stakeholders, the institute aims to contribute to building a global environment in which adverse business impacts are minimised, and opportunities for businesses to make a positive contribution to human rights are realised, info@humanrights.dk, https://www.humanrights.dk/business-human-rights
- **EARTHRIGHTS INTERNATIONAL** – represents local communities in courts and other fora infousa@earthrights.org, https://earthrights.org/
- **ENVIRONMENTAL LAW ALLIANCE WORLDWIDE (ELAW)** – provides pro bono legal and scientific support to local lawyers who work in their home countries to protect

the environment and human rights elawus@elaw.org, https://elaw.org

- **GREENPEACE INTERNATIONAL** – undertakes proactive litigation against environmental destruction, advises on mitigation strategies, and provides technical assistance in ongoing cases, www.greenpeace.org
- **INTERNATIONAL FEDERATION FOR HUMAN RIGHTS (FIDH)** – an international NGO federation of 184 organisations around the world. The federation engages in strategic litigation and other activities https://www.fidh.org/en/
- **INTERNATIONAL NETWORK FOR ECONOMIC SOCIAL AND CULTURAL RIGHTS (ESCR-NET)** – supports strategic litigation that aims to ensure accountability for violations of economic, social, and cultural rights within domestic, regional, and international systems info@escr-net.org, www.escr-net.org;
- **INTERNATIONAL SENIOR LAWYERS PROJECT (ISLP)** – provides pro bono legal assistance to civil societies and governments in developing countries, info@islp.org, www.islp.org
- **NAMATI** – trains and deploys grassroots legal advocates working on issues related to land, environmental justice, citizenship, and health. Conducts research and advocacy, and convenes a legal empowerment network of more than 1,000 groups worldwide, https://namati.org/
- **NATURAL JUSTICE** – conducts research on environmental and human rights law and supports Indigenous Peopless and communities and their organisations to participate in decisions that affect their land, culture, and environment, info@naturaljustice.org.za, http://www.naturaljustice.org/
- **OECD WATCH** – provides case support to communities filing complaints with National Contact Points (NCPs). info@oecdwatch.org, www.oecdwatch.org

Acronyms

ACHPR	African Commission on Human and Peoples' Rights
BCP	Biocultural Community Protocol
BHRRC	Business and Human Rights Resource Centre
CAO	Compliance Advisor Ombudsman
CDA	Community Development Agreement
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
EIA	Environmental Impact Assessment
EITI	Extractive Industries Transparency Initiative
ESCR-NET	International Network for Economic Social and Cultural Rights
ESIA	Environmental and Social Impact Assessment
FPIC	Free, Prior and Informed Consent
HRIA	Human Rights Impact Assessment
HURICAP	Human Rights Capacity-Building Programme
IFC	International Finance Corporation
IFI	International financial institution
ILO	International Labour Organization
JIV	Joint Investigation Visit
KHRC	Kenya Human Rights Commission
LAPSSET	Lamu Port-South Sudan-Ethiopia Transport
MIGA	Multilateral Investment Guarantee Agency
NAP	National Action Plan
NCP	National Contact Point
NGO	Non-governmental Organisation
NHRI	National Human Rights Institution
NOSDRA	National Oil Spill Detection and Response Agency
OECD	Organisation for Economic Co-operation and Development
RAP	Resettlement Action Plan
SEA	Strategic Environmental Assessment
SWOT	Strengths, Weaknesses, Opportunities, Threats
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNGP	United Nations Guiding Principles on Business and Human Rights
UNOHCHR	United Nations Office of the High Commissioner for Human Rights
WB	World Bank

Glossary

A

Access to Remedy – refers to a victim's right to compensation for any human rights harm they have suffered. Access to remedy is the basis of the third pillar of the UN Guiding Principles on Business and Human Rights: protect, respect, remedy. States must take appropriate steps to ensure, through judicial, administrative, legislative, or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

B

Biodiversity – the variability among living organisms from all sources, including terrestrial, marine and other aquatic ecosystems.
Bribery – the offering, giving, or receiving of any item of value to influence the actions of an official.
Business – an independently owned organisation where people work to make and sell products or services. It can refer to small, medium-sized, or large businesses.

C

Civil Society Organisation (CSO) – an organisation that is distinct from the family, state, or market and is created by individual and collective actions to advance shared interests.
Community – a group of people who share something in common, such as norms, values, identity, and often a sense of place such as a village, town, or neighbourhood.
Community-Based Organisation (CBO) – an organisation that provides social services or campaigns at the local level and relies mainly on community members for labour, material, and financial support.
Community Development Agreement (CDA) – An agreement among a project developer and one or more affected communities to address the management of negative impacts and define benefit-sharing mechanisms, including those related to health and education, economic and social development projects.
Community protocol – a charter of rules, procedures, and priorities defined by a community, which can specify a number of things, such as identifying affected groups; the community's decision-making procedures; its rights according to customary, national, and international law; mapping its use of land and natural resources; its legitimate representatives; its values and

vision for the future; consultation procedures important to the community; its development priorities, etc.

Company – a particular type of business comprising a separate legal entity, the liability of which can be limited or unlimited for its owners.

Complaint – an expression of dissatisfaction with the current state of affairs. Often complaints can be heard and dealt with by different actors, either through dialogue or a formalised complaints mechanism.

Corruption – the abuse of entrusted power for private gain. For example, where government officials entrusted with the power to tax businesses to raise money for public services take the money and spend it on themselves instead.

D

Displacement – when communities and/or individuals are forced to leave their homes. Physical displacement (or relocation) is when people lose their house and other assets and have to move to another location. Economic displacement is when people lose assets (including land) or access to assets, which leads to a loss of income and/or livelihoods.

Due diligence – refers to two separate concepts in business and human rights. The first concept entails the actions a State must take to exercise its obligation to protect: to prevent, investigate, punish, and redress human rights abuses by non-State actors. The second is the steps a business must take to exercise its responsibility to respect: to investigate, prevent, mitigate, account for, and remedy adverse human rights impacts. All references to due diligence in this handbook refer to the responsibility of the business to respect human rights, unless stated otherwise.

Duty-bearer – actor that has an obligation (in the case of States) or responsibility (in the case of a company or other non-State actor) to respect, protect, and realise human rights and abstain from human rights abuses or violations.

Duty to protect – the term used in the UN Guiding Principles on Business and Human Rights to refer to actions a State must take to prevent, investigate, punish, and redress human rights abuses by businesses. It is grounded in the recognition of States' international human rights law obligation to protect.

E

Environmental (and Social) Impact Assessment (E(S)IA) – a formal process and study to predict the likely environmental and social consequences (positive or negative) of a plan, policy, program, or project before implementation. The document includes a statement of the measures envisaged to eliminate, reduce, and/or offset any adverse effects to the environment, people, and communities, and corresponding estimated costs, as well as a presentation of possible alternatives and why, from an

environmental and social perspective, the proposed business activity is possible. In most countries, an ESIA is a regulatory requirement.

F

Financial institutions – any actor that provides financial services. This includes privately owned and State-owned financial institutions, as well as international financial institutions.

Free, prior and informed consent (FPIC) – the principle that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy, or otherwise use. FPIC is written into the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and has since been applied to communities more generally.

G

Grievance –a complaint that an individual or community has when they believe they have been wronged.

Grievance mechanism – refers to any kind of process that aims to resolve the complaints of individuals or communities who believe they have been wronged.

Guiding Principles on Business and Human Rights – a non-binding UN instrument that represents a global standard for preventing and addressing human rights abuses linked to business activity.

H

Human rights abuse – damage to or denial of a person's human rights by a person or people who are not State officials or acting on behalf of the State. When a State carries out a similar act, it is called a human rights violation.

Human rights-based approach – empowering people to understand and claim their rights and to increase the ability and accountability of individuals and institutions responsible for respecting, protecting, and fulfilling rights.

Human rights defender – a person who promotes and protects human rights by non-violent means.

Human rights impact – an action that affects an individual's ability to enjoy his or her human rights. A positive human rights impact improves the ability of an individual to enjoy their human rights, while an adverse impact reduces or removes their ability to do so.

Human rights impact assessment (HRIA) – a process of identifying, understanding, assessing, and addressing the adverse effects of programmes, projects, and activities on the human rights enjoyment of workers, communities, consumers, or other rights holders.

Human rights violation – occurs when a State, or person acting on behalf of the State, fails to meet any of its obligations to respect, protect, or fulfil.

I

Inter-communal conflict – conflict between communities.
International business – a business that operates in different States.
International Finance Corporation (IFC) – an international financial institution that is part of the World Bank Group and provides loans directly to businesses.
International financial institution (IFI) – an international organisation that provides financial services.
International non-governmental organisation – a not-for-profit organisation that is independent from States and international organisations, which operates internationally.
International organisation – any institution that has an international membership or is present in different States. In this handbook, the term refers to organisations created by, and made up of, States.
International standard – refers to any codified text that States and/or international organisations endorse. It includes both treaties and instruments that do not create binding international obligations but nonetheless have normative force due to their acceptance amongst States (sometimes referred to as soft law).
Intra-communal conflict – conflict within a community.
Investment – finance provided for a particular project or business in order for the investor to receive benefits from the project later (e.g. a loan or purchase of shares).
Investment chain – the (financial) connections of all actors that make a project practically and financially possible.
Investor – an individual or business that provides finance for, or investment in, a particular project or business in order to receive benefits from the project later (e.g. a bank).

J

Joint Venture – a business entity set up by two or more parties, usually for the purpose of a specific project or business activity.
Judicial mechanisms – mechanisms with outcomes that are legally binding.

L

Labour Rights – refer to fair and just treatment at work. They are at the heart of the fight for human rights (including the freedom to associate, to organise, and to have equal opportunities in the workplace), and many are often considered to be human rights.
Lawsuit – a formal complaint filed before a judicial mechanism such as a court.
Legacy issue – an occurrence or situation that happened before the company started operating in a particular location or before they acquired (bought) the operation.

Local content – the development of local skills, technology transfer, and use of local personnel as well as local supplies and manufacturing.

M

Multistakeholder initiative – a group of businesses, civil society organisations, and other actors that strives to develop human rights-related (or social or environmental-related) standards in codes of conduct, performance standards, and/or agreements with affected communities.

N

National Contact Point (NCP) – OECD Member States are legally bound to set up National Contact Points to investigate complaints against businesses for failing to implement the OECD Guidelines for Multinational Enterprises. Complaints can be made to National Contact Points regarding a business based in the OECD State, regardless of where the human rights abuses take place.
National Human Rights Institution (NHRI) – an administrative body set up to protect or monitor human rights.
Non-governmental organisation (NGO) – a not-for-profit organisation that is independent from States and international organisations.
Non-judicial grievance mechanism – refers to any kind of institution or process that aims to resolve complaints, usually outside the formal court system.

O

OECD Guidelines for Multinational Enterprises – recommendations for responsible business conduct for international businesses operating in or from OECD States and adhering countries. They include ethical standards on employment, human rights, the environment, transparency, corruption, taxation, and other standards.
Ombudsman – an independent public official who works to represent the interests of the public and investigates complaints related to public administration.

P

Parent (business/company) – where one business/company owns another business/company, the business/company that owns the other business/company is called the parent business/company.
Policy – the declared goals and objectives of a government, business, international organisation, or other actor concerning a particular topic such as the environment or human rights. Policies should include indicators and benchmarks to track progress towards particular policy goals.
Public services – services a State must provide to ensure it meets its human rights obligations such as education, healthcare, and security through law enforcement agencies.

R

Recourse mechanism – Recourse mechanism – an institution or procedure that individuals can turn to for legal help and/or to protect their rights.
Remediability – the extent to which human rights impacts are easy or difficult to solve and/or rectify.
Remedy – in the context of human rights, a remedy must 'make good' any human rights harm that has occurred. Remedies include apologies, restitution, rehabilitation, financial or non-financial compensation, punitive sanctions, and the prevention of further harm.
Resettlement action plan (RAP) – a detailed strategy on how a specific resettlement process will be conducted. The RAP details the processes of recording baseline conditions and consulting affected people, and provides a detailed strategy for: (i) minimising or avoiding resettlement; (ii) compensating for losses; (iii) relocating and rebuilding as necessary; and (iv) ensuring that affected people are afforded the opportunity to improve their livelihoods, income-producing activities, and standards of living.
Responsibility to respect – the business responsibility to respect is based on the role of businesses as specialised organs of society performing specialised functions that are required to comply with all applicable laws and to respect human rights: to investigate, prevent, mitigate, account for, and remedy all adverse human rights impacts.

S

Social cohesion – the willingness of members in a group or community to cooperate with each other in order to survive and prosper.
Social licence – where large-scale developments affect communities directly, there should be broad acceptance from the community for the project. This informal community support is called a social licence, as opposed to the formal, legal licence that a business needs in order to operate.
Strategic Environmental Assessment (SEA) – a process and tool for evaluating the effects of proposed policies, plans, and programs on natural resources, social, cultural and economic conditions and the institutional environment in which decisions are made. A SEA takes a very broad/wide (policy, geographic, or sectoral) view, whereas an Environmental and Social Impact Assessment is more focused on a specific project.
Subsidiary – where one business owns another business, the business that is owned by the other business is the subsidiary.
Supply chain – supply chains refer to the other businesses that supply a business with goods and/or services, and to all the businesses that supply the suppliers with goods, and the businesses that supply them, and so on.

T

Treaty – a binding agreement under international law entered into by parties that are subjects of international law (mainly States and international organisations). Treaties come in different forms including charters, conventions, covenants, pacts, and protocols.

W

World Bank Group – an international financial institution that provides loans to both States and businesses for infrastructure projects. The institutions within the World Bank Group that lend to States are the International Bank for Reconstruction and Development and the International Development Association, which together are referred to as the World Bank. The International Finance Corporation is an institution within the World Bank Group that provides loans directly to businesses.

V

Vulnerable groups – a group of people who, because of their gender, ethnicity, age, physical or mental disability, economic disadvantage, or social status may be more adversely affected by a project, activity, or natural disaster than others.

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