

# Human Rights Assessment

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## 1. INTRODUCTION

This FAQ sets out the BSR perspective on human rights assessments. We believe that identifying and prioritizing the actual and potential human rights impacts with which a company may be involved is a first critical step in avoiding, preventing, and mitigating harm to people associated with business activity.

## 2. DEFINING HUMAN RIGHTS ASSESSMENT

### What is a human rights assessment?

A human rights assessment identifies and prioritizes actual and potential adverse human rights impacts and makes recommendations for appropriate action to address those impacts. A human rights assessment can take many forms, but has the following key features:

- **All human rights:** A review against all internationally recognized human rights as a reference point since companies may potentially impact virtually any of these rights.
- **Stakeholder engagement:** Meaningful consultation with potentially affected groups, other relevant stakeholders, and credible independent experts.
- **Vulnerable groups:** Identifying whose rights may be adversely impacted, paying special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization.
- **Appropriate action:** Identifying appropriate action to avoid, prevent, mitigate, or remedy actual and potential adverse human rights impacts.

A human rights assessment identifies and prioritizes risks to people (i.e., risks to rightsholders) rather than risks to the business (i.e., risks to enterprise value creation).

### When should human rights assessments be undertaken?

Human rights assessments can be undertaken in many different circumstances, such as prior to a new activity or business relationship, prior to major decisions or changes in the operation (e.g., market entry or exit, product launch, or policy change), and / or in response to or anticipation of changes in the operating environment (e.g., rising social tensions).

Human rights assessments can be corporate wide, location based (e.g., country, site), upstream (i.e., supply chain), downstream (i.e., product use), policy oriented (e.g., social media platforms), issue specific (e.g., land

rights), or time bound (e.g., reviewing a crisis response). Human rights assessments can also be company specific or sector wide.

### **How long do human rights assessments take?**

In BSR's experience the length of human rights assessments can vary from less than one week (e.g., prior to an urgent business decision or in reaction to a sudden unexpected events) to two years or more (e.g., prior to a major new product launch or technology innovation). Our standard human rights assessment typically takes 4-6 months.

### **Is engagement with affected stakeholders a requirement for human rights assessment?**

A human rights assessment typically involves meaningful consultation with potentially affected stakeholders, and / or engagement with independent experts, human rights defenders, and civil society organizations. Occasionally engagement with stakeholders is not possible (for example, when an assessment informs an urgent or unanticipated business decision), and here companies should draw upon insights gained from prior stakeholder engagement.

BSR is an independent expert on human rights, and we bring insights from our stakeholder relationships to every engagement; however, effective human rights assessment does require meaningful stakeholder engagement.

### **Is a human rights assessment the same as human rights due diligence?**

No, a human rights assessment is only one part of human rights due diligence. According to the UNGPs, human rights due diligence has four elements:

- **Assessment:** Assessing actual or potential adverse human rights impacts with which the company may be involved.
- **Action:** Taking appropriate action to avoid, prevent, mitigate, and / or remedy actual or potential adverse human rights impacts identified in assessments.
- **Tracking:** Tracking the effectiveness of the company's response to human right impacts, including via qualitative and / or quantitative indicators and feedback from stakeholders.
- **Communications:** Communicating externally in a form and frequency such that the company's approach can be effectively evaluated.

### **What is a human rights salience assessment?**

A human rights salience assessment is one type of human rights assessment. A human rights salience assessment is typically companywide (rather than a specific country, product, or function) and prioritizes actual and potential adverse human rights impacts according to the following criteria:

- **Scale:** How grave is the impact?
- **Scope:** How widespread is the impact?
- **Remediability:** Is it possible to counteract or make good the resulting harm?
- **Likelihood:** What is the chance of the impact happening?

A salience assessment typically ends with the identification of "salient human rights issues" and does not consider appropriate action to address these impacts.

### **What is a human rights impact assessment?**

A human rights impact assessment is one type of human rights assessment. A human rights impact assessment typically involves more in-depth consultation with affected stakeholders than other forms of human rights assessment, and for this reason is often focused on specific locations or communities.

A human rights impact assessment can provide an in-depth foundation for more nimble, timely, and reactive human rights assessments as circumstances change over time.

## **3. OTHER TYPES OF ASSESSMENT**

### **What is the difference between human rights and civil rights? What is the difference between a human rights assessment and a civil rights assessment?**

Human rights are rights we have simply because we exist as human beings and are not granted by any state or government. Human rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, color, religion, language, sexuality, or any other status. By contrast, civil rights are legal protections granted by governments to their citizens, typically through a national constitution or other laws.

For this reason, a human rights assessment will review impacts against all internationally recognized human rights as a reference point, whereas a civil rights assessment will review impacts against the relevant local legal protections.

While human rights assessments and civil rights assessments are typically pursued separately (especially in the United States), we believe there are opportunities for significant synergies.

### **What is the difference between human rights and ethics? What is the difference between a human rights assessment and an ethics assessment?**

Human rights assessments are focused on established rights that should always be protected and respected, internationally recognized laws and standards, and a universally endorsed framework for defining company responsibility.

By contrast, ethics assessments are useful for decision-making in situations where right / wrong and good / bad are not clearly defined, where different pathways of action can reasonably be chosen, and to address issues of fairness and social justice where different schools of thought and ethical standards exist.

While human rights assessments and ethics assessments are typically pursued separately, we believe there are opportunities for significant synergies. A human-rights-based approach provides a universal foundation upon which various ethical frameworks, choices and judgments can be applied.

### **What is the difference between a human rights salience assessment and a materiality assessment?**

Historically there have been two important differences between materiality and salience: (1) materiality is about disclosure, while salience is about management; (2) materiality covers all issues, whereas salience has been limited to human rights impacts. However, two significant developments are bringing the concepts of salience and materiality closer together.

First, the 2021 iteration of the GRI Sustainability Reporting Standards adopted a revised definition of materiality that incorporates the scope, scale, irremediable character, and likelihood definitions that underpin the concept of salience and the UNGPs.

Second, the European Sustainability Reporting Standards (ESRS) that specify disclosure requirements under the EU Corporate Sustainability Reporting Directive also propose a definition of impact materiality based on the concept of salience and the UNGPs (i.e., scope, scale, remediability, likelihood).

In short, the concept of salience is being utilized for disclosure (not just management) and for a comprehensive range of economic, environmental, and social issues (not just human rights). BSR welcomes these developments as enhancing conceptual clarity and generating synergy across previously siloed assessments.

#### **Can a salience assessment be combined with a materiality assessment?**

It depends. The harmonization of prioritization criteria between “salience” and “impact materiality” means that a salience assessment can be undertaken as part of a materiality assessment provided the expectations of a salience assessment are met—for example, that impacts on all potentially relevant human rights are considered and that affected stakeholders are engaged. BSR anticipates that this combined approach may become more common over time, especially for companies where salient human rights issues make up a large portion of material matters (e.g., social media companies).

However, we also expect that many companies will choose to keep these two assessments separate, while achieving efficiency by integrating the results of a salience assessment into a materiality assessment, rather than undertaking duplicative assessments.

#### **Can human rights be embedded in enterprise risk assessment?**

Human rights assessment can be included within broader enterprise risk assessment and risk management systems, provided it goes beyond identifying material risks to the company and includes risks to people as well.

The emerging concepts of “double materiality” (the notion that companies should report on matters that influence enterprise value and matters that affect wider society) and “dynamic materiality” (the notion that the relative materiality of an issue may change over time) make it likely that the connectivity between enterprise risk assessment and human rights assessment will grow over time.

#### **What is the difference between a human rights assessment and a human rights audit?**

A human rights assessment is typically forward looking, identifies and prioritizes actual and potential human rights impacts, and recommends appropriate action to address them. By contrast, a human rights audit is typically historical, determines compliance against a standard, investigates the root causes of prior harms, and recommends corrective actions.

## **4. REGULATORY REQUIREMENTS**

#### **Should human rights assessment be required by law?**

BSR welcomes emerging regulatory requirements that mandate human rights due diligence by companies, which we believe will accelerate urgently needed due diligence, scale best practices, and result in greater attention on human rights impacts by Boards and senior management at companies. We believe these requirements should

be as consistent as possible with the UNGPs, enable effective human rights due diligence rather than “check box” approaches, and incentivize ambitious action by companies.

### **What are the risks associated with human rights assessment being required by law?**

There is a risk that companies will seek minimalist compliance and stifle efforts aimed at more ambitious and meaningful human rights due diligence. However, the absence of consistent and structured human rights due diligence at companies today means that regulation is merited, and BSR will promote meaningful human rights due diligence as the inevitable tug of war between “the letter” and “the spirit” of compliance unfolds.

## **5. TECHNICAL MATTERS**

### **Why is it important to determine whether a company causes, contributes to, or is directly linked to an adverse human rights impact?**

Appropriate action to address adverse human rights will vary according to whether the company causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products, or services by a business relationship.

Where a company causes an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Where a company contributes to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Where a company is directly linked to an adverse human rights impact, it should use leverage to prevent or mitigate the adverse impact, and consider ending the business relationship if that is not possible, taking into consideration the potential adverse human rights impacts of doing so.

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

Further, where a company causes or contributes to adverse impacts it should provide for or cooperate in remediation; where a company is directly linked to an adverse impact it does not have the responsibility to provide for remediation, though it may take a role in doing so.

### **Do BSR’s human rights assessments reach conclusions on whether a company causes, contributes to, or is directly linked to an adverse human rights impact?**

During most human rights assessments BSR uses the questions below (among others) to assess whether a company causes, contributes to, or is directly linked to an adverse human rights impact. However, in our experience, this analysis is directional rather than specific, since the precise conclusion can vary significantly according to the particulars of a case.

- Will the company’s actions or omissions on their own be sufficient to result in the adverse impact?
- Will the company’s specific products, services, or operations be involved in the specific harm?
- Are the company’s due diligence efforts, including efforts to prevent or mitigate the impact, of sufficient quality?
- Will the company take actions (or fail to take actions) that facilitate or enable another entity to cause an adverse impact, where a company’s actions add to the conditions that make it possible for use of a product by a third party to cause a harm?

- Will the company take actions (or fail to take actions) that incentivize or motivate another entity to cause an adverse impact, where a company's actions make it more likely that a product or service will be used in ways that cause harm?

### **Should human rights assessments be published?**

According to the UNGPs, companies should publish sufficient information for their human rights approach to be effectively evaluated by stakeholders, and we believe this principle should determine the extent to which the results of human rights assessments are published.

There is often a debate about whether (1) the full human rights assessment should be published, (2) a summary of the assessment should be published, or (3) nothing about the assessment should be published. In our experience the following criteria can help inform a decision:

- **Publish in full:** Full disclosure is “decision useful” for external stakeholders and would increase the quality of their work, such as by providing information or analysis they otherwise would not have; full disclosure makes contribution to the broader field; full disclosure would assist the company to avoid, prevent, mitigate, or remedy harm.
- **Publish a summary:** Significant parts of the assessment should not be disclosed because of internal and/or external stakeholder safety and security, commercial confidentiality, and / or legal prohibitions.
- **Don't publish:** All of the assessment should not be disclosed because of internal and/or external stakeholder safety and security, commercial confidentiality, and / or legal prohibitions; publication of the assessment itself may have an adverse impact on human rights (e.g., increase tension in conflict affected areas, increased scrutiny by a bad actor or government); human rights risks can be effectively addressed without publication; the assessment is not material to stakeholders and would detract from other disclosures

## **ABOUT BSR**

BSR™ is an organization of sustainable business experts that works with its global network of the world's leading companies to build a just and sustainable world. With offices in Asia, Europe, and North America, BSR™ provides insight, advice, and collaborative initiatives to help you see a changing world more clearly, create long-term business value, and scale impact.

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