THE DANISH INSTITUTE FOR HUMAN RIGHTS

THE HUMAN RIGHTS COMPLIANCE ASSESSMENT TOOL

LEGAL AND GOVERNMENTAL AFFAIRS

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CONTENT

INTRODUCTION **4**

7.1 HOST COUNTRY CONDITIONS **5**

7.2 STATE-INVESTOR CONTRACTS **40**

7.3 INTERACTION WITH LEGAL SYSTEMS **58**

7.4 ANTI CORRUPTION **67**

INTRODUCTION

Welcome to the Legal and Governmental Affairs section of the Human Rights Compliance Assessment (HRCA) tool. This section concerns how human rights are respected when engaging with governments.

The sub-categories for this section are:

- Host Country Conditions
- State-Investor Contracts
- Interaction with Legal Systems
- Anti Corruption

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7.1 HOST COUNTRY CONDITIONS AND AGREEMENTS

No. 7.1.1.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Question
Does the company refrain from endorsing, supporting or benefiting from any governmental policies or acts that violate the right to intellectual property?

Yes	No	F/A	N/A

Description
The company should strive to respect, promote and implement good human rights standards in its practices, even when operating in a state whose policies violate international human rights law. The company may have little influence over such governmental policies. However, it should at a minimum refrain from endorsing or supporting the particular policy/activity that violates the right, this includes for instances where the government may be acting to protect the company's interests such as with public security clamping down on human rights defenders or protesters who are protesting against the company's operations/project. This includes avoiding passing along information on employees, customers and others that will help the state enact or carry out policies which violate the right.

Suggested Indicators

1 The company does not endorse any state imposed limitations on particular groups of people to own intellectual property, and does not rely on government assurances about the lack of ownership of intellectual property rights by particular groups of people.

True	False	F/A	N/A

---

2 The company does due diligence to verify the inventors/owners of a work before purchasing intellectual property rights from the government.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), article 27 (2); International Covenant on Civil and Political Rights (1966), Articles 17 and 23; International Covenant on Economic, Social and Cultural Rights (1966), Article 10; Convention on the Elimination of All Forms of Discrimination against Women (1979), Articles 3 and 5; ILO Code of Practice: Protection of Workers Personal Data, (1997), Article 10 (1)

No. 7.1.2.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Question
Does the company refrain from endorsing, supporting or benefiting from government policies or acts that violate the right to freedom of movement?

Yes	No	F/A	N/A

Description
The company should strive to respect, promote and implement good human rights standards in its practices, even when operating in a state whose policies violate international human rights law. The company may have little influence over such governmental policies, but it should at a minimum refrain from endorsing or supporting the particular policy/activity that violates the right. This includes avoiding passing along information on employees, customers and others that will help the state enact or carry out offending policies.

Suggested Indicators

1 The company does not endorse state policies that unreasonably restrict issuance of passports or travel permits, and does not supply information to the government that could be used as a reason to deny passports, such as employees' political and religious opinions/affiliations.

True	False	F/A	N/A

2 The company does not endorse government curfews and does not inform the government about curfew violators.

True	False	F/A	N/A

3 The company does not endorse or support official relocation programmes or policies that violate international human rights law, financially or otherwise.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Article 13; International Covenant on Civil and Political Rights (1966), Article 12 (1); ILO Code of Practice: Protection of Workers' Personal Data (1997), Article 10

No. 7.1.3.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Question

Does the company refrain from endorsing, supporting or benefiting from government policies or acts that violate the right to freedom of opinion, expression, conscience, thought and religion?

Yes	No	F/A	N/A

Description

The company should strive to respect, promote and implement good human rights standards in its practices, even when operating in a state whose policies violate international human rights law. The company will often have very little direct influence over such governmental policies. However, it should at a minimum refrain from endorsing or supporting the particular policy/activity that violates the right. This includes avoiding passing along information on employees, customers and others that will help the state enact or carry out offending policies. In addition this includes for instances where the government may be acting to protect the company's interests such as with public security clamping down on human rights defenders or protesters who are protesting against the company's operations/project Typical state violations of the right to freedom of opinion, expression, conscience, thought and religion that the company might be drawn into are listed below.

Suggested Indicators

1 The company does not endorse any state imposed limitations on the right to freedom of opinion, expression, conscience, thought and religion that violate the right.

True	False	F/A	N/A

---

2 The company does not supply information to the government about employees' religious beliefs or opinions.

True	False	F/A	N/A

		True	False	F/A	N/A
3	The company does not endorse the prosecution of persons for their opinions and does not voluntarily supply information to the government which could be used in such prosecutions.				

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Articles 18 and 19; International Covenant on Civil and Political Rights (1966), Articles 18 and 19; ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977), Articles 21 and 22

No. 7.1.4.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Yes	No	F/A	N/A

Question
Does the company refrain from asking the government to intervene to limit the rights of assembly and association of affected communities?

Description
The company must respect the rights of persons living in proximity to company operations, including their right to peacefully assemble and to freely associate with others for the protection of their common interests. The company should refrain from engaging in activities such as surveillance, intimidation, and divisionary intended-tactics amongst others of critical voices within the community. Thus, if the local community believes that it is in their interests to protest company policies, the company must respect that right and not attempt to curtail it by asking the government to silence critics. In order to protect its own property and interests, the company may seek state/police assistance to keep protesters from protesting on its land. However, if a company chooses to seek state support, the intervention must be done in accordance with international conventions on the use of force by state security forces. The company must seek to ensure that

the state security forces only use force when strictly necessary and only to the extent proportional to the threat.

Suggested Indicators

1 Company guidelines recognise the rights of affected individuals to assemble and associate, or emphasise that the company will not attempt to unduly influence the government to limit the human rights of its citizens.

True	False	F/A	N/A

---

2 Company managers and security staff do not request government intervention or otherwise influence the government to interfere with demonstrations, meetings, and association rights of any affected communities.

True	False	F/A	N/A

---

3 All affected individuals enjoy their rights to assembly and association and expression even if their concerns relate to the company operations.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Article 20 and 23(4); International Covenant on Civil and Political Rights (1966), Articles 21 and 22; International Covenant on Economic, Social and Cultural Rights (1966), Article 8; ILO Indigenous and Tribal Peoples Convention (C169, 1989), Article 3

No. 7.1.5.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Question
Does the company refrain from endorsing, supporting or benefiting from government policies or acts that violate the right to privacy?

Yes	No	F/A	N/A

Description
The company should strive to respect, promote and implement good human rights standards in its practices, even when operating in a state whose policies violate international human rights law. The company may have little influence over such governmental policies, but it should at a minimum refrain from endorsing or supporting any policy or activity that violates the right. This includes avoiding passing along information on employees, customers and others that will help the state enact or carry out offending policies.

Suggested Indicators

1 The company does not endorse state monitoring of people and does not provide assistance to the government for use in improper spying or monitoring.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Article 12; International Covenant on Civil and Political Rights (1966), Articles 17 and 23; International Covenant on Economic, Social and Cultural Rights (1966), Article 10; ILO Code of Practice: Protection of Workers Personal Data, (1997), Article 10 (1

No. 7.1.6.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Yes	No	F/A	N/A

Question
Does the company refrain from endorsing, supporting or benefiting from government policies or acts that violate the right to property?

Description
The company should strive to respect, promote and implement good human rights standards in its practices, even when operating in a state whose policies violate international human rights law. The company may have little influence over such governmental policies. However, it should at a minimum refrain from endorsing or supporting the particular policy/activity that violates the right. This includes purchase or lease of property that the state has taken from a person or people in violation of human rights law.

Suggested Indicators

1 The company does not endorse limitations on the rights of women, minorities or other groups to own property, and refrains from purchasing land that was taken by the state from the owner in violation of human rights law.

True	False	F/A	N/A

---

2 The company does not endorse any illegal land transfer executed by the state, and does not purchase land that was taken by the state from an indigenous people in violation of international law.

True	False	F/A	N/A

		True	False	F/A	N/A
3	The company does not endorse the dumping of harmful and hazardous material by the state on local or indigenous land, and does not use state waste collection facilities that violate the land rights of others.				

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Article 17; International Covenant on Civil and Political Rights (1966), Article 12 (1); Convention on the Protection of All Migrant Workers and Members of Their Families (1990), Article 15; ILO Code of Practice: Protection of Workers' Personal Data (1997), Article 10; UN Declaration on the Rights of Indigenous Peoples (2007) Article 10

No. 7.1.7.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Question
Does the company refrain from endorsing, supporting or benefiting from government policies or acts that violate the right to work and favourable conditions at work?

Yes	No	F/A	N/A

Description
The company should strive to respect, promote and implement good human rights standards in its practices, even when operating in a state whose policies violate international human rights law. The company may have little influence over such governmental policies, but it should at a minimum refrain from endorsing or supporting the particular policy/activity that violates the right. This includes avoiding passing along information on employees, customers and others that will help the state enact or carry out policies which violate the right.

Suggested Indicators

1 The company does not endorse any limitations on the working hours of women and does not take any disciplinary measures against female employees who violate the limitation.

True	False	F/A	N/A

---

2 When government labour laws are less protective than international standards, in particular for groups such as women, children and migrant workers, the company applies international standards.

True	False	F/A	N/A

---

3 Company policy or a code of conduct establish the company's commitment to fundamental human rights.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Articles 23, 24 and 25; International Covenant on Civil and Political Rights (1966), Articles 17 and 23; International Covenant on Economic, Social and Cultural Rights (1966), Article 10; ILO Code of Practice: Protection of Workers Personal Data, (1997), Article 10 (1)

No. 7.1.8.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Question
Does the company refrain from endorsing, supporting or benefiting from government policies or acts that violate the right to a cultural life**?**

Yes	No	F/A	N/A

Description
The company should strive to respect, promote and implement good human rights standards in its practices, even when operating in a state whose policies violate international human rights law. The company will may have little influence over such governmental policies. However, it should at a minimum refrain from endorsing or supporting the particular policy/activity that violates the right. This includes avoiding passing along information on employees, customers and others that will help the state enact or carry out offending policies. Typical state violations of the right to participate in cultural life that the company might be drawn into are listed below.

Suggested Indicators

1 The company does not publicly or privately endorse any discriminatory limitations on the right to participate in cultural life.

True	False	F/A	N/A

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2 The company equally respects and supports both state-endorsed and minority cultures, and allows all employees to take part in their own cultural activities.

True	False	F/A	N/A

		True	False	F/A	N/A
3	The company does not give the government information concerning their employees' cultural affiliations.				

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Article 27; International Covenant on Civil and Political Rights (1966), Article 27; Convention on the Protection of All Migrant Workers and Members of Their Families (1990), Article 31

No. 7.1.9.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Question
Does the company refrain from endorsing, supporting or benefiting from government policies or acts that violate the right to education?

Yes	No	F/A	N/A

Description
The company should strive to respect, promote and implement good human rights standards in its practices, even when operating in a state whose policies violate international human rights law. The company will often have very little direct influence over such governmental policies. However, it should at a minimum refrain from endorsing or supporting the particular policy/activity that violates the right. This includes avoiding passing along information on employees, customers and others that will help the state enact or carry out offending policies. Typical state violations of the right to education that the company might be drawn into are listed below.

Suggested Indicators

1 The company does not hire children of school age even though the state may not offer primary education.

True	False	F/A	N/A

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2 The company arranges informal training to improve skills of minorities and female employees, even if the state does not permit them to participate in educational activities.

True	False	F/A	N/A

---

3 The company does not give information about employees to the government which could be used to restrict the employee's family's access to education.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Article 26; International Covenant on Economic, Social and Cultural Rights (1966), Article 13 (2a); Convention on the Rights of the Child (1990), Article 28 (1); ILO Indigenous and Tribal Peoples Convention (C169, 1989), Articles 26; ILO Minimum Age Convention (C138, 1973), Articles 1, 2, 3 and 7

No. 7.1.10.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Question
Does the company refrain from endorsing, supporting or benefiting from government policies or acts that violate the right to a fair trial?

Yes	No	F/A	N/A

Description
The company should strive to respect, promote and implement good human rights standards in its practices, even when operating in a state whose policies violate international human rights law. The company may have little influence over such governmental policies. However, it should at a minimum refrain from endorsing or supporting the particular policy/activity that violates the right. This includes avoiding passing along information on employees, customers and others that will help the state enact or carry out offending policies. Typical state violations of the right to a fair trial that the company might be drawn into are listed below.

Suggested Indicators

1 The company does not participate in improper judicial proceedings or bring cases before tribunals where the rights to a fair trial of the responding party are not recognised.

True	False	F/A	N/A

---

2 The company does not supply information to the state which could lead to improper detentions or prosecutions.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Articles 6-11; International Covenant on Civil and Political Rights (1966), Article 14; ILO Code of Practise: Protection of Workers' Personal Data (1997), Article 10

No. 7.1.11.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Question
Does the company refrain from endorsing, supporting or benefiting from government policies or acts that violate the right to a family life?

Yes	No	F/A	N/A

Description
The company should strive to respect, promote and implement good human rights standards in its practices, even when operating in a state whose policies violate international human rights law. The company will often have very little direct influence over such governmental policies. However, it should at a minimum refrain from endorsing or supporting the particular policy/activity that violates the right. This includes avoiding passing along information on employees, customers and others that will help the state enact or carry out offending policies. Typical state violations of the right to family life that the company might be drawn into are listed below.

Suggested Indicators

1 The company does not endorse any discriminatory limitations on the adoption of children, and does not pass along information about employees that could be used by the government to discriminatorily limit the adoption of children.

True	False	F/A	N/A

2 The company does not endorse any discriminatory limitations on the right to marry, and does not pass along information about employees that could be used by the government to refuse the granting of a marriage license.

True	False	F/A	N/A

---

3 The company does not endorse any government forced sterilisation programmes, and does not supply information about employees that could be used as a justification for sterilisation.

True	False	F/A	N/A

---

4 The company does not endorse any state imposed limitations on the number of children a person may have, and does not support or implement disciplinary measures against employees who violated the limitations.

True	False	F/A	N/A

---

5 The company does not endorse the criminalization of individuals who have children out of wedlock, and does not supply information concerning such employees.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Article 16; International Covenant on Civil and Political Rights (1966), Articles 17 and 23; International Covenant on Economic, Social and Cultural Rights (1966), Article 10; Convention on the Elimination of All Forms of Discrimination against Women (1979), Articles 3 and 5; ILO Code of Practice: Protection of Workers Personal Data, (1997), Article 10 (1)

No. 7.1.12.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Question
Does the company refrain from endorsing, supporting or benefiting from government policies or acts that violate the right to adequate food?

Yes	No	F/A	N/A

Description
The company should strive to respect, promote and implement good human rights standards in its practices, even when operating in a state whose policies violate international human rights law. The company may have little influence over such governmental policies. However, it should at a minimum refrain from endorsing or supporting the particular policy/activity that violates the right.

Suggested Indicators

1 The company pays a living wage if the national minimum wage does not meet basic needs.

True	False	F/A	N/A

2 Even if the state fails to implement adequate environmental protection policies, the company refrains from using chemicals, pesticides and emitting pollutants that may be harmful to food production.

True	False	F/A	N/A

---

3 Even where the state does not regulate the safety and quality of food products, the company ensures that all company food products are produced safely and marketed ethically with a high degree of transparency.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Article 25; International Covenant on Civil and Political Rights (1966), Articles 17 and 23; International Covenant on Economic, Social and Cultural Rights (1966); ILO Social Policy (Basic Aims and Standards) Convention (C117, 1962), article 5; ILO Minimum Wage Fixing Recommendation (R135, 1970), article 3; FAO/WHO Codex Alimentarius: Code of Ethics for International Trade in Food (1979), Articles 4 (2d) and 5 (3)

No. 7.1.13.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Question

Does the company refrain from endorsing, supporting or benefiting from government policies or acts that violate the right to freedom from forced labour and servitude?

Yes	No	F/A	N/A

Description

The company should strive to respect, promote and implement good human rights standards in its practices, even when operating in a state whose policies violate international human rights law. The company may have little influence over such governmental policies. However, it should at a minimum refrain from endorsing or supporting the particular policy/activity that violates the right. This includes avoiding passing along information on employees, customers and others that will help the state enact or carry out offending policies. Typical state violations of the right to freedom from forced labour and servitude that the company might be drawn into are listed below.

Suggested Indicators

1 The company does not use prison labour in countries which are known to systematically imprison individuals without due process.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:

No. 7.1.14.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Question
Does the company refrain from endorsing, supporting or benefiting from government policies or acts that violate the right to freedom from torture or other cruel, inhuman or degrading treatment or punishment?

Yes	No	F/A	N/A

Description
Torture generally occurs in a limited range of circumstances. The company might be complicity in violations committed by local army or police units called upon to protect the company's installations or facilities. The company shall refrain from supporting or endorsing any government policy or activity that violates the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment.

Suggested Indicators

1 In areas where there is a history of torture and other ill-treatment perpetrated by state security forces or vigilante groups, the company informs the government that it expects police and army units to abide by international standards in protection of company installations or facilities.

True	False	F/A	N/A

---

2 The company informs government about its security policies and refusal to support or benefit from government violations of the right to freedom from torture and cruel, inhuman, or degrading treatment and punishment.

True	False	F/A	N/A

		True	False	F/A	N/A
3	The company closely monitors the work of local army or police units who guard the company's installations or facilities.				

		True	False	F/A	N/A
4	Company employees are notified of their duty to refuse any command by government officials to torture or perform acts of cruel, inhuman or degrading treatment and punishment.				

		True	False	F/A	N/A
5	No incidents of torture, intimidation or violence by army or police units who protect company installations or facilities are reported.				

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Articles 18 and 19; International Covenant on Civil and Political Rights (1966), Articles 18 and 19; ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977), Articles 21 and 22

No. 7.1.15.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Question
Does the company refrain from endorsing, supporting or benefiting from government policies or acts that violate the right to an adequate standard of living?

Yes	No	F/A	N/A

Description
The company should strive to respect, promote and implement good human rights standards in its practices, even when operating in a state whose policies violate international human rights law. The company may have little direct influence over such governmental policies. However, it should at a minimum refrain from endorsing or supporting the particular policy or activity that violates the right. Typical state violations of the right to an adequate standard of living that the company might be drawn into are reflected in the indicators below.

Suggested Indicators

1 If the state limits the rights of women, minorities, or other vulnerable groups to work, the company still attempts to create adequate jobs for these groups, which provides them with a living wage.

True	False	F/A	N/A

---

2 If the national minimum wage only applies to citizens or other particular groups in society, the company pays even those groups at least the minimum wage.

True	False	F/A	N/A

		True	False	F/A	N/A
3	If the minimum wage is not sufficient to cover basic needs, the company establishes a living wage which covers the basic needs of all employees.				

		True	False	F/A	N/A
4	If national social welfare programs do not provide a living wage, the company establishes additional pension and unemployment funds for dismissed, disabled and retired employees.				

		True	False	F/A	N/A
5	If the national social welfare programs exclude some vulnerable groups, the company ensures that these groups are provided with equivalent benefits in case of unemployment, sickness and old age.				

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Article 25; International Covenant on Economic, Social and Cultural Rights (1966), Article 7 (a) and 11 (1); Convention on the Rights of the Child (1989), Article 37 (b);Convention on the Protection of All Migrant Workers and Members of Their Families (1990), Article 25; ILO Minimum Wage Fixing Convention (C131, 1970), Article 3; ILO Social Policy (Basic Aims and Standards) Convention (C117, 1962), Article 5; ILO Workers' Housing Recommendation (R115, 1961), Article 4; Tripartite Declaration on the Responsibilities of Transnational Corporations (1977), Article 34

No. 7.1.16.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Question

Does the company refrain from endorsing, supporting or benefiting from government policies or acts that violate the right to housing?

Yes	No	F/A	N/A

Description

The company should strive to respect, promote and implement good human rights standards in its practices, even when operating in a state whose policies violate international human rights law. The company will often have very little direct influence over such governmental policies. However, it should at a minimum refrain from endorsing or supporting the particular policy/activity that violates the right. This includes avoiding passing along information on employees, customers and others that will help the state enact or carry out policies which violate the right. Typical state violations of the right to housing that the company might be drawn into are listed below.

Suggested Indicators

1 The company does not purchase property from the government that has been acquired through destruction and demolition of housing, state imposed evictions or forced relocations without adequate compensation.

True	False	F/A	N/A

---

2 When providing company housing to employees or the local community, the company does not implement discriminatory policies or practices limiting the right to own property that may apply to groups such as women or persons of particular ethnic groups or religions.

True	False	F/A	N/A

---

3 The company does not supply information about religious, racial, political or other characteristics of employees which could be used by the government to violate their right to housing.

True	False	F/A	N/A

---

4 The company does not endorse the occupation of residential settlements by state forces in any way, for example by supplying funding or weapons.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Article 25; International Covenant on Economic, Social and Cultural Rights (1966), Article 11 (1); ILO Indigenous and Tribal Peoples Convention (C169, 1989), Articles 7, 14 and 16; ILO Workers' Housing Recommendation (R115, 1961, Article 12

No. 7.1.17.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Question
Does the company refrain from endorsing, supporting or benefiting from government policies or acts that violate the rights to peaceful assembly and freedom of association?

Yes	No	F/A	N/A

Description
The company should strive to respect, promote and implement good human rights standards in its practices, even when operating in a state whose policies violate international human rights law. The company may have little influence over such governmental policies, but it should at a minimum refrain from endorsing or supporting the particular policy or activity that violates the right. This includes avoiding passing along information on employees, customers and others that will help the state enact or carry out offending policies.

Suggested Indicators

1 The company does not endorse any state imposed limitations on freedom of assembly and association, and does not implement or support disciplinary measures against employees who violate limitations that violate international law.

True	False	F/A	N/A

2 The company does not endorse the criminalization of union leaders and representatives, and does not share information with the government about employees who violate the ban.

True	False	F/A	N/A

3 The company does not endorse laws or policies that discriminate against particular worker groups' rights to assembly and association.

True	False	F/A	N/A

		True	False	F/A	N/A
4	If national law only allows state-controlled unions, the company supports workers in establishing alternative means to meet and to influence their own working conditions.				

Comments:

Basis for assessment:

No. 7.1.17.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Question
Does the company refrain from endorsing, supporting or benefiting from any government policies or acts that violate the right to take part in government?

Yes	No	F/A	N/A

Description
The company should strive to respect, promote and implement good human rights standards in its practices, even when operating in a state whose policies violate international human rights law. The company will often have very little direct influence over such governmental policies. However, it should at a minimum refrain from endorsing or supporting the particular policy/activity that violates the right. This includes avoiding passing along information on employees, customers and others that will help the state enact or carry out offending policies. Typical state violations of the right to take part in government, that the company might be drawn into, are listed below.

Suggested Indicators

1 The company does not endorse any state imposed discriminatory limitations on the right to vote, and does not pass along information concerning religious, racial, political affiliations or other characteristics of employees which could be used by the government as a reason to restrict the right to vote.

True	False	F/A	N/A

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2 The company does not endorse any discriminatory limitations on the expression of political opinions, and does not pass along information concerning affiliations or personal characteristics which could be used by the government as a reason to punish or limit an employee's right to express his or her political opinions.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Article 20 and 23(4); International Covenant on Civil and Political Rights (1966), Articles 21 and 22; International Covenant on Economic, Social and Cultural Rights (1966), Article 8; ILO Freedom of Association and Protection of the Right to Organise Convention (C87, 1948), Article 2; ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977), Article 44

No. 7.1.18.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Question

Does the company refrain from endorsing, supporting or benefiting from government policies or acts that violate the right to health?

Yes	No	F/A	N/A

Description

The company should strive to respect, promote and implement good human rights standards in its practices, even when operating in a state whose policies violate international human rights law. The company will often have very little direct influence over such governmental policies. However, it should at a minimum refrain from endorsing or supporting the particular policy/activity that violates the right. This includes avoiding passing along information on employees, customers and others that will help the state enact or carry out policies which violate the right. Typical state violations of the right to health that the company might be drawn into are listed below.

Suggested Indicators

1 If governmental health and safety standards for the workplace are inadequate, the company follows international standards to ensure that all employees are adequately protected against any type of work accidents.

True	False	F/A	N/A

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2 The company does not endorse government discrimination of HIV/AIDS victims by denying them access to similar health benefits as other employees.

True	False	F/A	N/A

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3 The company does not endorse any type of enforced female genital mutilation programmes of the state, and refrains from supplying any information regarding employees which could be used to submit them to such operations.

True	False	F/A	N/A

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4 The company does not endorse any discriminatory limitations on the right to health, and does not pass along information concerning religious, racial or other characteristics of employees which could be used by the government as a reason to restrict an employee's access to medical care.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Article 25; International Covenant on Economic, Social and Cultural Rights (1966), Article 12; Convention on the Elimination of All Forms of Discrimination against Women (1979), Articles 3 and 5; ILO Code of Practice: Protection of Workers Personal Data, (1997), Article 10 (1)

No. 7.1.19.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Question
Does the company refrain from endorsing, supporting, or benefiting from government policies or acts that violate the right to life, liberty and security of the person?

Yes	No	F/A	N/A

Description
The company should strive to respect, promote and implement good human rights standards in its practices, even when operating in a state whose actions or policies violate international human rights law. The company will often have very little direct influence over such governmental actions or policies. However, it should at a minimum refrain from endorsing or supporting the particular policy/action that violates the right. This includes avoiding passing along information on employees, customers and others that will help the state enact or carry out policies or actions which violate the right.

Suggested Indicators

1 Prior to agreeing to invest in a particular location, the company makes clear to the government that it will not promote or tolerate any violations of the right to life, liberty and security of the person used to create a favourable business climate.

True	False	F/A	N/A

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2 In high-risk areas, where right to life violations are perpetrated by state security forces or linked paramilitary groups for the purposes of promoting corporate enterprise, the company has made it clear to the government that it will not promote or tolerate any violations of the right to life, liberty and security of the person, and continually monitors the situation.

True	False	F/A	N/A

		True	False	F/A	N/A
3	The company dialogues with local NGOs and human rights groups to ensure that all possible measures are taken to mitigate its effect on violence in the area.				

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Article 25; International Covenant on Economic, Social and Cultural Rights (1966), Article 12; Convention on the Elimination of All Forms of Discrimination against Women (1979), Articles 3 and 5; ILO Code of Practice: Protection of Workers Personal Data, (1997), Article 10 (1)

No. 7.1.20.	**Area** Legal and government affairs	**Section** Host country conditions and agreements

Question
Has the company ensured that agreements with the host state do not exempt the company from complying with improved social or environmental laws or oblige the host state to compensate the company for the expense or other burden of complying with improved social or environmental laws?

Yes	No	F/A	N/A

Description
Before establishing operations in some states, companies sometimes negotiate with the host state for certain privileges, which are included in a host government agreement. Such an agreement may include a stabilization clause. A stabilization clause can serve as a risk-mitigation tool for long-term investors by protecting the investment from changes in host state domestic laws during the life of the contract. Changes in law covered by a stabilization clause can include improvements in social and environmental laws. Therefore, by limiting the applicability of new social and environmental laws and regulations, a stabilization clause has the potential to limit the enjoyment of improved human rights for persons within the company's sphere of influence. A stabilization

clause can either freeze the applicable law as to the company's operations (freezing clause), or oblige the host state to compensate the company for the burden or expense of complying with amended laws (economic equilibrium clause). For example, the effect of a freezing clause would be that new laws that set higher standards related to health and safety would not need to be applied within the company's operations, and the company workers would therefore only enjoy the health and safety standards as they stood at the time the host government agreement was formed. In the case of an economic equilibrium clause, the stabilization clause does not freeze the law per se, but rather, requires the host state to compensate the company for the costs of complying with improved social or environmental laws through, for example, adjustments to the contract, tax reductions or monetary compensation. A hybrid clause requires the host state to restore the investor to the same position the investor was in prior to the changes in the law and can involve a combination of freezing the law and compensation. The substantive coverage of a stabilization clause can vary widely to include a broad range of laws, including social and environmental laws, or be limited only to laws that are considered discriminatory towards the investor or laws that may be of particular relevance to the project covered by the contract. In some cases, stabilization clauses can have the potential to create a chilling impact on the host state's willingness to improve social or environmental standards. For example, if the host state is under an obligation to compensate a company for costs of implementing improved standards, state governments or legislators might become less able or willing to put in place such improvements. In this case a stabilization clause may adversely interfere with the host state's duty to protect and fulfil human rights.

Suggested Indicators

		True	False	F/A	N/A
1	Any stabilization clause is based on the principle of risk allocation and does not provide exemption from or compensation for compliance with improved social and environmental laws of general application, legislation enacted to reasonably implement the host state's international human rights obligations, or reasonably foreseeable changes in the law.				

		True	False	F/A	N/A
2	Any stabilization clause limits stabilization coverage to changes in laws that are arbitrary and/or discriminatory towards the investor.				

		True	False	F/A	N/A
3	If the company negotiates for stabilization clauses it ensures that all negotiating and contracting parties are fully informed about the range of potential stabilization clauses and the implications of any stabilization clauses being negotiated. This obligation may include providing independent legal support or assistance to the negotiating and contracting parties.				
4	The company does not conclude host government agreements that contain full freezing clauses, but rather negotiates for limited economic equilibrium stabilization clauses that are drafted in accordance with international best practice.				
5	If a stabilization clause in an existing agreement freezes law related to health, safety, labour, environment or other standards related to human rights protection, the company nonetheless implements the higher level of standards.				
6	Where the state is required to compensate the company for the costs of implementing new legislation that improves social and environmental protection, the company does not accept an exemption to the law in lieu of compensation.				

7 A stabilization clause requiring state compensation to the company for improvements in social or environmental laws includes features to ensure fairness, such as a reasonable threshold loss requirement before compensation is to be provided, and a requirement that the company must make all efforts to minimize costs arising from compliance with changes in law, where a neutral expert or regulatory body is engaged to assess the expense of implementing new social and environmental laws.

True	False	F/A	N/A

8 Where the host state does not make host government agreements publicly available, the company makes its host government agreements publicly available free of charge.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:

7.2 STATE-INVESTOR CONTRACTS

No. 7.2.1.	**Area** Legal and government affairs	**Section** State-investor contracts: Negotiation preparation and planning

Question
Are negotiating teams supported by human rights expertise, ensuring capacity and mandate to implement the responsibility to respect human rights in negotiations?

Yes	No	F/A	N/A

Description
Negotiating parties need to be adequately prepared and have the capacity to address human rights implications of the project during negotiation. This includes making sure that negotiating teams are appropriately supported by in-house or external human rights expertise, reflecting human rights in the mandates of negotiators and ensuring negotiators understand the respective human rights duties of the State and human rights responsibilities of the company.

Suggested Indicators

1 Company due diligence processes and protocols governing negotiations include human rights considerations (e.g. investment risk-assessments, negotiation guidelines etc.).

True	False	F/A	N/A

2 The negotiating team is supported by in-house or external human rights expertise.

True	False	F/A	N/A

		True	False	F/A	N/A
3	The negotiating team is aware of potential adverse human rights impacts reasonably foreseeable from feasibility studies, early impact assessments, community engagement or other initial project preparation. Context specific potential human rights impacts identified through these studies inform the negotiations.				

		True	False	F/A	N/A
4	The company takes steps to ensure that State negotiating teams have access to any necessary expertise and information during negotiations (e.g. human rights, legal, technical, financial, etc.).				

Comments:

Basis for assessment:

Question references:

No. 7.2.2.	**Area** Legal and government affairs	**Section** State-investor contracts: Management of potential adverse human rights impacts

Question

Does the company take steps to clarify State duties and company responsibilities for the prevention, mitigation and remediation of actual and potential adverse human rights risks and impacts associated with the project?

Yes	No	F/A	N/A

Description

State duties and company responsibilities for the prevention, mitigation and remediation of actual and potential human rights risks and impacts associated with the project and its activities should be clarified and agreed to the extent possible before the contract is finalised. As the contract forms a basis for the future management of human rights risks and impacts it is an important tool in the allocation of tasks for protecting and respecting human rights, including allocation of financial resources and timing for ongoing management of human rights risks and impacts throughout the project lifecycle. Considerations at contracting include: clarifying how a human rights baseline will be established; providing for assignment of adequate funding for human rights management and mitigation (including capturing project lifecycle considerations, i.e. anticipating the need for human rights due diligence funding at project start up and closure, as well as during operations); recognising the State duty to protect human rights, the corporate responsibility to respect human rights and access to remedy; and to the extent possible assigning roles and responsibilities for ongoing human rights due diligence, including through commitments to further defining specific protocols and steps during project implementation (e.g. including an initial contractual commitment for the development and implementation of a more detailed security management protocol and community engagement plan).

Suggested Indicators

1 The contract contains provision for undertaking human rights due diligence (i.e. human rights baseline, periodic assessment of human rights impacts, stakeholder engagement, grievance mechanism etc.).

True	False	F/A	N/A

		True	False	F/A	N/A
2	The contract clearly delineates State duties and company responsibilities with regard to actual and potential human rights impacts of the project.				

		True	False	F/A	N/A
3	The contract provides for assignment of adequate funding for human rights impact management, including through setting up special financial mechanisms with independent or joint accountability structures where appropriate.				

Comments:

Basis for assessment:

Question references:

No. 7.2.3.	**Area** Legal and government affairs	**Section** State-investor contracts: Monitoring and compliance

Question
Do negotiations and contracts consider how project compliance with human rights will be monitored?

Yes	No	F/A	N/A

Description
The State has the primary duty to monitor project compliance with relevant standards to protect human rights whilst also providing necessary assurances for the company against arbitrary interference in the project. To ensure effective monitoring and project compliance with relevant standards the company needs to consider the State's capacity to monitor the project's compliance with applicable standards, and identify how it may contribute to closing any gaps identified in the State's capacity to monitor (e.g. through temporary alternative agreed methods of monitoring and ensuring project compliance with applicable standards).

Suggested Indicators

1 Company negotiators consider potential conflicts of interest and gaps in State capacity to monitor project compliance with project operating standards and human rights and if there are gaps identified the contract stipulates how these will be mitigated, e.g. via self-reporting requirements, external assistance or other means.

True	False	F/A	N/A

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2 The contract reflects the State's duty to monitor compliance with all relevant standards (such as technical, social, environmental, fiscal, financial and accounting standards), including providing for State access to information and project sites reasonably required to ensure such compliance.

True	False	F/A	N/A

		True	False	F/A	N/A
3	The company cooperates in State monitoring and compliance work.				

		True	False	F/A	N/A
4	The company seeks to ensure adequate costing of monitoring and compliance activities.				

Comments:

Basis for assessment:

Question references:

No. 7.2.4.	**Area** Legal and government affairs	**Section** State-investor contracts: Project operating standards

Question
Does the company ensure the contract stipulates human rights compatible operating standards for the project?

Yes	No	F/A	N/A

Description
The laws, regulations and standards governing the project should facilitate the prevention, mitigation and remediation of any adverse human rights impacts throughout the project lifecycle. This includes seeking clarity of operating standards, identifying any inconsistencies between host-country laws and regulations and relevant international standards, including human rights standards, and including a commitment that the most protective standards will apply. The contract should also include acknowledgment that standards are dynamic over time and a

commitment that project governance allows for updates in laws, regulations and standards as they evolve.

Suggested Indicators

1	The company has identified gaps between host-country laws and regulations (and implementation) and international standards, including human rights standards (e.g. through early baseline or risk assessment).	True	False	F/A	N/A

2	The contract applies operating standards that facilitate the prevention, mitigation and remediation of any adverse human rights impacts throughout the project lifecycle, including a commitment that in case of inconsistencies between national standards and international and other best practice standards the more protective standard will apply.	True	False	F/A	N/A

3	The contract stipulates that all operating standards apply to successors and contractors and sub-contractors.	True	False	F/A	N/A

4	The contract acknowledges that applicable standards are dynamic over time and provides for adherence to operating standards updated as bona fide efforts of the State to introduce and implement laws, regulations or policies to meet the State's international human rights obligations.	True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:

No. 7.2.5.	**Area** Legal and government affairs	**Section** State-investor contracts: Stabilisation clauses

Question

Has the company ensured that stabilisation clauses, if used, are carefully drafted so that any protections for the company against future changes in law do not interfere with the host-State's bona fide efforts to introduce and implement laws, regulations or policies, in a non-discriminatory manner, to meet the State's human rights obligations?

Yes	No	F/A	N/A

Description

Stabilisation clauses refer to those clauses in an agreement that address changes in the law during the term of the contract. From a company perspective, stabilisation clauses can constitute a risk-mitigation tool to protect an investment from changes in the fiscal regime during the life of the project. Host-States may view stabilisation clauses as a way to foster a favorable investment climate. It is important to distinguish between different types of stabilisation clauses, and full-freezing clauses must be avoided. 'Full-freezing' clauses are clauses that freeze the law of the host-State with respect to the investment project over the life of the project; 'economic equilibrium' clauses require that the investor complies with new laws but also require that the investor be compensated for the cost of complying with them; and 'hybrid' clauses require the State to restore the investor to the same position it had prior to changes in law. If used, it is essential that potential human rights implications of any stabilisation clauses are carefully considered. For example, if such clauses are used it is important that they are consistent with the State's human rights obligations and do not create obstacles to the State's bona fide efforts to introduce and implement laws, regulations or policies, in a non-discriminatory manner, in order to meet the State's human rights obligations.

Suggested Indicators

1	The company does not negotiate full-freezing stabilisation clauses and avoids entering any contract that contains full-freezing stabilisation clauses.	True	False	F/A	N/A

2	Stabilisation clauses, if used, do not contemplate economic or other penalties for the State in the event that the State introduces laws, regulations or policies which: a) are implemented on a non-discriminatory basis; and b) reflect international standards, benchmarks or recognised good practices in areas such as health, safety, labor, the environment, technical specifications or other areas that concern human rights impacts of the project.	True	False	F/A	N/A

3	Where they are used, mechanisms to manage the material and economic impacts on a company of non-discriminatory changes in law should be carefully designed to mitigate the specific risks to which the company is exposed.	True	False	F/A	N/A

4	If a stabilisation clause in an existing agreement freezes law related to health, safety, labour, environment or other standards related to human rights protection, the company nonetheless applies the relevant higher standards and improvements in laws and regulations.	True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:

No. 7.2.6.	**Area** Legal and government affairs	**Section** State-investor contracts: Additional goods or service provision

Question
Does the company ensure human rights impacts associated with additional goods or service provision are considered?

Yes	No	F/A	N/A

Description
Where the contract envisages that the company provides additional goods or services (non-commercial services or infrastructure, such as schools, healthcare services, roads or other, that are not essential to either carrying out the project or mitigating the project impacts), this should be carried out in a manner that is compatible with the State's human rights duties and the company's human rights responsibilities. This includes consideration of whether additional goods or service provision would in any way hinder the State's implementation of its human rights duties. The company's responsibility to respect human rights applies to the provision of goods or services even where these are additional to the project and the company's core business activity.

Suggested Indicators

1 The contract clearly sets out human rights compliant standards that apply to additional goods or service provision.

True	False	F/A	N/A

2 Responsibility for ensuring the effectiveness, oversight and monitoring of additional goods or services is assigned and adequately resourced.	True	False	F/A	N/A

3 Any company provision of additional goods or services is designed in a manner that considers and supports the State duty to provide such services, including long-term sustainability of services (i.e. beyond the life of the project).	True	False	F/A	N/A

4 Company human rights due diligence activities include additional goods or service provision (e.g. impact assessments, monitoring etc.).	True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:

No. 7.2.7.	**Area** Legal and government affairs	**Section** State-investor contracts: Physical security for the project

Question

Does the company seek to ensure a contractual commitment that any physical security for the project is carried out in a manner that is consistent with international human rights standards and international humanitarian law?

Yes	No	F/A	N/A

Description

Physical security for the project's facilities, installations or personnel should be provided in a manner that is consistent with human rights standards and principles. Therefore, to the extent possible human rights risks and impacts associated with public and/or private security provision for the project need to be identified in negotiation preparations and planning, and approaches to security management agreed before the contract is finalised (to be further operationalised throughout the project lifecycle).

Suggested Indicators

1 In negotiations and contracts the company identifies and considers human rights risks and impacts associated with physical security of the project, including potential legal liabilities.

True	False	F/A	N/A

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2 The company negotiates for a commitment that security will be carried out in line with international human rights standards (e.g. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Code of Conduct for Law Enforcement Officials, International Humanitarian Law, Voluntary Principles on Security and Human Rights etc.), and ensures that there is provision for the development of detailed security management protocols.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:

No. 7.2.8.	**Area** Legal and government affairs	**Section** State-investor contracts: Community engagement

Question
Does the company ensure that the contract contains provision for effective community engagement throughout the project lifecycle?

Yes	No	F/A	N/A

Description
Effective community engagement is an integral aspect of human rights due diligence and may be facilitated through a contractual provision allocating resources and responsibilities for community engagement activities. Whilst the contract may not be able to stipulate all necessary detail, it should at minimum provide reference to the development, costing and resourcing of community engagement plans and activities.

Suggested Indicators

1 Potentially impacted communities and individuals have been identified and consulted to the extent possible before the contract is finalised.

True	False	F/A	N/A

		True	False	F/A	N/A
2	To the extent possible at contracting stage, the community engagement plan has been properly costed, resourced, roles and responsibilities for implementation considered and the timing for implementation agreed.				

		True	False	F/A	N/A
3	Parties have shared information regarding any previous community engagement activities, and have agreed on how information gathered going forward will be shared.				

Comments:

Basis for assessment:

Question references:

No. 7.2.9.	**Area** Legal and government affairs	**Section** State-investor contracts: Project-level grievance resolution

Question
Does the company ensure that the contract includes a commitment for the development and implementation of an effective project-level grievance mechanism?

Yes	No	F/A	N/A

Description

An effective project-level grievance mechanism is an integral component of human rights due diligence, facilitating both remediation as well as serving as an early warning system to capture community grievances. Therefore, the contract should at minimum provide reference to the development, implementation, costing and resourcing of a project-level grievance mechanism that meets the UN Guiding Principles' effectiveness criteria.

Suggested Indicators

		True	False	F/A	N/A
1	The contract provides for the development and implementation of a project-level grievance mechanism that: is accessible to impacted individuals and communities; meets the UN Guiding Principles' effectiveness criteria; and does not prejudice recourse to judicial mechanisms.				
2	To the extent possible at contracting stage, the community grievance mechanism has been properly costed, resourced and roles and responsibilities for implementation considered.				

Comments:

Basis for assessment:

Question references:

No. 7.2.10.	**Area** Legal and government affairs	**Section** State-investor contracts: Transparency and disclosure of contract terms and information

Question

Does the company take active steps to ensure the terms of the contract as well as specific human rights due diligence information related to the project are disclosed in a timely and accurate manner and are accessible to impacted rights-holders and other interested stakeholders?

Yes	No	F/A	N/A

Description

Rights-holders and other stakeholders who may be impacted by the investment project need to have access to timely and accurate information regarding the terms of the contract. Appropriate disclosure of the contract terms also allows negotiating parties to communicate transparently with those who may be impacted by the project. Negotiations should include reaching an agreement on a strategy for the disclosure of the contract terms and conditions, including consideration of information accessibility (e.g. languages, literacy, physical accessibility etc.). The company should negotiate with a presumption towards transparency and disclosure, ensuring that the scope and duration of any exceptions are appropriately time-bound and based on compelling justifications. It is also important that negotiations and contracts include steps for the timely and accurate disclosure of specific human rights due diligence information associated with project implementation (e.g. impact assessments, stakeholder engagement plans, information about the community grievance mechanism etc.). Transparency and disclosure of such information also needs to consider information accessibility for rights-holders and other stakeholders.

Suggested Indicators

1 The company agrees to, and works towards, the proactive and timely disclosure of the contract terms.

True	False	F/A	N/A

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2 The company ensures that disclosure of contract terms is in formats accessible to impacted rights-holders and stakeholders, considering factors such as language, literacy, physical accessibility etc.

True	False	F/A	N/A

3 Any exceptions to disclosure are based on compelling justifications and time-bound to fit the compelling justifications.	True	False	F/A	N/A

4 The contract requires that where clauses are kept confidential, the subject matter of the excepted clause(s) is disclosed, along with the expected release date.	True	False	F/A	N/A

5 The contract delineates responsibility for making the contract terms accessible.	True	False	F/A	N/A

6 The company ensures that contact negotiations and contract terms make provision for the timely and accurate disclosure of specific human rights due diligence information associated with project implementation (e.g. impact assessment plans, stakeholder engagement plans, information about the community grievance mechanism etc.).	True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:

7.3 INTERACTION WITH LEGAL SYSTEMS

No. 7.3.1.	**Area** Legal and government affairs	**Section** Interaction with legal systems

Question
Does the company refrain from becoming involved in legal matters which involve law that violates the right to a fair trial and the right to life, liberty and security of the person?

Yes	No	F/A	N/A

Description
The right to a fair trial contains many different features, depending upon whether the matter is a civil or criminal proceeding, but at its core, it is the right to an equal, fair and public hearing by an independent and impartial tribunal, for the determination of one's rights and obligations under the law. Criminal defendants in particular are also entitled to i) the right to be informed promptly of all charges in sufficient time to prepare a defence, once the authorities have decided to issue criminal charges; ii) the right to choose one's own counsel or be provided with adequate and qualified defence counsel at no cost if the accused cannot afford counsel; iii) the right to have a trial, and receive judgment, without undue delay; iv). The right to adequate time and facilities for the preparation of one's case; v) right to appeal a judgment to a higher court; and vi) the right to compensation in case of subsequent proof of miscarriage of justice, unless the accused was in whole or in part a cause of the miscarriage of justice. Some state legal systems may, as a whole, comply with international human rights, but may still contain limited features which are in violation. For example, some legal systems prohibit women from testifying in court or assign less weight to their testimony. Under such a system, the right to a fair trial would be particularly endangered if the defendant's witnesses are women, because it would severely impede the defendant's ability to prepare a defence. To avoid a violation of the right to a fair trial, the company should seek to identify the troublesome features of law and avoid involvement in cases that rely on that feature of law. The death penalty may only be imposed as punishment for gravely violent offences or homicide, but never for non-violent crimes, political or economic offences. It may never be used against pregnant women or convicted criminals who were under 18 years of age at the time the offence occurred. Moreover, the death penalty can only be applied with appropriate safeguards observed for the trial itself, including a right to review and the possibility of the condemned to seek pardon or commutation of sentence. Regardless of these perimeters, many countries still apply the death penalty for minor crimes, and sometimes for non-criminal civil infractions. Therefore, if the company brings a lawsuit against a respondent or defendant, against whom the death penalty may be improperly applied, the company must seek to resolve the dispute in a manner that avoids application of the death penalty.

Suggested Indicators

1 The company has not been accused of participating in or profiting from legal proceedings that violate the right to a fair trial of the participants.

True	False	F/A	N/A

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2 The company uses alternative dispute resolution to resolve disputes that would violate the right to a fair trial if the formal justice system were used.

True	False	F/A	N/A

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3 The company's legal department has guidelines against participating in proceedings which, in any part, violate the right to a fair trial of the other party.

True	False	F/A	N/A

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4 Company lawyers identify potential sanctions for convictions, and particularly the death penalty, prior to bringing cases before the civil or criminal justice system.

True	False	F/A	N/A

		True	False	F/A	N/A
5	The company's legal department is aware of aspects of the state legal system that are in violation of international human rights law.				

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Articles 6-11; International Covenant on Civil and Political Rights (1966), Article 6 (2 and 5), 14; Convention on the Elimination of all Forms of Discrimination against Women (1979), Article 15

No. 7.3.2.	**Area** Legal and government affairs	**Section** Interaction with legal systems

Question
Does the company refrain from bringing legal actions against juveniles who are not specially protected, and against any individuals who are not formally protected or recognized as full persons by the law?

Yes	No	F/A	N/A

Description
In some states, groups of individuals are not afforded full recognition and full protection of the law. Typically these groups include women, illegitimate children, widows, mentally handicapped individuals, refugees, and stateless persons. As a general rule, the company should avoid any situation where it can sue but not be counter-sued or defended against by persons who are not recognised or afforded protection under the law. Juveniles have special rights before the law, even when they are accused or convicted of serious criminal acts. Not only must they receive the same guarantees and protections afforded to adults in judicial proceedings, but they are also entitled to additional protections which take into account their age and possibility for rehabilitation. The company should avoid engaging in legal processes that might directly or indirectly violate a juveniles' right to a fair trial.

Suggested Indicators

1	Company contracts with legally unrecognised persons are not less favourable than equivalent contracts with legally recognised persons.	True	False	F/A	N/A

2	Legal department guidelines instruct against initiating legal proceedings against persons who are not protected or recognized as full persons before the law, and juveniles.	True	False	F/A	N/A

3	The company does not bring charges against children under 13 years of age in states where juveniles are detained together with adults.	True	False	F/A	N/A

4	The company uses alternative dispute resolution in disputes involving individuals who are not recognized as full persons or given legal status by the law.	True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Articles 6-11; International Covenant on Civil and Political Rights (1966), Article 14 (4); Convention on the Rights of the Child (1989), Article 40; Convention on the Protection of All Migrant Workers and Members of Their Families (1990), Articles 17 (2 and 4) and 18(4); UN Standard Minimum Rules for the Administration of Juvenile Justice (1985)

No. 7.3.3.	**Area** Legal and government affairs	**Section** Interaction with legal systems

Question
If the company sues or accuses an indigenous person, does it allow the transfer of the case away from the state judicial system to the indigenous judicial system?

Yes	No	F/A	N/A

Description
The right to be tried by one's peers is a crucial component of the right to a fair trial, even if one's peers include an indigenous group. In states where both indigenous and national law are recognized as proper legal authority, the company should be willing to engage in litigation in the indigenous judicial system if the responding party is a member of an indigenous group.

Suggested Indicators

1 The company's legal department has guidelines allowing for the transfer of a case to an indigenous legal system, when the responding party is indigenous and voluntarily requests a transfer.

True	False	F/A	N/A

2 The company agrees to transfer cases involving indigenous respondents/defendants to indigenous legal systems at their request.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Articles 6-11; International Covenant on Civil and Political Rights (1966), Article 14; ILO Indigenous and Tribal Peoples Convention (C169; 1989), Articles 8 and 9; UN Declaration on the Rights of Indigenous Peoples (2007), Article 34

No. 7.3.4.	**Area** Legal and government affairs	**Section** Interaction with legal systems

Question
Does the company ensure that it does not improperly interfere with judicial proceedings?

Yes	No	F/A	N/A

Description
The company must not use its power to exert pressure, interfere improperly or tamper with the process or outcome of legal matters in the judicial system, regardless of whether the company is a defendant, a plaintiff, a witness, an interested party or a bystander to the proceeding. The company should be careful to ensure that judges, judicial employees or other jury members are not influenced by the company through bribery, threats, promises or other means to affect the outcome of the case at any time prior to, during, or after the proceedings. The company is also responsible for ensuring that its lawyers do not use improper influence to affect the process or outcome of a legal matter, even if corrupt methods are commonplace within a particular state. As a general rule, the company should also refrain from discussing the details of legal matters with outside actors, particularly the press, because publicly available information, or communications made to the public, might influence parties, witnesses, and members of the jury or court employees in their decisions regarding the trial.

Suggested Indicators

1 Company guidelines prohibit company employees and representatives from attempting to exert pressure or interfere improperly with parties, witnesses, judges, prosecutors and members of the jury in judicial proceedings.

True	False	F/A	N/A

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2 Company guidelines prohibiting employees from interfering improperly in judicial proceedings are made available to all employees, particularly those who are involved in company legal matters.

True	False	F/A	N/A

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3 Lawyers who represent the company are instructed against using methods of influence that violate the right to a fair trial.

True	False	F/A	N/A

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4 Company guidelines require that staff only discuss legal matters with concerned parties and do not attempt to persuade jurors through the use of the media.

True	False	F/A	N/A

		True	False	F/A	N/A
5	Company advocates and employees have not been accused of attempting to improperly interfere in judicial proceedings.				

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Articles 6-11; OECD Convention on the Combating of Bribery of Foreign Public Officials in International Business Transaction (1997), Article 1

No. 7.3.5.	**Area** Legal and government affairs	**Section** Interaction with legal systems

Question
In countries where failure to pay private debts can be punished with imprisonment, does the company use an alternative debt collection process?

Yes	No	F/A	N/A

Description
Imprisonment for failure to pay a debt violates the right to liberty. The company should avoid engaging in lawsuits of this nature when the punishment is imprisonment.

Suggested Indicators

		True	False	F/A	N/A
1	The company has a procedure for collecting outstanding debts that avoids reporting the debtor to the authorities and risking his imprisonment.				

		True	False	F/A	N/A
2	No company debtors have been imprisoned as a result of the company's efforts to collect private debts.				

		True	False	F/A	N/A
3	Company employees who are involved in the process of collecting outstanding debts have been trained in the procedure for collecting outstanding debts.				

Comments:

Basis for assessment:

Question references:
Universal Declaration of Human Rights (1948), Article 3; International Covenant on Civil and Political Rights (1966), Article 9 (1)

7.4 ANTI CORRUPTION

No. 7.4.1.	**Area** Legal and government affairs	**Section** Anti-Corruption

Question
Does the company assess and address the risk of bribery and corruption when doing business?

Yes	No	F/A	N/A

Description
Companies frequently engage with government officials in the course of establishing and maintaining operations. For example, a company may engage with different areas of government related to: licencing and permitting; environmental and social impact assessments; tax and revenue; and others. In some instances, engagement between the company and government officials may involve disagreement, attempts to explain a viewpoint or attempts to persuade a governmental actor to agree with a company position, proposal or policy. Discussions of this nature are an inevitable part of the process of business, and do not generally constitute a violation of the right to take part in government or the right to a fair trial. However, companies may also encounter bribery and corruption risks. Companies need to clearly recognise that bribery and corruption is illegal and disruptive to the process of ensuring democracy and transparency. This includes the thorough assessment and consideration of any bribery and corruption risks before deciding whether to operate. Furthermore, the company should discourage practices that condone bribery and/or corruption whenever feasible, as corruption may impede individuals' right to a fair trial and undermine the right to take part in and influence the governance and politics of the country. The type of influence that a company must avoid is that which could unjustly influence government officials or the political and judicial process itself. Unjust actions are those undertaken i) without the public's awareness, that would deny citizens the opportunity to participate in shaping the decisions of public officials or the political process; or ii) with the intent to influence (through bribery, threats, promises, or other means) judges, judicial workers or other jury members to affect the process or outcome of legal matters in the law enforcement system. Facilitation payments, that is, small payments or gifts made to secure or expedite the performance of a routine action to which the company is entitled, are considered a form of bribery, and the company should work to eliminate them. By making facilitation payments, the company perpetuates corruption and makes itself more vulnerable to extortion.

Suggested Indicators

1 The company assesses potential areas of bribery and corruption, including factors such as: types of transactions the company engages in, industries, and customers and/or business partners involved.

True	False	F/A	N/A

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2 The company assesses the risk of bribery and corruption when its employees, agents, intermediaries or consultants deal with public officials, including with employees of state-owned companies.

True	False	F/A	N/A

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3 The company assesses the risk of internal and external conflicts of interest in relation to business partners and government officials, including employees of state-owned companies.

True	False	F/A	N/A

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4 The company has developed an action plan to mitigate and address any risks of bribery and corruption identified, and has defined responsibilities for each task to address these risks, including detailed provisions for high-risk areas.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:
UDHR (1948), Articles 6, 7, 8, 9, 10, 11 and 21; ICCPR (1966), Article 25; OECD Convention on the Combating of Bribery of Foreign Public Officials in International Business Transactions (1997), Article 1; OECD Guidelines for Multinational Enterprises (2000), Section 6; UN Convention Against Corruption (2003), Article 12; OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones.

No. 7.4.2.	**Area** Legal and government affairs	**Section** Anti-Corruption

Question
Does the company have in place a written policy commitment against bribery and corruption?

Yes	No	F/A	N/A

Description
Ensuring a culture of anti-corruption involves formulating anti-corruption standards and implementing these in company procedures so that employees are equipped to identify and address any bribery and corruption risks and incidents that they may encounter in their work, in compliance with the company's anti-corruption policy commitment. Clearly communicating pro-active measures taken by the company to address bribery and corruption risks and incidents to stakeholders and partners is strongly advised in order to prevent bribery and corruption demands or requests.

Suggested Indicators

1 The company has in place a written policy commitment against bribery and corruption that requires all directors, managers and employees of the company to behave ethically and in conformity with the law.

True	False	F/A	N/A

		True	False	F/A	N/A
2	The policy specifies expected conduct with regard to: handling requests for facilitation payments, giving and receiving gifts, engaging in sponsorships, giving political contributions, and responsible lobbying.				
3	The company reports publicly on measures taken to assess and address bribery and corruption risks, including the effectiveness of such measures.				
4	The company publishes timely and adequate information about any legal cases regarding bribery and corruption that it is involved in.				
5	The company has appointed a manager to devise, implement, monitor and continually improve anti-corruption policy and procedure(s), under the oversight of senior leadership.				

Comments:

Basis for assessment:

Question references:
ICC guidelines on Whistleblowing; Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations; Business Principles for Countering Bribery. Transparency International; Partnering Against Corruption - Principles for countering Bribery, Partnering Against Corruption Initiative (PACI), World Economic Forum.

No. 7.4.3.	**Area** Legal and government affairs	**Section** Anti-Corruption

Question
Does the company's internal procedure support its anti-corruption policy commitment?

Yes	No	F/A	N/A

Description
Implementing anti-corruption standards into the core structure of the company relies heavily on the development of suitable procedures which are resistant to bribery and corruption and able to identify and address any risks and instances of bribery and corruption. This includes making provisions for escalating significant bribery and corruption risks immediately to senior management levels. It is also important that the implementation and effectiveness of anti-bribery and corruption policy and procedure(s) is monitored, including through internal and external auditing, and provisions made for their continual improvement.

Suggested Indicators

1 The company policy commitment against bribery and corruption is implemented through effective anti-bribery and corruption procedure(s), including defined benchmarks and indicators.

True	False	F/A	N/A

2 The company has assigned adequate resources to effectively implement and monitor the anti-bribery and corruption policy and procedure(s).	True	False	F/A	N/A

3 The company has assigned different individuals and/or departments to be responsible for handling contracts, placing orders, receiving goods, processing invoices and making payments.	True	False	F/A	N/A

4 The company specifies its anti-corruption standards and expectations in contracts with business partners, e.g. suppliers, contractors and others.	True	False	F/A	N/A

5 Company policy and procedure(s) prohibit informal employment and any ‘off the books' record-keeping.	True	False	F/A	N/A

6 The company performs external and internal audits and has checks and balances in place to effectively implement all anti-corruption commitments.	True	False	F/A	N/A

7 The company's procurement, financial and internal audit personnel have clear procedures on their respective responsibilities to look for and to identify any bribery and corruption risks, report them to management, and implement follow-up measures to address the risks.	True	False	F/A	N/A

8 Any irregularity reported by external or internal auditors is promptly and systematically addressed by management.	True	False	F/A	N/A

9 The company systematically monitors compliance with anti-bribery and corruption policy and procedure(s), evaluates their effectiveness, and implements any changes and improvement measures necessary to identify any gaps identified by the monitoring.	True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:
ICC Tools for Self-Regulation; OECD Risk Awareness Tool for Investors in Weak Governance Zones; OECD Guidelines for Multinational Enterprises.

No. 7.4.4.	**Area** Legal and government affairs	**Section** Anti-Corruption

Question
Do the company's anti-corruption policy and procedure(s) cover agents, intermediaries and consultants?

Yes	No	F/A	N/A

Description
Using agents, intermediaries, consultants or other external service providers does not free the company of its responsibility of implementing its anti-bribery and corruption commitments. Following international law and other anti-bribery and corruption legislation, the criminal offence of bribery occurs when a financial benefit or other advantage is offered, promised or given to a public official directly or through agents, intermediaries or consultants. Information, training and monitoring of agents, intermediaries or consultants' activities should be carried out on a regular basis and according to a clear line of responsibility within the company.

Suggested Indicators

1 Company policy and procedure(s) on anti-bribery and corruption explicitly extend to consideration of the standards and conduct of agents, intermediaries and consultants.

True	False	F/A	N/A

2 The company assesses bribery and corruption risks associated with all agents, intermediaries and consultants (e.g. financial, legal, labour, tax, IT, environment, and market/commercial).

True	False	F/A	N/A

		True	False	F/A	N/A
3	The selection and terms of reference of agents, intermediaries and consultants are approved at the senior management level (or at a management level above that of the business section for which the intermediary is hired).				
4	All agreements with agents, intermediaries and consultants are fully documented in written and signed contracts.				
5	Contracts with agents, intermediaries and consultants include a section on anti-bribery and corruption, including an explicit expectation that the contract-holder must comply with all applicable laws and regulations regarding anti-bribery and corruption, as well as the company standards.				
6	Agents, intermediaries and consultants are provided with information on the company's anti-bribery and corruption policy, procedure(s), and training material and information on disciplinary procedures for breach of these.				

		True	False	F/A	N/A
7	The company only makes payments by bank transfer or cheque, never in cash, in the country of the agent, intermediary and consultant, and never to a third-party without prior examination.				

Comments:

Basis for assessment:

Question references:
Convention on combating bribery of foreign public officials in international business transactions. OECD; Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations; Business Principles for Countering Bribery. Transparency International; Partnering Against Corruption - Principles for countering Bribery, Partnering Against Corruption Initiative (PACI), World Economic Forum.

No. 7.4.5.	**Area** Legal and government affairs	**Section** Anti-Corruption

Yes	No	F/A	N/A

Question
Does the company ensure that staff know the company's anti-bribery and corruption policy and procedure(s) and are properly trained to comply with these?

Description
Awareness-raising is essential for the long-term success of fighting bribery and corruption. Awareness is not established instantly, but created through on-going dialogue, training and information about bribery and corruption, its impact and how to prevent and address it. It is critical that employees of the company are adequately trained in their roles and responsibilities with regards to the company's anti-bribery and corruption policy and procedure(s). This includes that employees are made aware of any bribery and corruption risks specific to their job-function, as well as the operating context.

Suggested Indicators

1	The company ensures that all staff are fully aware of, and understand, the company's anti-bribery and corruption policy and procedure(s).	True	False	F/A	N/A

2	Information on disciplinary procedures for breach of such policy and procedure(s) is clearly communicated to staff on a regular basis.	True	False	F/A	N/A

3	The company provides anti-bribery and corruption training at all levels within the organisation, tailored to the specific bribery and corruption risks and issues of each organisational level and/or business-unit function.	True	False	F/A	N/A

4	The company actively seeks staff feedback and dialogue on measures to identify and address bribery and corruption risks and incidents.	True	False	F/A	N/A

		True	False	F/A	N/A
5	The company has and promotes a function/mechanism by which staff can safely report any incidents, or suspected incidents, of bribery or corruption (e.g. hotline or mailbox) and allocates resources to systematically address the issues that are identified.				

Comments:

Basis for assessment:

Question references:
ICC guidelines on Whistleblowing; Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations; Business Principles for Countering Bribery. Transparency International; Partnering Against Corruption - Principles for countering Bribery. Partnering Against Corruption Initiative (PACI), World Economic Forum.

No. 7.4.6.	**Area** Legal and government affairs	**Section** Anti-Corruption

Question
Does the company promote its anti-bribery and corruption commitment in its interactions with suppliers and other business partners?

Yes	No	F/A	N/A

Description
Anti-bribery and corruption commitments in suppliers, contractors and other business partners need to be effectively managed by the relevant entity. However, the company should also apply attentiveness and ensure that all reasonable measures are undertaken to improve and promote anti-bribery and corruption management in suppliers, contractors and other business partners. This includes setting clear standards and expectations in the business relationship, appropriately monitoring the adherence of business partners to these standards, and taking steps to address any gaps or incidents identified.

Suggested Indicators

1 The company informs all suppliers, contractors and other business partners of its anti-bribery and corruption commitment and asks all suppliers, contractors and business partners to comply with this commitment.

True	False	F/A	N/A

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2 The company monitors that the anti-bribery and corruption commitment is supported by anti-bribery and corruption training of relevant internal staff employed by suppliers, contractors and other business partners.

True	False	F/A	N/A

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3 Where necessary, the company collaborates with individual suppliers or other business partners to implement continuous improvement efforts to identify and address bribery and corruption risks and incidents.

True	False	F/A	N/A

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4 The company procurement practices, including prices, delivery times, internal incentive structures and other relevant criteria, support anti-bribery and corruption commitment in suppliers and other business partners.

True	False	F/A	N/A

		True	False	F/A	N/A
5	The company has and promotes a function/mechanism by which suppliers, contractors and other business partners can safely report any incidents, or suspected incidents, of bribery or corruption (e.g. hotline or mailbox) and allocates resources to address the issues that are identified.				

Comments:

Basis for assessment:

Question references:
Convention on combating bribery of foreign public officials in international business transactions. OECD; Combating Extortion and Bribery: ICC Rules of Conduct and Recommendations; Business Principles for Countering Bribery. Transparency International; Partnering Against Corruption - Principles for countering Bribery, Partnering Against Corruption Initiative (PACI), World Economic Forum; ICC guidelines on Whistleblowing.

No. 7.4.7	**Area** Legal and government affairs	**Section** Anti-Corruption

Question
Does the company take joint actions with others to engage in and promote anti-bribery and corruption initiatives?

Yes	No	F/A	N/A

Description
It can be difficult for a company to address bribery and corruption alone. Collective or joint actions are proven methods of fighting bribery and corruption and increasing each company's impact by making business practices that are free from bribery and corruption more common, thereby elevating individual actions into an alliance of like-minded organisations. Collaboration builds integrity in the business community and can reduce bribery and corruption in the broader community.

Suggested Indicators

1 The company shares experiences, procedures and challenges relating to bribery and corruption risks and management with other relevant organisations, i.e. the local business community, sector initiatives, networks etc.

True	False	F/A	N/A

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2 The company has initiated or joined initiatives with other companies in the same sector for the purpose of promoting a business environment that is free from bribery and corruption.

True	False	F/A	N/A

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3 The company initiates and/or engages in multi-stakeholder dialogue on combating bribery and corruption.

True	False	F/A	N/A

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4 The company encourages the local business community and business partners to initiate cooperation to combat bribery and corruption.

True	False	F/A	N/A

Comments:

Basis for assessment:

Question references:
Fighting Corruption through Collective Action, World Bank Institute, Version 1.0 A Joint effort with business, NGOs, and multilaterals.