

HUMAN RIGHTS ENABLING CONDITIONS

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Introduction

This document focuses on the enabling conditions analysis, which is one component of the full human rights assessment process specified in Annex 3. Enabling conditions refer to laws, procedures, processes, social arrangements, and other factors and circumstances in a landscape that support (or could support) the protection and respect of human rights, and/or could address and mitigate actual and potential human rights impacts and their root causes. This includes but is not limited to human rights safeguards, which are precautionary measures that are intentionally adopted in order to prevent and mitigate human rights abuses.

This Annex identifies common human rights enabling conditions and is intended to assist the assessor in defining suitable performance metrics to evaluate the most relevant enabling conditions for each selected human rights indicator. It is generally expected that assessors will incorporate many of these common enabling conditions into the human rights performance metrics that they define. Based on the specific landscape context, assessors may also need to adapt the description of these enabling conditions and/or identify additional enabling conditions - and develop performance metrics around these - to adequately evaluate status and trends of efforts to protect and respect human rights in the landscape.

General Enabling Conditions

Some enabling conditions are relevant for several or all human rights issues and associated indicators. Following are some examples:

- **Effective Operational Grievance Mechanism(s)** (OGMs) can address complaints before they escalate and help provide *remediation* at an early stage. The UN Guiding Principles on Business and Human Rights outlines the following eight main principles of an effective OGM:¹

¹ United Nations Human Rights Office of the High Commissioner. (2011). *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. OHCHR. https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf

- **Legitimate:** enabling trust from the stakeholder groups for whose use it is intended and being accountable for the fair conduct of grievance processes;
- **Accessible:** being known to all stakeholder groups for whose use it is intended and providing adequate assistance for those who may face barriers to access;
- **Predictable:** providing a clear and known procedure with an indicative time frame for each stage, clarity on the types of process and outcome available, and means of monitoring implementation;
- **Equitable:** seeking to ensure that aggrieved parties have reasonable access to sources of information and advice and expertise necessary to engage in a grievance process on fair, informed, and respectful terms;
- **Transparent:** keeping parties to a grievance informed about its progress, providing sufficient information about the mechanism's performance to build confidence in its effectiveness, and meeting any public interest at stake;
- **Rights-compatible:** ensuring that outcomes and remedies are in accordance with internationally recognized human rights;
- **A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;
- **Based on engagement and dialogue:** consulting the stakeholder groups for whose use the mechanism is intended on its design and performance and focusing on dialogue as the means to address and resolve grievances.
- **Use of technology-based consultation and systems for engagement** to gain perspectives from rights-holders and identify actual and potential negative human rights impacts. Such systems are sometimes developed or used by trade unions, local NGOs, farmers associations, indigenous peoples, and other stakeholders to help monitor and report issues.
- **Landscape-level land use and conflict register:** the local government or a neutral party can establish and operate an open and accessible register for land use disputes and conflicts. The register should include information on the nature of the dispute, when it was filed, and the status of progress toward resolving it. A register should operate in tandem with efforts of government authorities to help clarify land ownership and use rights, facilitate obtaining legal land titles, and resolve disputes in an equitable and rights-respecting manner.²

² This enabling condition can be linked to the Governance Pillar assessment for Indicator 3.1.2 Land conflicts.

- **Capacity building of rights holders;** increased knowledge of rights and responsibilities by rights holders (i.e. workers and community members) can help improve participation in human rights due diligence processes and other efforts to identify, resolve, and remedy adverse human rights impacts.

Indicator 2.2.1: Child Labor³

There is no one-size-fits-all approach to ending child labor; rather, the most effective solutions usually include multiple components adapted to the specific context. However, the International Labour Organization (ILO) has identified five main areas – education, social protection, labor markets, legal standards, and regulation – that are essential pillars of a policy response to child labor. Additionally, there is consensus on the factors that contribute to child labor, such as limited legal protections, poverty and marginalization, exposure to shocks, low quality and limited school access, limited decent work opportunities, and the absence or weak realization of workers’ rights and other human rights. Access to quality schooling is among the most effective solutions to address child labor. It enables families to invest in their children’s education, which provides greater long-term returns than involving children in work at the expense of education.

Child labor in commodity supply chains concerns various parties such as governments, companies, domestic and international buyers and traders, employers’ and workers’ organizations, and civil society. Collaboration among these parties through multi-stakeholder initiatives can help identify and coordinate actions necessary to address child labor. Collaboration between industries is especially important to help ensure that when child labor is tackled in one supply chain, it is not merely displaced into another. Such partnerships can put systems in place that address the root causes of child labor, not only its manifestation and symptoms.

³ LandScale evaluates Worst Forms of Child Labour as defined by the ILO: (1) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including recruitment of children for use in armed conflict. (2) The use, procurement or offering of a child for prostitution, for the production of pornography or for pornographic performances. (3) The use, procurement or offering of a child for unlawful activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties. (4) Work which, by its nature or the environment where it takes place, is likely to harm the health, safety or morals of children (referred to as hazardous child labour). According to the ILO, “Child labour is work that deprives children of their childhood, their potential, and their dignity, and that is harmful to physical and mental development. Whether or not work performed by children is defined as child labour depends on the child’s age, the hours and type of work and the conditions in which the work is performed.”

Common enabling conditions to effectively address child labor:

- Inclusive and equitable education
 - Expanded access to early childhood development opportunities for vulnerable households (e.g. early childhood care programs and assistance)
 - Reduced direct and indirect schooling costs
 - Improved school quality and expand school access
- Social protection
 - Mitigate the economic vulnerabilities that can drive families to resort to child labor to meet basic needs and deal with uncertainty. This may be done through cash payments or in-kind direct benefits (e.g., food assistance) to low-income households as well as by improving or expanding access to health care, transportation, social insurance, and other benefits that help fulfill families' basic needs.
- Decent work and livelihoods
 - Households have sufficient access to credit under fair terms.
 - Smallholders/farmers have the opportunities to invest in new technology and infrastructure, as well as promote smallholder associations and/or cooperatives.
 - Workers have reduced barriers to transition from the informal to the formal economy and invest in their skills development.
- Legal framework
 - Status of ratification of international laws and standards on child labor
 - Existence of national laws, regulatory systems, and inspection or enforcement mechanisms related to child labor

Box 1. Case Study on Child Labor: El Salvador

El Salvador provides an example of meaningful progress in removing hazardous child labor from the sugarcane industry. Sugarcane is harvested under dangerous conditions, including working long hours under the sun, using sharp machetes, setting fires to clear the fields, among many other risks. In 2002, the Sugarcane Producers Association signed a memorandum of understanding with the Government of El Salvador to put an end to child labor in the sugarcane industry. The strategy entailed raising awareness, enhancing education and training, and organizing community-based monitoring schemes. As a result, it reduced the number of child laborers in sugarcane production from 12,380 children in 2004 to 1,559 children in 2009.⁴

Indicator 2.2.2: Forced Labor⁵

Forced labor is a multi-faceted phenomenon that requires multi-dimensional solutions. Factors contributing to forced labor include governance gaps, volatile consumer demand, downward cost pressure, and other pressures placed on suppliers and their responses to these pressures. Numerous farms, mines, and factories are in landscapes where there is inadequate governance. This means that there is a higher risk for illegal employment practices and a lack of enforcement of international labor and human rights standards in these cases.

Additionally, trends in consumer demand for rapidly changing styles, quick response and delivery expectations, and ongoing price competition across the value chain contribute to several negative effects for workers and their rights, including lower wages, fewer benefits, and the increasing prevalence of contracted and casual labor arrangements in lieu of direct and permanent employment arrangements.

A wide range of stakeholder groups, including regulators, buyers, traders, suppliers, workers' representatives, and civil society, have a pivotal role in mitigating forced labor. Considering the diverse and globalized root causes of forced labor, a single actor or intervention is rarely sufficient to address the issue alone.⁶

⁴ International Labour Organization. (2016). *Eliminating and Preventing Child Labour*. ILO. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_456960.pdf

⁵ According to the ILO, "Forced labour refers to situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities."

Common enabling conditions to effectively address child labor:

- Prevention
 - **Awareness-raising:** Educating the general public, vulnerable groups, and employers on forced labor prevention
 - **Fair recruitment:** Protecting workers from possible abusive and fraudulent practices during the recruitment and placement process
 - **Due diligence:** Addressing forced labor in business operations and supply chains
 - **Addressing root causes and risk factors:** A focus on the informal economy
 - **Grievance procedures:** Giving voice to workers through grievance procedures capable of uncovering and resolving issues
 - **Worker-led action:** Workers, trade unions, and other support groups have a crucial role to play in exposing forced labor through, for example, collective bargaining

- Protection, remediation, and enforcement
 - **Protection:** Promoting safe recovery and preventing re-victimization
 - **Remediation:** Ensuring that persons in forced labor have access to appropriate remedies⁷
 - **Enforcement:** Strengthening the administration of criminal and labor justice

- Addressing forced labor in situations of crisis and state fragility
 - **Prevention:** Building resilience and ensuring preparedness
 - **Protection:** Ensuring identification, release assistance, and recovery
 - **Recruitment:** Addressing forced recruitment and other extreme abuses associated with armed conflict

Box 2. Case Study on Slave Labor: Brazil

The National Pact for the Eradication of Slave Labor in Brazil is one of the most comprehensive responses to forced labor. It is a multi-stakeholder initiative involving Ethos Institute, the Social Observatory Institute, the ILO, and the NGO Repórter Brasil.

⁷ Remediation is a prevalent concern as it is challenging to make reparations for victims' harm and the danger of ongoing victimization. Trafficked and forced laborers often face termination, deportation, and possible retaliations if exposed.

National and international companies that sign on to the Pact pledge to keep their supply chains free of slave labor.

Key components of the Pact are:

- A national commission to eradicate slave and forced labor
- A national action plan
- A special inspectorate
- The publication of a 'dirty list'
- Civil society organizations that investigate the supply chains of the companies on the list and pressure them to help clean up the chain

The Pact has been emulated in the Brazilian steel industry, where 15 companies came together with the ILO and civil society organizations to fight against forced labor in the production of charcoal. The Brazilian model is an important example of combining public and private pressures to defend human rights and pursue their mandates.⁸

Indicator 2.2.3: Workers' Rights

Workers on farms, factories, and other production sectors are among the most vulnerable people in global trade. As agricultural workers often lack access to land and are unable to make a living from it, they have fewer opportunities for a decent livelihood. Furthermore, they often lack formal contracts, freedom of association, basic health and safety insurances, and adequate wages, among other deprivations.⁹ Freedom of association, the effective recognition of the right to collective bargaining, and the elimination of discrimination in respect of employment and occupation, are universal human rights that should be respected and protected in all workplace settings.

Workers' rights include a wide range of topics that are at the core of workers' well-being and human dignity. These topics include wages, working time, work organization, freedom of association, work conditions, arrangements to balance working life with the demands of family and life outside work, non-discrimination, and protection from harassment and violence at work. There are core elements of the employment

⁸ Van Heerden, A. (2015). Identifying, managing, mitigating and preventing forced labour and modern slavery. *Ethical Trading Initiative*, 2. https://www.ethicaltrade.org/sites/default/files/shared_resources/eti_background_paper_on_forced_labour_modern_slavery_oct_15_0.pdf

⁹ Flinterman, W., & FairTrade International. (2020). *Workers' rights*. Fairtrade International. <https://www.fairtrade.net/issue/workers-rights>

relationship and workers' safety that may be at risk depending on the landscape context. This indicator covers a broad range of issues, from working time (hours of work, rest periods, and work schedules) to remuneration and the workplace's physical and mental demands.

Common enabling conditions to effectively address workers' rights issues:

- **Freedom of association:** This is the right of workers and employers to form and join organizations of their own choosing. This is an integral part of a free and democratic society. In many cases, these organizations have played a significant role in their countries' political and economic development.
- **Collective bargaining:** Through collective bargaining, employers and trade unions can negotiate and agree upon fair wages and working conditions while providing the basis for reliable labor relations. Typical items on the bargaining agenda include wages, benefits, working time, training, occupational health and safety, and equal treatment.
- **Employment security:** Employment security is the protection of workers against income fluctuations due to job loss by dismissal caused by economic downturns, enterprise restructuring, and other factors unrelated to the employee's performance. The growth of non-standard forms of work, such as temporary contracts, jobs through employment agencies, dependent self-employment, and marginal part-time work has increased workers' concerns over employment security.
- **Wages:** Wage levels are chief among the necessary conditions for decent working arrangements and are a central subject of collective bargaining. This includes paying a minimum wage, paying or progressing toward a living wage, establishing policies for equitability of wage levels in relation to the employer's profits, and pay equality across groups of workers, including gender pay differences.
- **Working time:** This is a topic that presents significant challenges related to excessive hours of work, workers' health and safety influenced by the number of working hours, lack of adequate periods for rest and recovery, including weekly rest and paid annual leave, which are protected by international labor standards.
- **Work and family:** This element addresses a variety of policies to facilitate all workers' access to a decent job while accommodating various family and health situations. It includes various means to support family responsibilities, including maternity and paternity leave. As a general principle, both men and women workers with family responsibilities should be able to engage, participate, and advance their employment without discrimination.

Indicator 2.4: Other Human Rights

While indicators 2.2.1 through 2.2.3 identify some of the most widely relevant human rights in the context of natural resource-based sectors, by no means do they include an exhaustive list of human rights. This landscape-dependent indicator is therefore included to ensure that other human rights that are particularly salient in the landscape are also addressed in the LandScale assessment.

During the human rights assessment, the assessor should identify other human rights issues that are not covered in indicators 2.2.1, 2.2.2, and 2.2.3. Once the issues are identified, the assessor can proceed with the enabling conditions analysis for the new indicator(s). Performance metrics for other human rights indicators can generally be defined as evaluating the three kinds of enabling conditions or measures of¹⁰:

1. **Structural metrics (commitments)** include the ratification and adoption of legal instruments and the existence as well as the creation of basic institutional mechanisms necessary for the promotion and protection of human rights.

Example: International human rights treaties relevant to the right to non-discrimination and equality (right to non-discrimination) ratified by the State.

2. **Process metrics (efforts)** measure the duty bearers' efforts to transform their human rights commitments into the desired results by taking specific actions toward this end.

Example: Number of persons (including law enforcement officials) arrested, adjudicated, convicted or serving sentence for discrimination and bias-driven violence per 100,000 population.

3. **Outcome metrics (results)** should capture individual and collective attainments that reflect the state of enjoyment of human rights in a given context. An outcome indicator consolidates, over time, the impact of various underlying structural and process improvements. Outcome metrics can be slow moving and less sensitive to capturing momentary changes than process metrics.¹¹

Example: Wage gap ratios for targeted population groups.

¹⁰ Definitions and examples are drawn from: United Nations Human Rights Office of the High Commissioner. (2012). *Human Rights Indicators: A Guide to Measurement and Implementation*. OHCHR. https://reliefweb.int/sites/reliefweb.int/files/resources/Human_rights_indicators_en.pdf

¹¹ United Nations Human Rights Office of the High Commissioner. (2012). *Human Rights Indicators: A Guide to Measurement and Implementation*. OHCHR. https://reliefweb.int/sites/reliefweb.int/files/resources/Human_rights_indicators_en.pdf