

## 1. About this page

This page aims to provide fund managers with a practical introduction to human rights issues that may be relevant to their investments. It gives fund managers:

- A clear understanding of what human rights risks and impacts are, why they are important and how they relate to traditional environmental and social (E&S) risks and impacts.
- A practical approach to integrating human rights lens into existing E&S due diligence approaches, aligned with international standards.

- [Additional considerations](#)

This page provides an overview of human rights issues and gives general guidance. It is not intended to be a detailed or comprehensive technical guidance document. Further support can be found in the 'Further resources' section, and in the accompanying Terms of Reference Template for Enhanced Assessment of Human Rights Risks and Impacts included under [Reference materials](#). Fund managers may need to engage appropriate external expertise to assist in assessing and/or addressing companies' exposure to, and management of, human rights risks and opportunities. The Terms of Reference Template provides further guidance for Fund managers when engaging such external expertise.

This note seeks to be clear, practical and relevant, by highlighting the most important points of connection and divergence between traditional E&S due diligence and managing human rights impacts effectively. It presumes a foundation of effective E&S due diligence, aligned with international good practice, as a basis for understanding what is different about assessing and addressing human rights risks and impacts as part of broader E&S due diligence.

## 2. Introduction: What are human rights, risks and impacts?

Human rights are defined in a series of UN conventions and agreements, including the International Bill of Human Rights and in the International Labour Organization's (ILO)

Declaration on Fundamental Principles and Rights at Work. Human Rights aim to secure dignity and equality for all.

Human rights risks and impacts are not a separate class of E&S risks or impacts, entirely distinct from the more familiar types of E&S impacts fund managers already include in their due diligence. Rather, E&S impacts can become human rights impacts when their impact on individuals or groups reaches a level that negatively affects the ability of those individuals or groups to enjoy their basic human rights, as defined by internationally accepted standards. The [UN Guiding Principles Reporting Framework](#) website provides a list of internationally recognised human rights, offers a brief explanation of each, and provides examples of how a business might be connected to negative impacts on these rights.

- [Examples of how business might be involved with an impact on the right](#)

Human Right	Description	Example of how business might be involved with an impact on the right
Right to life	Right not to be unlawfully or arbitrarily deprived of life. The right to have one's life protected, for example from physical attacks or health and safety risks.	<ul style="list-style-type: none"> <li>- Lethal use of force on peaceful protesters by security forces to protect company resources, facilities, or personnel.</li> <li>- Operations that expose communities or workers to toxic chemicals.</li> <li>- Manufacture and sale of products with lethal flaws.</li> </ul>
Right to health	Right to highest attainable standard of physical and mental health, including control over one's health and body, and freedom from interference.	<ul style="list-style-type: none"> <li>- Pollution from business operations that affects basic health of workers or neighbouring communities.</li> <li>- Sale of products that are hazardous to health.</li> <li>- Failure to provide a safe environment for workers.</li> </ul>
Right to freedom of movement	Individuals who are lawfully in a country have the right to move freely throughout it, to choose where to live, and to leave.	<ul style="list-style-type: none"> <li>- Employers withholding workers' identity documents (for instance, where migrant workers are relied upon by companies or their suppliers).</li> </ul>

When these human rights impacts are particularly severe for the affected individual or

group, they become the highest priority for a fund or company to address. These kinds of impacts are increasingly called ‘salient human rights issues’. The concept of salience is a relative one, meaning that each company’s salient human rights issues will be determined by identifying the most severe impacts on people with which the business may be involved, either through its own activities or via its business relationships. The concept of severity is discussed further in section 4 below. The diagram below shows the relationship between E&S impacts, human rights impacts, and salient human rights issues.

- [Examples of E&S impacts that can increase in severity to become human rights impacts](#)

Examples include:

- Impacts related to labour conditions (such as those covered by the ILO Declaration and Core Conventions), including excessive working hours, inadequate pay, discrimination, workplace safety, child labour, forced labour, and barriers to labour organising or collective bargaining, and working conditions for temporary or migrant workers.
- Impacts on local communities related to land use, land acquisition and resettlement, such as on their livelihoods or their cultural heritage.
- Environmental or social impacts that affect local communities’ health and safety, livelihoods, or access to water and sanitation.
- Impacts on indigenous peoples; related to their language, culture and institutions which may come under threat.

**Figure 1. Relationship between E&S impacts and salient human rights issues**

[Click to view figure 1](#)

\*Graphic credited to UNGP Reporting Framework ([www.ungpreporting.org](http://www.ungpreporting.org))

In principle, robust implementation of the International Finance Corporation (IFC) Performance Standards should address many human rights issues, as described in the UN Guiding Principles Reporting Framework website, through implementation of PS1 on management systems. However, three common challenges arise in practice:

- [Common practice challenges when assessing and managing human rights issues](#)
  1. Due diligence processes, and the expertise deployed in their implementation, are often more developed in assessing and addressing environmental issues than social issues. This is highlighted in BII's 2015 analysis of 'Good practice for fund managers: Environmental and social due diligence: mitigating risks, identifying opportunities' (see [Reference materials](#)).
  2. Traditional E&S due diligence may not use international human rights standards as a reference point, and therefore may not correctly identify the severity of an impact nor what is required as a remedy under international human rights standards.
  3. A challenge that is common across many organisations that apply the Performance Standards as a basis for due diligence, is that social due diligence often focuses on the specific impacts highlighted in PS 2-7 and may therefore miss other potential human rights impacts that are not explicitly mentioned.

By way of illustration, one common example that is increasingly relevant across industries relates to privacy-related impacts. While such impacts may be relevant for all companies in all contexts, in that companies hold an increasing amount of personal data on employees or consumers, the misuse of which could harm those individuals' human rights, they may be particularly relevant for companies in the information and communications technology (ICT) sector or for companies operating in contexts in which regulatory authorities might demand this data in order to use it to harm individuals (for example, by harassing or detaining individuals opposing a project or who are HIV+).

- [International standards for managing business and human rights impacts](#)

The UN Guiding Principles on Business and Human Rights (UNGPs) are the authoritative global framework on how to prevent and address impacts by business on people. The UNGPs are based on the UN 'Protect, Respect and Remedy' framework and are structured around the three pillars of that framework. Importantly, this

structure recognises that both governments and businesses have essential but distinctive roles and responsibilities to prevent harm to people that could arise from business activities. The UNGPs identify specific steps that both states and businesses should take to meet those responsibilities.

The UNGPs have brought clarity to both the scope of responsibility for businesses in managing their human rights impacts ('what' human rights impacts to look for, and 'where' to look) and the practical steps companies should take to ensure that they are respecting human rights ('how' companies should assess and address these issues). Leading international frameworks, such as the IFC Performance Standards and the OECD Guidelines for Multinational Enterprises, have aligned their expectations of companies with those of the UNGPs. The UNGPs include the following core concepts:

- Businesses should prevent and address negative impacts on people that they are, or may be, connected to through their own activities and through their business relationships (e.g., supply chains, security providers, government actions to acquire land for private sector actors).
- The UNGPs apply to all businesses, regardless of size, geography or industry; no 'sign-up' mechanism is required.
- Businesses could be connected to an impact on any internationally recognised human right (see [How Can Businesses Impact Human Rights?](#)), through their own activities, or through those of their business relationships.
- Compliance with local law may not be sufficient, if local law (or its enforcement) falls short of international human rights standards.
- While many businesses may also have positive impacts on people, these cannot 'offset' business' responsibility to address any negative impacts it may be involved with.
- Companies should undertake human rights due diligence (key features of which are described in the sections that follow) to identify and address negative impacts they may be connected to and should provide remedy for impacts that they cause or contribute to.

### 3. Why should companies and fund managers address this topic?

There are a variety of positive and negative drivers that collectively establish a strong business case for companies and fund managers to incorporate human rights due diligence into their E&S practices. Many of these drivers also help to make the business case for traditional E&S due diligence. These include commercial risks and opportunities, reputational risks and opportunities, and regulatory and legal risks.

Drivers specific to the area of human rights include:

- [Heightened risk means heightened stakes](#)  
Human rights impacts are often the most severe forms of E&S impacts, meaning that the consequences of failing to manage these issues are often much greater than for other issues. For example, a project involving the construction of a shopping mall in a West African country might face significant operational delays due to ongoing conflict with stakeholders arising from a flawed government-led land acquisition process that negatively impacts their basic livelihoods. Operating in fragile and conflict states may pose challenges related to the actions of public security forces which companies may call upon.
- [Regulatory trends](#)  
Increasingly, the expectations of the UNGPs are being written into national legislation with transnational implications. In particular, companies are being required to disclose information that explains what they are doing to identify and address certain types of human rights risks in their own operations and in their supply chains. For example, the UK Modern Slavery Act, the California Supply Chain Transparency Act, and the US Federal Acquisition Regulations all require companies to explain the steps they have taken to ensure they are not connected to slavery or forced labour in their value chains. Regulators increasingly require non-financial reporting on social issues, and specifically on human rights (such as the EU Non-Financial Reporting Directive that comes into effect in 2016). Stock exchanges globally are also strengthening disclosure expectations on non-financial issues and some such as India and Malaysia, specifically on human rights. Voluntary initiatives such as the Equator Principles (EP) are also contributing to the growing expectation of human rights disclosure, through the EP III focus on consent-based disclosure and specific requirements to undertake human rights due diligence in certain high risk circumstances.

- [Driving due diligence through global value chains](#)

Due in large part to the convergence of expectations around the UNGPs, multinational companies are increasingly being held to a higher level of accountability for the human rights actions of their business partners. Regulatory trends, stakeholder advocacy, and investor questions are driving the due diligence of global multinationals down through their value chains. While not all companies may be directly subject to these pressures, many occupy intermediate roles in global value chains, where they are increasingly subject to human rights due diligence expectations from their business customers.

- [Practical guidance that responds to reality](#)

Leading fund managers and companies already recognise that risks from third-party business relationships can be material to their business (for example, when working with logistics or construction contractors). The approach to human rights due diligence outlined in this Briefing Note provides a framework for recognising and reflecting these realities by clarifying where to look (across a company's own operations and business relationships) and what standards to use (internationally recognised human rights), but also enables funds and companies to prioritise the most severe impacts on people for attention, and sets reasonable expectations of the actions that a company should take when its operations are linked to impacts that are beyond its control to fully resolve.

## **4. Advice for fund managers: What does it mean to incorporate human rights lens to E&S due diligence?**

In theory, robust E&S due diligence will identify and address the majority of relevant human rights risks and impacts in most transactions. However, as stated previously in this Briefing Note, practice demonstrates common challenges in the implementation of E&S due diligence, particularly when it comes to social impacts (including human rights), for instance, ensuring appropriate experience and competencies of those conducting the E&S due diligence. It is therefore important to ensure effective integration of a human rights lens into existing E&S due diligence, even in investments presumed to be low risk, in order to:

- Provide fund managers with a more accurate assessment of the risks and impacts connected to a company's operations, products or services (including identifying risks that might otherwise be missed).
- Enable E&S due diligence processes to meet the expectations of key stakeholders.

- Help fund managers to determine when additional, focused human rights due diligence may be warranted.
- Provide greater clarity about when remediation is required.

Considering the above, fund managers may wish to consult the [UN Guiding Principles Reporting Framework](#) website to ensure that their internal or contracted E&S due diligence capacity is employing a comprehensive approach to potential impacts on people that takes account of internationally recognised human rights standards.

**Applying a human rights lens to E&S due diligence means testing the robustness of due diligence in three primary ways, which may in some cases be different from existing approaches:**

**a. Scope:** Does the scope of the due diligence include the activities of other actors connected to the business's operations (i.e. its business relationships) and does it rely on internationally recognised human rights standards?

- [Further guidance on scope](#)

Incorporating human rights into E&S due diligence has two components: (1) considering risks and impacts arising from third parties connected to the business' activities, and (2) assessing risks and impacts on the basis of internationally recognised standards. (The need to look at internationally recognised standards is discussed in Section 2 above; the following focuses on considering risks from third parties.)

Assessing risks and impacts arising from third parties requires E&S due diligence to look across all business relationships connected to the company's operations, products or services. This means identifying risks and impacts connected to the business's own operations, products, or services, as well as risks and impacts connected to the activities of third parties with which the business has a relationship (including suppliers, contractors, joint-venture partners, customers, and government entities).

E&S risks and impacts are no less significant when they occur many tiers removed in the supply chain, in parallel processes such as government-led land acquisition processes, through the actions of third parties, such as security providers, or by customers who might use a product in a way that infringes on human rights. These risks and impacts, caused by others but linked to a company's operations through one

or more business relationships, increasingly pose commercial, reputational and regulatory risks for companies – even where the company has not contributed to the impact and is not able to control the solution.

Therefore, it is important for companies and investors alike to assess such risks and impacts, even if their ability to address them is limited, so that they can make informed decisions.

One common question from fund managers is how far this inquiry should extend beyond the core activities of the investee company. There is no simple answer to this question. Some of the factors that might be relevant include:

1. The relative severity of the harm.
2. The extent to which certain human rights risks are well-known within specific sectors, supply chains or operating contexts such that there will be a heightened expectation that companies should have known about such risks.
3. The extent to which engagement with relevant stakeholders helps to shape an understanding of risks, and their appropriate prioritisation, closer to a company's operations or deeper in the supply chain.

This expanded scope of due diligence provides greater clarity about where to look for risks and impacts, but implementation is only feasible when coupled with the additional guidance on prioritisation and appropriate actions to address risks and impacts, as described below.

**Examples of scope:** Human rights due diligence should include assessing issues such as:

- Working conditions at the facilities of suppliers, including wages, hours, worker health and safety, freedom to form or join a trade union.
- Negative impacts in supply chain contexts; for example, child in cocoa supply chains.
- Risks posed by security providers, both private and public.

- Risks from government customers who might misuse a company's products in ways that infringe on individuals' privacy.
- Negative impacts on people related to land acquisition, even where that land acquisition was managed by the government, if the process failed to meet international standards around consultation, resettlement or compensation.

**b. Prioritisation:** Does the due diligence prioritise risks and impacts on the basis of risk to people, rather than risk to the business alone?

- Further guidance on prioritisation

The expanded scope of looking across all business relationships as part of E&S due diligence means that businesses are likely to identify a greater number of risks and impacts that they might be connected to. They may therefore face legitimate resource constraints in addressing all of the risks to, and impacts on, people that are identified and may prioritise the E&S risks that will affect the company's bottom line rather than severity on people. Incorporating human rights into E&S due diligence encourages fund managers and companies to take a more holistic risk-based approach to due diligence which avoids underestimating the importance and potential risks and impacts of, human rights. Taking this holistic approach to E&S due diligence allows businesses to prioritise which risks and impacts to address first. In fact, when businesses look more closely, they may see that human rights risks pose significant risks to the business.

While risks to people are increasingly recognised as material risks to the business, this is not always the case. For example:

- A company might not prioritise risks to freedom of association in a context where the right to form and join a trade union is routinely undermined in practice because it is unlikely to be identified/exposed and thus does not seem to represent a reputational risk. Yet a denial of freedom of association is not just a severe impact in itself, it can compound the risks to workers because it prevents them from enjoying many of their other rights, such as the right to a safe and healthy work environment or to a living wage.

- A company may focus all its energies on getting through the permitting process required to obtain a lease over a parcel of land to avoid disruption to its business plans, while ignoring the fact that the government-led land acquisition underlying the process was flawed and that local community members have significant grievances.

The need to prioritise places even greater emphasis in the due diligence process on the role of stakeholder engagement, as stakeholder perspectives should inform a fund or company's understanding of which impacts are perceived or experienced by stakeholders as most severe. It is difficult, or even impossible, for a business to make these decisions without input from those who are directly affected, their legitimate representatives, or credible proxies for their views where direct engagement is not feasible.

**c. Appropriate action:** Does the due diligence identify steps that a company should take to address risks and impacts it is connected to through its business relationships, but which it has not caused or contributed to directly through its own actions?

- [Further guidance on appropriate actions](#)

The expanded scope of looking across all business relationships as part of E&S due diligence also means that there are different expectations for the actions a company should take to address identified risks or impacts. Where the company causes or contributes to an impact directly through its own actions, it should take steps to prevent the impact from occurring, continuing or recurring, and provide remedy for any harm that has been caused.

However, in looking across business relationships, companies may identify severe risks to, or impacts on, people that are caused by third parties over which the company may not be in full control or be able to address the risks or impacts. Actions by the parties that caused the impact will be necessary to cease, prevent, mitigate or provide remedy for the impact. The human rights lens to E&S due diligence therefore includes identifying actions a company can take to increase its leverage over such third parties, to encourage them to take appropriate actions to address impacts. This approach to using and increasing leverage recognises that a company's efforts to address impacts linked to their operations may not be immediately effective, but nevertheless expects

the company to think about and take credible steps to try to make the impact less likely or less severe.

In devising appropriate monitoring plans, it is important to consider how to track progress over time and to ensure the ability to recognise and respond to new issues as they arise. Ultimately, where an impact is severe and a company is unable to mitigate it, the company can either stay in the relationship and accept the consequences – legal, reputational, financial – or exit the relationship, after considering any additional negative human rights consequences of doing so.

The expectation of using and increasing leverage to prevent human rights impacts linked to a company's operations, products or services applies not only to the companies a fund invests in, but equally to the fund itself. Where a negative impact is connected to the fund's activities through its investments, the fund should focus on the most severe impacts, and seek to use or, where necessary, increase its leverage with clients to influence the company's practices to mitigate the human rights risks.

### **Practical examples of using leverage:**

- A company might use its leverage with a third-party security provider to ensure that security personnel have appropriate training and processes in place to prevent unnecessary use of force or escalation that could lead to severe human rights harms. A company might include such provisions in its tender processes, or provide longer-term contracts or more favourable terms for providers that ensure personnel are appropriately trained.
- A company might seek to use its leverage with a government to ensure that relevant international standards shape land acquisition programmes by sharing technical expertise or noting that its investors require it to answer questions on the issue. Where impacts related to flawed land acquisition processes have already occurred, a company might seek to increase leverage by collaborating with other members of its industry, companies from other industries, or international organisations to urge the government to retroactively remediate any harm caused.
- A company might lack leverage individually to address negative impacts deep in the supply chain, but might collaborate with industry peers and various levels of its own supply chain to take sector-based action to address the most severe risks

(as has been done in trying to tackle “conflict minerals” in global electronics, agribusiness, automotive and consumer products supply chains).

Guidance on developing terms of reference for human rights due diligence is available [here](#).

## 5. Advice for fund managers: When should enhanced assessment of human rights, risks and impacts be considered?

While robust E&S due diligence with a human rights lens will be appropriate for many transactions, certain transactions will pose heightened risk of severe human rights impacts. In such cases, fund managers may want to consider enhanced assessment of human rights risks and impacts. This may mean one of the following options:

- **a. “Focused assessment of human rights impacts”** concentrating on a particular business relationship, vulnerable group, or impact;
- **b. “Broadly-scoped assessment of human rights impacts”** necessitating a more comprehensive assessment of human rights risks and impacts (for instance, through a human rights impact assessment).

Fund managers may wish to develop criteria to screen investments for enhanced human rights due diligence, building on traditional E&S categorisation systems.

- [Factors to be considered in the categorisation system](#)

Factors may include:

- The operating context, such as the presence of conflict (e.g. operations in fragile and conflict-affected states), corruption, social instability, weak or absent regulation, or weak enforcement.

- The nature of business relationships, such as business partners with poor track records on managing human rights issues or weak systems in place for managing such issues.
- Certain business activities that are more likely to present human rights issues, such as land acquisition, resettlement, activities leading to rapid influx, the presence of security forces, or legacy impacts related to previous activities by other business or government actors.
- The potential impacts and risks from this particular business activity in this particular context and the actual vulnerability of certain groups (such as women, children, indigenous peoples, migrant workers, or others who may face greater challenges in the protection of their rights, including in relation to wider contextual issues such as climate change).
- The experience of a company in a particular industry or context, such as whether it has experience managing similar kinds of business activities, at similar scale, in similar contexts.

Each of these factors, and their cumulative presence in a particular transaction or company's business footprint, may point to higher-risk circumstances for human rights and an expectation of enhanced due diligence and scrutiny.

### **Figure 2. Sources of heightened human rights risk**

[Click to view figure 2](#)

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## **6. Further advice for fund managers**

- [Expand the scope of due diligence](#)

Companies should refer to internationally recognised human rights standards and look at their own operations and business relationships as they assess potential risks or actual impacts on people. This process can be aided by mapping the value chain of the

business, including key goods and services that might be necessary for core business activities to take place. These might be certain commodities, inputs or parts of the supply chain; parallel services such as security, transportation or logistics providers; or enabling circumstances, such as land acquisition, that makes these business activities possible, but which run the risk of increasing human rights impacts.

- Prioritise on the basis of severity

The practical reality is that every company presents some level of E&S risks, including impacts on human rights. While all negative human rights risks and impacts need to eventually be addressed, fund managers should to the greatest extent possible help companies to prioritise those issues that represent the most severe risks or impacts to people - in alignment with the criteria of scale, scope and remediability.

- Identify opportunities to use and build leverage

In many instances, the most severe risks to or impacts on people may not be caused directly by the company, but by third parties (or business relationships) connected to the company's operations, products or services. The risk or impact may be beyond the direct control of the company, and the company may therefore not be in a position to prevent or remediate the risk or impact. Nevertheless, if the risk involves a potentially severe impact on stakeholders, the company should use and build its leverage to encourage the third party to take appropriate actions to cease, prevent and remediate the harm. It will then be in a better position from which to report these risks and issues to investors.

- Emphasise effective stakeholder engagement

Existing approaches to E&S due diligence emphasise the importance of meaningful stakeholder engagement as part of the due diligence process. However, this often poses challenges. In assessing human rights risks and impacts, the importance of meaningful stakeholder engagement increases substantially. This is particularly important in understanding the severity of a risk to, or impact on, an affected person or group, and therefore on any approach to prioritising which risks or impacts to address first. In practical terms, this means that in those high-risk circumstances where the risk of severe human rights impacts is greatest, fund managers should place added emphasis on both assessing the quality of a company's stakeholder engagement processes (and those of its crucial business relationships), and using the fund's leverage to ensure more robust processes for company-level stakeholder engagement where necessary.

- [Ensure that oversight of human rights risks and issues is ongoing](#)

It is important to continually monitor the circumstances, risks and impacts as these can change over time. Severe human rights impacts often occur as the result of a failure to effectively manage more familiar E&S risks and impacts. Ongoing monitoring can help to ensure that existing systems are effectively identifying and addressing the types of E&S risks that can escalate into more serious issues if left unattended. For example, effective grievance mechanisms can provide a useful source of information about the types of actual impacts that are occurring, whether they are being effectively addressed, and whether systems and processes are being adapted to prevent continuation or recurrence of those impacts.

## 7. Further resources

- [Further information and guidance](#)

- [Managing Risks Associated with Modern Slavery](#): The Good Practice Note, which was commissioned by the DFIs and produced by Ergon Associates and the Ethical Trading Initiative, provides guidance for DFIs, banks, private equity firms and other financial institutions that provide capital to private companies in emerging markets. The publication offers advice for a range of sectors where risks of modern slavery are high. These risks tend to be greater in the supply chain and are associated with a number of unacceptable practices, such as abusive and fraudulent recruitment (e.g. use of recruitment fees), the withholding of wages, and document retention, etc – some or all of which can leave workers in a situation of modern slavery. Furthermore, the Good Practice Note is of relevance and practical use for a range of company functions, including management, human resources, sustainability and procurement.
- [Human Rights Due Diligence in High Risk Circumstances: Practical Strategies for Companies](#): Shift's report on human rights due diligence in high-risk circumstances resulted from consultations with leading companies from diverse sectors on key factors in identifying where heightened due diligence is required. This built on work Shift undertook in collaboration with the IFC to explore Footnote 12 of IFC Performance Standard 1, which states that in certain high-risk circumstances, additional human rights due diligence may be warranted. The report explores how to identify high-risk circumstances, and what additional due diligence might entail. These issues are further explored in the accompanying [Terms of Reference for Human Rights Due Diligence](#).

- [Using Leverage in Business Relationships to Reduce Human Rights Risk](#): Shift's report on leverage resulted from experience working with leading companies, as well as testing in a workshop setting. The primary utility of this report may be in expanding the menu of options that funds and companies can pursue in increasing their influence over others to address human rights impacts they may be connected to, but which may be beyond their control to prevent or address alone.
- [UN Guiding Principles Reporting Framework](#): Fund managers may find great utility in the questions posed in the UNGP Reporting Framework. While the stated purpose of the framework relates to what companies disclose in their approach to managing human rights impacts, investors and companies themselves can find value in using the Reporting Framework's eight overarching questions as a diagnostic tool to help assess the relative strengths and gaps in a company's management system and approach.