THE DANISH INSTITUTE FOR HUMAN RIGHTS

HUMAN RIGHTS IMPACT ASSESSMENT

GUIDANCE AND TOOLBOX

ROAD-TESTING VERSION

HUMAN RIGHTS IMPACT ASSESSMENT
GUIDANCE AND TOOLBOX

Authors: Nora Götzmann, Tulika Bansal, Elin Wrzoncki, Cathrine Poulsen-Hansen, Jacqueline Tedaldi and Roya Høvsgaard

Acknowledgments:

This Road-testing version of the HRIA Guidance and Toolbox has been developed with input from a number of individuals and organisations who contributed their expertise, reflections and time on a voluntary basis, for which we are deeply thankful. We wish to extend our sincere thanks to: Désirée Abrahams, Day Associates; Manon Aubry, Sciences Po and Oxfam France; José Aylwin; Sibylle Baumgartner, Kuoni Travel Management Ltd.; Richard Boele; Caroline Brodeur; Jonathan Drimmer; Gabriela Factor, Community Insights Group; Alejandro González, Project on Organizing, Development, Education, and Research (PODER); International Alert; Human Rights Task Force members of IPIECA, the global oil and gas industry association for environmental and social issues; Madeleine Koalick, twentyfifty Ltd.; Felicity Ann Kolp; Serena Lillywhite, Oxfam Australia; Lloyd Lipsett, LKL International Consulting Inc.; Susan Mathews, OHCHR; Siobhan McInerney-Lankford; Geneviève Paul, FIDH; Grace Sanico Steffan, OHCHR; Haley St. Dennis; Sam Szoke-Burke, Columbia Center on Sustainable Investment; Irit Tamir, Oxfam America; Deniz Utlu, German Institute for Human Rights; Prof. Frank Vanclay, University of Groningen; Margaret Wachenfeld; Yann Wyss, Nestlé; Sarah Zoen, Oxfam America. The contribution of expert reviewers does not represent their endorsement of the content. We would also like to thank Flavia Fries for her contributions to the Guidance and Toolbox during her fellowship at DIHR.

© 2016 The Danish Institute for Human Rights
Denmark's National Human Rights Institution
Wilders Plads 8K
DK-1403 Copenhagen K
Phone +45 3269 8888
www.humanrights.dk

This publication, or parts of it, may be reproduced if author and source are quoted.www.menneskeret.dk/tilgaengelighed

CONTENT

A WELCOME **6**
A.1 Introduction **6**
A.2 Overview of the Guidance and Toolbox and HRIA phases **7**
A.3 Who can use this Guidance and Toolbox and how **8**
A.4 Introduction to Human Rights Impact Assessment **9**
A.4.1 What is HRIA? 9
A.4.2 Why do businesses need to assess their human rights impacts? 11
A.4.3 When should HRIA be undertaken and how long does it take? 12
A.4.4 How does HRIA relate to human rights due diligence and the UN Guiding Principles? 15
A.4.5 What are the differences and similarities between HRIA and other types of impact and risk assessment? 17
A.4.6 Should HRIA be stand-alone or integrated? 20
A.5 10 Key Criteria for HRIA **22**
A.6 Applying international human rights standards and principles **31**
A.6.1 What are human rights? 31
A.6.2 How are international human rights implemented? 31
A.6.3 What are the State duties to respect, protect and fulfil human rights and how do these differ from the corporate responsibility to respect human rights? 32
A.6.4 What types of human rights are businesses expected to respect? 33
A.6.5 What are the sources of human rights that should be considered in HRIA? 34
A.6.6 What are absolute rights, core content and AAAQ? 34
1 PLANNING AND SCOPING **39**
1.1 Scoping for HRIA **40**
1.1.1 Scoping of the business project or activities 41
1.1.2 Scoping of the human rights context 43
1.1.3 Identifying relevant stakeholders 44
1.2 The HRIA team **45**
1.3 Terms of reference for HRIA **48**

2 DATA COLLECTION AND BASELINE DEVELOPMENT 50
2.1 Developing a HRIA baseline 51
2.2 Sources for data collection 54
2.3 Introduction to human rights indicators 56
3 ANALYSING IMPACTS 62
3.1 Types of human rights impacts to be considered 63
3.1.1 Examples of human rights impacts 63
3.1.2 Impacts to which the business contributes and complicity 64
3.1.3 Cumulative impacts 65
3.1.4 Adverse impacts and project benefits 67
3.2 Establishing impact severity 69
4 IMPACT MITIGATION AND MANAGEMENT 72
4.1 Planning and resourcing for human rights impact management 73
4.2 Developing actions to address impacts and exercising leverage 75
4.3 Monitoring 80
4.4 Access to remedy and operational-level grievance mechanisms 82
5 REPORTING AND EVALUATION 84
5.1 Why report on HRIA? 84
5.2 Challenges when reporting on HRIA processes and findings 87
5.3 Content of a HRIA report 88
5.4 Evaluation and continuous improvement 89
B STAKEHOLDER ENGAGEMENT 90
B.1 Introduction to engaging with stakeholders in HRIA and participation of rights-holders 91
B.2 Identifying the relevant stakeholders to engage with 96
B.2.1 Stakeholder identification and analysis 96
B.2.2 Engagement with rights-holders in particular 99
B.2.3 Engagement with duty-bearers 105
B.2.4 Engagement with other relevant parties 109
B.3 Considerations for engaging with specific rights-holders 111
GLOSSARY 125
FURTHER RESOURCES 128
ENDNOTES 135

This document contains the full Guidance text. You can access the Practitioner Supplements at: http://www.humanrights.dk/business/human-rights-impact-assessment-guidance-toolbox

For ease of reference, via the above link you can also access a PDF version of the Guidance text for each of the HRIA phases individually.

A NOTE ON THIS ROAD-TESTING VERSION

This Road-testing version of the Human Rights Impact Assessment (HRIA) Guidance and Toolbox is based on DIHR materials and experiences, input from expert reviewers, the UN Guiding Principles on Business and Human Rights and international human rights instruments, as well as public domain sources on impact assessment.

The preparation of the Guidance and Toolbox included two consultation drafts on which we received written feedback from expert reviewers, as well as a workshop in Geneva in November 2015, at which 15 of the expert reviewers participated in a discussion on the Guidance and Toolbox and HRIA. It is anticipated that in 2016-17, a Phase II of the project will focus on the Guidance and Toolbox in practice, the gathering and sharing of learning, and updating it based on experiences from practice.

As HRIA of business projects and activities is an emerging practice, this Road-testing version of the HRIA Guidance and Toolbox seeks to provide guidance to those working with HRIA, but also to contribute to a platform for dialogue about HRIA practice and standards in the business and human rights field. In this context, we welcome comments from stakeholders on the Guidance and Toolbox and on experiences with using it.

Please send comments, questions and suggestions to:
Nora Götzmann nog@humanrights.dk and Tulika Bansal tuba@humanrights.dk

WELCOME

A WELCOME

A.1 INTRODUCTION

The purpose of this Guidance and Toolbox is to provide those who are involved in conducting, commissioning, reviewing or monitoring Human Rights Impact Assessments (HRIA) of business projects and activities with guidance and practical tools; with the view to ensuring that such assessments apply a human rights-based approach and are consistent with the United Nations Guiding Principles on Business and Human Rights (UN Guiding Principles).

With increased attention being given to the accountability of businesses for their human rights impacts, HRIA has gained traction as one approach available to the private sector, non-government and civil society organisations (NGOs and CSOs), governments and other stakeholders, to assess and evaluate the impacts of business activities on the human rights enjoyment of rights-holders, such as workers and communities. In the business and human rights context, the UN Guiding Principles have been one key driver for HRIA development.

As HRIA is an emerging practice, it is important that those who are involved in HRIA of business activities engage in dialogue and consider emerging practice carefully, with the view to establishing HRIA practice that achieves its intended purposes, including to:

- Identify and address adverse human rights impacts (through meaningful engagement with stakeholders, data gathering and analysis, prevention, mitigation and remediation)
- Contribute to effective human rights due diligence
- Facilitate meaningful dialogue between stakeholders in a particular context; and
- Empower rights-holders to hold businesses to account for their adverse human rights impacts.

By providing guidance and tools that can be applied in HRIA of business projects and activities, this Guidance and Toolbox seeks to assist those who are involved in such assessments in working towards robust HRIA practice.

The process outlined is modelled on HRIA undertaken for large-scale private sector business projects conducted at the project- or site-level (e.g. factory, mine site, hotel, oil & gas plant, including the supply chain and ancillary infrastructure as relevant). As such, it may need to be adapted and scaled to suit the particular business project or activities in question. Whilst the Guidance and Toolbox in its entirety outlines a process for stand-alone HRIA (i.e. impact assessment that focuses exclusively on human rights), stakeholders may also wish to draw on specific components when working to integrate human rights into other types of assessments (e.g. environmental, social and health impact assessments).

A.2 OVERVIEW OF THE GUIDANCE AND TOOLBOX AND HRIA PHASES

The Guidance and Toolbox includes the following sections:

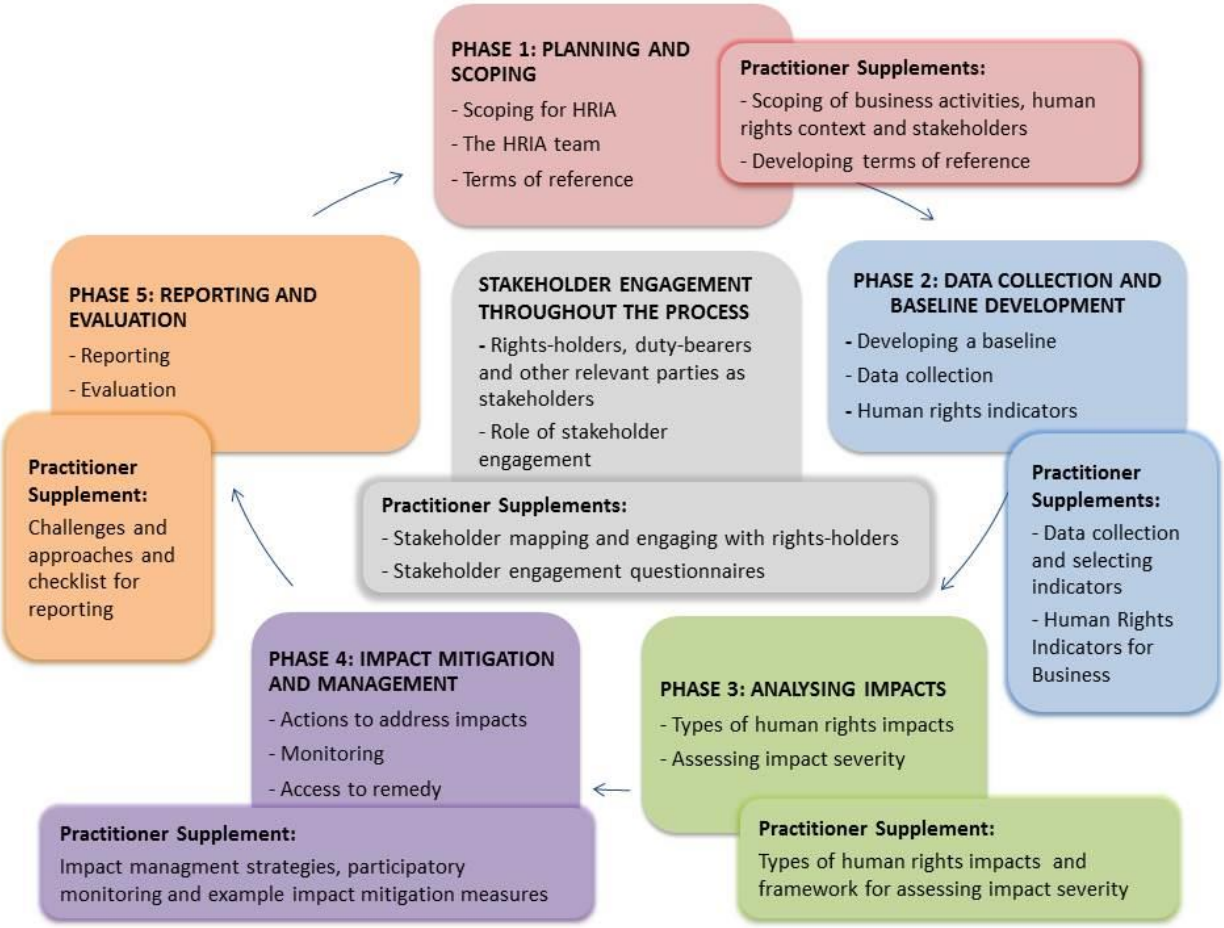
- **Welcome Section:** where you can find an overview of the Guidance and Toolbox, an introduction to HRIA, 10 key criteria to guide the process and content of HRIA, as well as other introductory materials on international human rights standards and principles.
- **HRIA Phases and Stakeholder Engagement:** the Guidance and Toolbox is divided into five phases: planning and scoping; data collection and baseline development; analysing impacts; impact mitigation and management; and reporting and evaluation; with stakeholder engagement situated as a cross-cutting component. For each HRIA phase explanatory guidance is provided as well as corresponding practitioner supplements that include templates, checklists and other practical tools for conducting HRIA. The explanatory guidance seeks to provide an overview of the impact assessment phase, detailing what it would include and why, as well as discussion on key points; these sections are suitable for a broad audience wishing to familiarise themselves with HRIA. The accompanying practitioner supplements are intended for those who are involved in conducting, commissioning, reviewing or monitoring HRIAs.

You can find further details about the content of the Guidance and the Practitioner Supplements for the different HRIA phases in Figure 1, below.

This document contains the full Guidance text. You can access the Practitioner Supplements at: http://www.humanrights.dk/business/human-rights-impact-assessment-guidance-toolbox

For ease of reference, via the above link you can also access a PDF version of the Guidance text for each of the HRIA phases individually.

Figure 1: Overview of the content of the Guidance and Toolbox



A.3 WHO CAN USE THIS GUIDANCE AND TOOLBOX AND HOW

The primary target audience for this Guidance and Toolbox is:

- **Human rights practitioners and consultants** conducting impact assessments for business projects and activities
- **Businesses**, in particular staff who are responsible for commissioning and overseeing impact assessments; and
- **Financial institutions** providing support to businesses, in particular staff who are responsible for the implementation of social safeguard and performance standards for projects.

The secondary audience is other individuals or organisations who are interested in the topic of HRIA of business projects or activities, or involved in such assessments. For example:

- **National human rights institutions** in exercising their mandate to promote and protect human rights could use the Guidance and Toolbox in advising the government and other stakeholders on impact assessment law, policy and practice, to ensure that the adoption of a human rights-based approach and international human rights standards are reflected.
- **Government departments and State institutions** that are responsible for providing guidance to businesses on respecting human rights, or setting standards for due diligence and impact assessment, could draw on the Guidance and Toolbox for information on how human rights might be better reflected in such guidance and standards.
- **Non-government and civil society organisations** that support and/or represent workers, individuals and communities that are adversely affected by business projects or activities could use the Guidance and Toolbox to advocate for a company to undertake a HRIA or for increased community involvement in business-commissioned HRIAs, or to review and monitor those HRIAs that have been undertaken (for a methodology designed specifically for community-led HRIA, however, see the Getting it Right Tool, developed by Rights & Democracy).
- Other stakeholders with an interest in impact assessment and/or business and human rights.

A.4 INTRODUCTION TO HUMAN RIGHTS IMPACT ASSESSMENT

A.4.1 WHAT IS HRIA?

In the business context, HRIA can be defined as a process for identifying, understanding, assessing and addressing the adverse effects of a business project or activities on the human rights enjoyment of impacted rights-holders such as workers and community members.

Compared to other types of risk and impact assessment, such as environmental or social impact assessment, the field of HRIA is relatively new (Box 1, below, provides an overview of emerging strands of HRIA from different fields).

HRIA involves several phases or steps, all of which need to be included to ensure a comprehensive assessment. In this Guidance and Toolbox the phases have been divided into:

1. Planning and scoping
2. Data collection and baseline development
3. Analysing impacts
4. Impact mitigation and management; and

5. Reporting and evaluation.

Whilst HRIA can be divided into different phases, it is important to recognise that the assessment is an iterative process and should facilitate continuous learning and analysis throughout the process.

Engagement with rights-holders and other stakeholders are essential in HRIA. A thorough assessment of human rights impacts is unlikely to be possible or effective if conducted purely as a desk-top research exercise. Instead, it is an involved process, requiring background research, field work and being heavily based on the participation of rights-holders other stakeholders. Stakeholder engagement has therefore been situated as the core cross-cutting component in the Guidance and Toolbox.

To ensure that human rights are addressed comprehensively, it is important that the content, process and outcomes of the assessment apply and are compatible with international human rights standards and principles. Drawing on the UN Guiding Principles, as well as current guidance and literature on HRIA, a number of content and process aspects can be identified as essential for HRIA of business projects or activities. In short:

- **International human rights as benchmark:** International human rights standards and principles must constitute the basis and benchmark for the assessment, at minimum referring to the International Bill of Human Rights and the ILO Core Labour Conventions, and other human rights as necessary in the particular HRIA context.
- **Human rights-based process:** The process of the assessment itself needs to respect human rights by paying particular attention to human rights principles such as non-discrimination, participation, empowerment and transparency.
- **Focus on accountability:** The assessment process and content need to emphasise accountability, including by recognising the entitlements of rights-holders to have their rights respected and the corresponding duties and responsibilities of duty-bearers to uphold and respect these rights.

These essential content and process elements of HRIA are elaborated further in 10 Key Criteria for HRIA, below, where you can also find questions for practitioners on how they can be implemented in practice.

Box 1: Overview of emerging strands of HRIA from different fields

Within emerging HRIA practice, several different strands have been identified, including:

- In the field of development
- On health and human rights

- Child rights impact assessments
- Impact assessments of private sector projects
- On international trade and investment agreements
- Impact assessments conducted for public authorities
- Community-led processes; and
- Sector-wide impact assessments.

Within and between these strands, practice is diverse in terms of the rights-holders and duty-bearers involved, the level of detail in the methodology and analysis, and the purpose and intent of the impact assessments. For example, in the area of HRIA conducted for government programmes, the focus may be on high-level policy analysis to establish whether a certain human rights focused intervention is meeting its objectives in terms of improving the realisation of the particular human right(s); such as an analysis of whether a government equal opportunities programme is effective in generating more employment opportunities for target groups such as women or ethnic minorities. In the context of business activities, on the other hand, the focus to date has primarily been on identifying, usually through ex-post assessments (i.e. assessments that occur after business activities are already under way), of the adverse impacts of private sector projects on workers and communities.

Sources: James Harrison and Mary-Ann Stephenson (2010), *Human Rights Impact Assessment: Review of Practice and Guidance for Future Assessments,* Edinburgh: Scottish Human Rights Commission; Simon Walker (2009), *The Future of Human Rights Impact Assessments of Trade Agreements,* Antwerp: Intersentia.

A.4.2 WHY DO BUSINESSES NEED TO ASSESS THEIR HUMAN RIGHTS IMPACTS?

It is evident that business projects and activities can have a wide range of impacts on human rights. With the endorsement of the UN Guiding Principles by the Human Rights Council in 2011, it has been firmly established that businesses have a responsibility to respect human rights, including by identifying, avoiding, mitigating and remediating the human rights impacts with which they are involved (see Box 3, below). HRIA can provide a process for businesses to understand and address such impacts. HRIA of business projects and activities can provide a structured approach through which to:

- Identify adverse human rights impacts, including understanding these from the perspectives of impacted rights-holders such as workers and community members
- Determine measures to address any adverse human rights impacts identified (through prevention, mitigation and remediation)

- Facilitate dialogue between a business, rights-holders and other relevant parties, in particular human rights actors (on the different stakeholders to be engaged in HRIA see further, Stakeholder Engagement)
- Facilitate capacity building and learning of company stakeholders, rights-holders and others involved in the impact assessment, including through awareness raising of respective rights and responsibilities
- Enhance the accountability of businesses through documenting the impacts that have been identified and the actions taken to address these; and
- Build partnerships between businesses and other stakeholders to address human rights impacts, including through developing joint actions to address cumulative impacts or legacy issues.

A.4.3 WHEN SHOULD HRIA BE UNDERTAKEN AND HOW LONG DOES IT TAKE?

HRIA should be conducted as early as possible in the project-cycle, or when business activities commence, and repeated and re-evaluated at regular intervals (for example, in the case of environmental and social impact assessment review every three-five years is considered to be good practice) or critical gateways (such as project expansion, preparation for decommissioning and closure, where there are significant changes in social and political circumstances and so forth).

In planning and undertaking a HRIA, it is important to recognise that the complexity of the assessment should be appropriately scaled to the particular context (i.e. the community context, whether it is ex-ante or ex-post, whether there are pre-existing conflicts etc.) and to the nature of the business project or activities (i.e. the size of the operation, the stage of operations, the specific location etc.). This also applies to consideration of how much time will be needed for the assessment. See Box 2, below, for some example time allocations for HRIA.

Box 2: Examples of time allocation for HRIA

Nestlé HRIAs

The global food and beverage company Nestlé SA and the Danish Institute for Human Rights, as part of their partnership, have conducted 11 HRIAs between 2010 and 2015. Each HRIA is different, given the varying country contexts, human rights situation and the scale and scope of business operations. Therefore, each HRIA requires a deliberate reflection on the necessary and appropriate amount of time needed for preparing and conducting the assessment.

Below, an estimation of the time allocation has been described. Please note that this example should not be seen as standard practice in that the same

amount of time is set for every HRIA. As noted above, the amount of time necessary will depend on the particular context. Additionally, in practice the various phases of a HRIA are much more fluid, which often creates overlap among the different phases, e.g. planning and scoping often overlaps with, and feeds into, data collection and baseline development.

- Approximately **two-three months** are allocated for the planning and scoping phase. This phase includes kick-off sessions involving the HRIA team and the subsidiary to explain the HRIA process, country risk research, scoping of business activities, identifying which locations, suppliers and commodities to include in the scope of the assessment, development of assessment questionnaires, as well as logistical preparations.
- Approximately **six weeks** are allocated for data collection and baseline development, which includes more or less three weeks of desk-top data collection and two-three weeks of in-country assessment.
- During the in-country assessment, typically 70-80 interviews are conducted during the **two-three weeks** on the ground. These include interviews with management at the subsidiary head office, focus group discussions and individual interviews with workers and community members, interviews with suppliers' and contractors' (both management and workers), and interviews with other relevant parties such as UN agencies, NGOs and CSOs, academic experts, etc.
- After every in-country assessment, the HRIA team evaluates the overall assessment process; what went well and what could be improved for the next round of assessments. This evaluation takes place on location and takes a few hours.
- Upon return from the in-country assessment, the HRIA team spends approximately **four-five weeks** drafting the HRIA report, which includes time to analyse the human rights impacts found during the in-country assessment, as well as drafting of the final HRIA report. This phase may take longer depending on how much further research is needed. As part of the HRIA report, the team also develops an impact management plan, which includes recommendations to mitigate the impacts found during the assessment.
- Once the HRIA report and impact management plan have been shared with the subsidiary, it needs approximately **1 month** to review the recommendations and determine timelines and identify relevant persons who will be responsible for the different mitigation actions.
- Monitoring of the HRIA impact management plan takes place on a quarterly basis, through calls between the HRIA assessors and Nestlé (HQ representative and subsidiary focal point), to discuss and evaluate progress of the implementation of mitigation measures and support with any challenges that the company may encounter in implementing the

recommendations.

The overall process, i.e. from preparing for the HRIA to finalising the HRIA report including impact management plans, takes approximately six-seven months.

Bisha Mine HRIA in Eritrea

The HRIA and post-HRIA activities of Nevsun's Bisha Mine in Eritrea were undertaken from mid-2013 through to 2015. The timeline below describes this process:

- June - July 2013, Nevsun commissioned the first HRIA of its Bisha Mine, this began the HRIA, and included meetings with the HRIA team and the preparation of a detailed assessment plan, i.e. terms of reference.
- August - October 2013, scoping took place, including background research, document review and analysis of the legal framework of Eritrea, and understanding the relevant international human rights standards and context.
- October 2013, the first of two field missions to Eritrea took place to conduct fieldwork research, interviews and focus groups with stakeholders; additionally, the HRIA team made observations of the Bisha Mine and nearby communities and their interactions with Eritrea subcontractors.
- January 2014, a second mission to Eritrea took place for further data collection.
- February 2014, interactive dialogues on Eritrea's Universal Periodic Review at the UN Human Rights Council.
- February - March 2014, further research and human rights analysis was undertaken by the HRIA team.
- April 2014, release of the initial HRIA report.

After the publication of the 2014 HRIA report, the HRIA team stayed on to monitor and audit the Mine. From July 2014 until August 2015 activities included:

- Various meetings with external stakeholders to discuss the HRIA report and consult about findings and recommendations.
- Meetings with senior management, general managers and heads of departments to discuss next steps on the implementation of recommendations.
- Two additional field missions in Eritrea, which included interviews with stakeholders.
- Publication of the 2015 Audit.
- Development of a proposal for a stakeholder engagement plan to include discussions about the HRIA report, recommendations, and follow-up

assessment activities.

Goldcorp's Marlin Mine Human Rights Assessment

Goldcorp's Marlin Mine Human Rights Assessment in Guatemala began in October 2008, and was conducted over an 18-month period. A steering committee was created, which consisted of a member of Guatemalan civil society, a shareholder group representative, and a Goldcorp representative. The committee was charged with overseeing and managing the HRIA process, including developing the scope and timeline of the assessment as well as selecting the consultant(s) to conduct the assessment. On Common Ground Consultants were chosen by the committee to conduct the HRIA.

During November 2008 to June 2009 (an eight-month period) the HRIA team conducted 189 individual interviews, nine group interviews with 84 participants, eight informal discussions, and 10 focus groups with 95 participants. Additionally, field visits in Guatemala totalled more than 180 days, with continuous presence of the HRIA team from mid-January through the end of March 2009.

In May and June 2009 it was noted that certain stakeholder groups were underrepresented in the interviews, so through local contacts the HRIA team contacts conducted additional interviews, which lasted eight days, in order to ensure representation of these stakeholder groups in the assessment.

Sources: Tulika Bansal and Yann Wyss (2013), *Talking the Human Rights Walk: Nestlé's Experience Assessing Human Rights Impacts in its Business Activities,* Copenhagen: Danish Institute for Human Rights and Nestlé; LKL International Consulting Inc. commissioned by Nevsun Resources Ltd. and Eritrean National Mining Corporation (ENAMCO) (2015), *Human Rights Impact Assessment of the Bisha Mine in Eritrea 2015 Audit*; On Common Ground Consultants Inc. commissioned on behalf of Goldcorp by the Steering Committee for the Human Rights Assessment of the Marlin Mine (2010), *Human Rights Assessment of Goldcorp's Marlin Mine,* Vancouver: On Common Ground Consultants Inc.

A.4.4 HOW DOES HRIA RELATE TO HUMAN RIGHTS DUE DILIGENCE AND THE UN GUIDING PRINCIPLES?

The UN Guiding Principles (see Box 3, below) articulate the expectation that businesses should respect human rights by using a process of 'human rights due diligence'. That is, a process by which to identify, prevent, mitigate and account for how a business addresses the adverse human rights impacts with which it is involved. The assessment of human rights impacts is a critical step in this process.

Notably, the UN Guiding Principles do not necessarily require that businesses conduct 'human rights impact assessments', but indicate that a range of approaches may be appropriate for assessing human rights impacts. Examples of approaches that have been developed include 'stand-alone' HRIA (i.e. assessments that focus exclusively on human rights), 'integrated' assessments (e.g. integrating human rights into environmental, social and health impact assessments) and others.

The UN Guiding Principles state that when a business is assessing its human rights impacts it should:[1]

- Draw on internal and/or independent human rights expertise
- Undertake meaningful consultation with potentially affected rights-holders and other relevant parties
- Be gender-sensitive and pay particular attention to any human rights impacts on individuals from groups that may be at heightened risk of vulnerability or marginalisation
- Assess impacts from the perspective of risk to people rather than risk to business; and
- Repeat its risk and impact identification and assessment at regular intervals (i.e. before entering into a new activity, prior to significant decisions about changes in activities, and periodically throughout the project-cycle).

Box 3: The United Nations Guiding Principles on Business and Human Rights

The UN Guiding Principles were developed under the auspices of the former Special Representative of the UN Secretary-General on Business and Human Rights, Professor John Ruggie, during his mandate term, 2005-2011.

They rest on three inter-related pillars:

1. The State duty to protect against human rights abuses by third parties, including businesses, through appropriate policies, legislation, regulation and adjudication
2. The corporate responsibility to respect human rights, meaning that businesses are expected to avoid infringing on the human rights of others and to address adverse human rights impacts with which they are involved; and
3. Access to remedy, which requires both States and businesses to ensure greater access by victims of business-related human rights abuses to effective remedy, both judicial and non-judicial.

The UN Guiding Principles were unanimously endorsed by the Human Rights Council in 2011. Since then they have been integrated into numerous key business and human rights frameworks and standards, for example, the OECD Guidelines for Multinational Enterprises, the Performance Standards of the International Finance Corporation and the European Union's 2011-2015 Corporate Social Responsibility Policy.

Combining these points with aspects highlighted in HRIA guidance and literature, a number of key criteria for the assessment of human rights impacts can be identified (these are outlined in 10 Key Criteria for HRIA, below).

A.4.5 WHAT ARE THE DIFFERENCES AND SIMILARITIES BETWEEN HRIA AND OTHER TYPES OF IMPACT AND RISK ASSESSMENT?

HRIA draws on impact assessment practices such as environmental, social and health impact assessment (EIA, SIA and ESHIA when combined). However, whilst HRIA has a number of things in common with these more established practices there are also some notable differences, and a number of 'original' or 'essential' elements of HRIA indicate that there is a 'value added' of HRIA (see Box 4, below).

When comparing HRIA and SIA for instance, it can be noted that both place significant emphasis on:[2]

- Identifying and addressing adverse impacts
- Affected communities and individuals, including a particular focus on vulnerable groups; and
- The process as well as the outcome of the impact assessment, including recognising that an impact assessment needs to be an ongoing process of change management rather than a one-off assessment exercise.

However, there are also notable differences between HRIA and SIA, including:

- The standards applied as the benchmark for the assessment, HRIA uses internationally recognised human rights standards whereas SIA uses a range of different benchmarks dependent on the context
- In the context of business activities, SIA focuses on both adverse impacts and project benefits, whereas HRIA focuses on adverse impacts; and
- The identification of rights-holders and their entitlements, and the respective duty-bearers and their obligations, in stakeholder analysis and engagement.

It has also been noted that whilst there are significant parallels between ESHIA and HRIA, there are some areas of human rights impacts which are not, in practice, always included in a standard ESHIA scope, or which, if included, warrant further attention in practice; which could be facilitated by taking a human rights focus. Examples include:[3]

- Labour issues with contractors and within the goods and services supply chain
- Post-conflict or conflict-sensitive areas
- Security activities related to business operations and/or activities
- Gender analysis and an assessment of the gender impacts associated with a business project or activities

- The rights of indigenous peoples and an adequate focus on vulnerable individuals and groups
- Community impacts related to business relationships or activities (e.g. business partners, government actors or joint-venture operations)
- Legacy human rights impacts associated with the activities of previous business operators
- Cumulative impacts, involving human rights impacts of other businesses operating in the same area; and
- In-migration associated with the development of the business project, which may result in overloading infrastructure and social services.

It should also be emphasised that HRIA is not the same as risk assessment, although the two may be related and inform each other. In the business context, risk assessment is focused on predicting the future occurrence of events and the associated implications for the business. HRIA differs from this by focusing on actual and potential impacts, rather than risks.

Box 4: The 'original' or 'essential' elements of HRIA

Literature and practical guidance on HRIA has identified some of the key distinguishing features of HRIA as including:

- Being **based on internationally recognised human rights standards and principles**, i.e. using these as the benchmark for the impact assessment. International human rights standards provide a universal and comprehensive basis for impact assessment, whereas other types of impact assessment tend to use a diverse array of standards as benchmarks, and may not cover civil and political and economic and social and cultural rights comprehensively. Use of international human rights standards also includes drawing on a developed jurisprudence in the analysis of impacts, and recognising the interdependence and interrelatedness of impacts, whereas other types of impact assessment may be narrower in their focus.
- Focus on **participation of rights-holders, duty-bearers and other human rights stakeholders** in the impact assessment process. In HRIA, meaningful participation in the impact assessment process is as important as the outcomes, and rights-holders are considered to be active agents in the impact assessment process. Whilst public participation is a standard component of impact assessment processes such as EIA and SIA, taking a human rights-based approach creates further emphasis on participation in terms of questioning and broadening the points in time at which participation occurs, the level of information sharing involved in participation and consultation activities, and empowerment and capacity

building of individuals to participate in the impact assessment process. The human rights framework also facilitates drawing on human rights institutions, networks and expertise in the impact assessment itself, as well as the implementation of recommendations and mitigation measures.

- Attention to **equality and non-discrimination**. International human rights place significant emphasis on non-discrimination and equality, and these terms are arguably more clearly defined than notions such as equity which may be applied by other types of impact assessment. Furthermore, equality and non-discrimination in human rights provide parameters for the systematic analysis of impacts experienced by vulnerable individuals and groups, gender dynamics, and consideration of the differential distribution of impacts, through emphasising a focus on impact analysis at a disaggregate level. As human rights inhere in the individual, HRIA limits offsetting, such as accepting impacts on certain individuals for the greater good or positive contributions. In short, use of the human rights framework can facilitate broadening and deepening the analysis in terms of equality and non-discrimination.
- Focus on **accountability, including transparency, access to information and access to remedy**. Transparency is imperative both throughout the impact assessment process, as well as with regard to the results. Considering transparency from the perspective of the right to access to information includes emphasis on a full range of parameters, such as the type of information being disclosed, the points in time, language and other accessibility factors and so forth. The particular attention to accountability in the human rights framework, through the recognition of rights-holders as having entitlements for which respective duty-bearers have duties and responsibilities for upholding these rights, arguably provides greater imperatives for the implementation of mitigation measures, including remedy, than provided by impact assessment frameworks that are not based on legal standards. Relatedly, the emphasis of the human rights framework on access to remedy both as a right in and of itself, as well as a component of accountability, indicates the need for a stronger focus on this in HRIA than what may be required or expected in other types of impact assessment.

The 10 Key Criteria for HRIA, below, provide more detail on how such 'original' or 'essential' elements might be implemented in HRIA of business projects or activities.

Sources: Based on: Simon Walker (2009), *The Future of Human Rights Impact Assessments of Trade Agreements*, Antwerp: Intersentia, pp.39-49; World Bank and Nordic Trust Fund (2013), *Human Rights Impact Assessments: A Review of the Literature, Differences with other forms of Assessments and Relevance for Development,* Washington: World Bank and Nordic

Trust Fund.

A.4.6 SHOULD HRIA BE STAND-ALONE OR INTEGRATED?

One key question for current HRIA practice is whether it is best to assess human rights by using a 'stand-alone' (i.e. assessment that focuses exclusively on human rights) or 'integrated' (e.g. integrating human rights into EIA, SIA or ESHIA) approach. In short, the answer should depend on the particular context.

There are a number of potential benefits to taking integrated approaches, such as:

- Building on and utilising existing impact management structures
- Avoiding consultation fatigue of stakeholders
- Facilitating analysis of the interrelatedness of environmental, social and human rights impacts; and
- Building on the respective strengths of the different disciplines involved.

On the other hand, there are also a number of potential benefits to taking a stand-alone approach. A stand-alone HRIA can, for example:

- Avoid side-lining human rights issues amongst a range of topics being considered
- Draw more extensively on human rights expertise; and
- Facilitate more in-depth space for learning and capacity building of the different stakeholders involved.

Table A, below, provides a short overview of some of the potential pros and cons associated with stand-alone and integrated approaches.

Table A: Strengths and weaknesses of different approaches to assessing human rights impacts

	Integrated Approach	**Dedicated (Stand-alone) Approach**
Strengths	• Benefits from established internal and external company mechanisms that assign accountabilities. • Avoids duplication of work and stakeholder consultation fatigue by focusing on the synergies between potential social and	• Draws on human rights expertise enabling specific focus and deep analysis of human rights. • Specifically prioritises those individuals and communities who may experience human rights impacts, in particular by

Table A: Strengths and weaknesses of different approaches to assessing human rights impacts		
	Integrated Approach	**Dedicated (Stand-alone) Approach**
	human rights impacts. • Can enable more efficient use of project time and resources. • The term 'human rights' resonates differently amongst people. This can lead to confusion, concern and sensitivities. An integrated ESHIA has the benefit of addressing human rights while using a framework and language with which project teams are familiar.	facilitating participation of vulnerable and marginalised individuals or groups. • Can be performed outside the regulatory requirements of an ESHIA process, and may allow for sensitive human rights issues and impacts to be assessed without triggering risks during the permitting process or from public release of the report. • Provides the freedom for companies to identify and assess human rights impacts, irrespective of government adherence to international human rights standards.
Weaknesses	• The process, especially if it is dictated by prescriptive host-country regulatory requirements, may not allow for a specific focus on human rights. • ESHIA practitioners may not have sufficient human rights expertise. • Human rights considerations may not be explicitly referenced, and it may be less clear how human rights impacts have been identified and will be addressed by the	• Mitigation and management plans drawn from a dedicated assessment may not be easily incorporated into existing company management systems and may suffer from lack of both 'buy-in' and accountability for implementation. • Adds additional cost and resource management requirements to the project; cost sensitivities

Table A: Strengths and weaknesses of different approaches to assessing human rights impacts		
	Integrated Approach	**Dedicated (Stand-alone) Approach**
	project. • In operating contexts where human rights may be more sensitive, affected communities and individuals may be at risk if specific information from the ESHIA report enters the public domain. Separate reporting (if any) of such information may therefore be necessary.	may also arise with business partners or host-country governments. • The impact assessment practitioners may lack specific human rights expertise. • May exacerbate or give rise to potential political sensitivities from external stakeholders, or may raise or create stakeholder expectations in situations where human rights are not promoted and protected.
Source: Danish Institute for Human Rights and IPIECA (2013), *Integrating human rights into environmental, social and health impact assessments: A practical guide for the oil and gas industry,* IPIECA and DIHR.		

A.5 10 KEY CRITERIA FOR HRIA

Despite the diversity, and at times divergence, in current HRIA approaches, there are a number of elements that recur in HRIA literature, guidance and practice as critical aspects to consider. These 'key criteria' relate to both the process and content of HRIA, and reflect what is unique about HRIA, as well as emphasising aspects which may to a lesser or greater degree be reflected in other impact assessment methodologies but which arguably warrant heightened attention from a human rights perspective. These aspects can be grouped into five key criteria relating to process and five key criteria relating to content.

The following Table B, provides an overview of these 10 key criteria, including example guiding questions for HRIA practitioners.

Table B: 10 Key Criteria for Human Rights Impact Assessment			
Key criteria for the process and content of HRIA			**Example guiding questions for HRIA practitioners**
Process	Participation	Meaningful participation of affected or potentially-affected rights-holders during all stages of the impact assessment process, including scoping, data collection and baseline development, impact analysis, and design implementation of measures to prevent, mitigate and remediate impacts.	• Have a broad range of rights-holders been engaged in the impact assessment, including workers and community members? Have the rights and involvement of contracted and supply chain workers and downstream communities been considered? • Have rights-holders been involved throughout the impact assessment process, including during early phases of the impact assessment such as: design of the impact assessment process; development of terms of reference for the assessment; impact scoping and prioritisation of critical issues to be considered by the assessment? • Have rights-holders, duty-bearers and other relevant parties been involved in designing measures to address impacts (through prevention, mitigation and remediation) and follow-up to evaluate the effectiveness of these? • Have the participation rights of particular groups of rights-holders been fully recognised and respected in the impact assessment, for example the right of indigenous peoples to be consulted according to the principle of free, prior and informed consent? • Have rights-holder representatives or representative organisations been included in consultation and engagement, including consideration of the legitimacy of their claim to represent workers or community members? • Is engagement and participation in the impact assessment guided by local context, including through using community preferred mechanisms (e.g. modes of

Table B: 10 Key Criteria for Human Rights Impact Assessment			
Key criteria for the process and content of HRIA			**Example guiding questions for HRIA practitioners**
			communication) where possible? • Is the assessment process being undertaken at particular times to ensure participation, for example, when women are not in the fields, young people at school or families involved in the harvest? • Does the impact assessment provide for on-going dialogue between rights-holders, duty-bearers and other relevant parties? For example, through collaborative problem analysis and design of mitigation measures?
	Non-discrimination	Engagement and consultation processes are inclusive, gender-sensitive and take into account the needs of individuals and groups at risk of vulnerability or marginalisation.	• Has impact assessment consultation and engagement involved both women and men, including through the design and implementation of gender-sensitive engagement methods as necessary? For example, through holding women only meetings or going house-to-house for individual consultation? • Have steps been taken to ensure that the modes for engagement and participation address any barriers that may be faced by vulnerable and marginalised individuals? For example, by offering transport or holding meetings in culturally appropriate locations? • Have the vulnerable or marginalised individuals and groups in the given context been identified and considered, i.e. by considering discrimination, resilience, poverty factors, etc.? • Have the needs of vulnerable and marginalised individuals been identified in stakeholder mapping and engagement planning?
	Empowerment	Capacity building of	• Do rights-holders have access to independent and competent legal, technical and

Table B: 10 Key Criteria for Human Rights Impact Assessment			
Key criteria for the process and content of HRIA			**Example guiding questions for HRIA practitioners**
		individuals and groups at risk of vulnerability or marginalisation is undertaken to ensure their meaningful participation.	other advice as necessary? If not, does the impact assessment include provisions for making such support available? • Does the impact assessment provide for capacity building of rights-holders to know and claim their rights, as well as of duty-bearers to meet their human rights duties? • Does the assessment process allow sufficient time for the capacity building of communities to be meaningfully involved? • Does the impact assessment provide for particular attention to vulnerable or marginalised individuals and groups in engagement and participation activities? Including allowing sufficient time and resources to facilitate the inclusion of these individuals?
	Transparency	The impact assessment process is as transparent as possible to affected or potentially affected rights-holders, without causing any risk to security and well-being of rights-holders or other participants such as NGOs and human rights defenders. Impact assessment findings are	• Does the impact assessment process provide for information sharing between participants at relevant intervals? • Is the information about the business project or activities that is made available to participating stakeholders adequate for giving a comprehensive understanding of potential implications and human rights impacts associated with the business project or activities? Including information on ancillary infrastructure such as the construction of a port, railway etc.? • Are HRIA findings and impact management plans publicly communicated to the greatest extent possible (i.e. published, with any reservations based on risk to rights-holders or other participants being clearly justified)? • Are the phases of the impact assessment, including timeframes, communicated in a clear and timely manner to all relevant stakeholders?

Table B: 10 Key Criteria for Human Rights Impact Assessment			
Key criteria for the process and content of HRIA			**Example guiding questions for HRIA practitioners**
		appropriately publicly communicated.	• Does communication and reporting take into account and respond to the local context? For example, is information made available in relevant languages and formats, non-technical summaries, and in physical and/or web-based formats that are accessible to stakeholders?
	Accountability	The impact assessment team is supported by human rights expertise, and the roles and responsibilities for impact assessment, mitigation and management are assigned and adequately resourced. The impact assessment identifies the entitlements of rights-holders and the duties and responsibilities of relevant duty-bearers, for example, the company, contractors and suppliers, local government authorities and so forth.	• Is responsibility for the implementation, monitoring and follow-up of mitigation measures assigned to particular individuals/groups? • Are sufficient resources dedicated to undertaking the HRIA as well as implementing the impact management plan? Including financial and human resources, as well as adequate time? • Are relevant duty-bearers meaningfully and appropriately engaged in the impact assessment process, including impact mitigation and management? • Does the HRIA draw on the knowledge and expertise of other relevant parties, in particular human rights actors? • Does the HRIA team have the relevant inter-disciplinary skills and expertise (including human rights, legal, language, local knowledge and other) to undertake the HRIA in the given context? • Have efforts been made to include local people, including women, in the impact assessment team, if appropriate?

Table B: 10 Key Criteria for Human Rights Impact Assessment			
Key criteria for the process and content of HRIA			**Example guiding questions for HRIA practitioners**
Content	Benchmark	Human rights standards constitute the benchmark for the impact assessment. Impact analysis, assessment of impact severity and design of mitigation measures are guided by international human rights standards and principles.	• Have international human rights standards and principles been used as the benchmark for the assessment? • Has the impact assessment addressed the full scope of relevant human rights? If certain human rights have been excluded from the assessment, is the basis for this reasonable as well as explicitly noted and explained in the impact assessment? • Is the scoping, baseline data collection, analysis of actual and potential impacts and design of mitigation measures guided by the substantive content of human rights?
	Scope of impacts	The assessment includes actual and potential impacts caused or contributed to by the business, as well as impacts directly linked through operations, products or services through business relationships (contractual and non-contractual). The assessment includes	• Does the assessment include actual and potential impacts that the business project (including ancillary infrastructure) or activities: has caused; contributed to; as well as impacts directly linked through operations, products or services through business relationships, for example with suppliers, contractors, joint-venture partners, customers or government agencies? • Does the assessment consider any impacts of the business project or activity due to the aggregative or cumulative effect of activities of multiple business operations in the same area? • Does the assessment identify and address any legacy impacts associated with the business project or activities? For example, poorly conducted government resettlement of communities prior to the company acquiring the land.

Table B: 10 Key Criteria for Human Rights Impact Assessment			
Key criteria for the process and content of HRIA			**Example guiding questions for HRIA practitioners**
		cumulative impacts as well as legacy issues.	
	Assessing impact severity	Impacts are addressed according to the severity of their human rights consequences. This includes considering the scope, scale and irremediability of particular impacts; taking into account the views of rights-holders and/or their legitimate representatives.	• Is the assessment of impact severity guided by human rights relevant considerations, including considering the scope, scale, whether it is possible to remediate the impact, interrelatedness and so forth? Is the assessment of severity determined with respect to the consequences for the individual(s) affected? • Are the relevant rights-holders and/or their legitimate representatives involved in the assessment of impact severity? Does the assessment of severity reflect the views of the relevant rights-holders? • Has the analysis of impacts taken into account the interrelatedness of human rights, as well as the interrelatedness of environmental, social and human rights factors? For example, if a business project or activity impacts on the right to adequate rest and leisure by requiring excessive overtime, this may have a corresponding impact on the rights of children to care. Or if a business uses a significant amount of water resources, for instance through irrigation of an agricultural plantation, this will have an impact not only on the environment but may also impact on people's right to adequate water for drinking and sanitation, or the right to an adequate standard of living if families can no longer grow their food.
	Impact mitigation measures	All human rights impacts are addressed. Where it is necessary to prioritise	• Are all human rights impacts that are identified addressed? • If it is necessary to prioritise actions to address impacts, is such prioritisation guided by the severity of human rights consequences?

Table B: 10 Key Criteria for Human Rights Impact Assessment			
Key criteria for the process and content of HRIA			**Example guiding questions for HRIA practitioners**
		actions to address impacts, severity of human rights consequences is the core criterion. Addressing identified impacts follows the mitigation hierarchy of 'avoid-reduce-restore-remediate'.	• In determining mitigation measures, are all efforts made to first avoid the impact altogether, and if this is not possible to reduce, mitigate and remediate the impact? • Is care taken to ensure that compensation is not considered to be synonymous with impact mitigation and remediation? • Does the impact assessment identify ways of exercising leverage to address any impacts to which the business contributes, or impacts that are directly linked to operations, products or services through business relationships? Where leverage does not exist, does impact mitigation include building leverage to address such impacts?
	Access to remedy	Impacted rights-holders have avenues whereby they can raise grievances regarding the impact assessment process and outcomes. Impact assessment and management ensure that the business provides for or cooperates in access to remedy for impacted rights-holders.	• Does the impact assessment identify actual impacts for which a remedy is needed? Are such impacts referred to the appropriate channels for remediation, including legal and non-legal as appropriate? • Have any severe human rights impacts that may constitute a legal breach been referred to the relevant legal channels (pending the consent of the rights-holders involved)? Does the business co-operate in any legal proceedings? • Is there an operational-level grievance mechanism in place that contributes to ongoing impact management, as well as the identification of unanticipated impacts? If not, does the impact management plan include the establishment of such a mechanism? Does the operational-level grievance mechanism meet the eight effectiveness criteria for non-judicial grievance mechanisms that are outlined in UN Guiding Principle 31? • Is it ensured that the operational-level grievance mechanism does not deny access

Table B: 10 Key Criteria for Human Rights Impact Assessment			
Key criteria for the process and content of HRIA			**Example guiding questions for HRIA practitioners**
			to all relevant judicial processes? • Are the access to remedy channels that are utilised responsive to the context and preferences of the rights-holders in question?

Sources: These criteria are based on a literature review including sources on human rights impact assessment, stakeholder engagement, social impact assessment and the human rights-based approach, including the following key sources: Desiree Abrahams and Yann Wyss (2010), *Guide to Human Rights Impact Assessment and Management*, Washington: International Business Leaders Forum, International Finance Corporation and UN Global Compact; James Harrison (2013), 'Establishing a meaningful human rights due diligence process for corporations: learning from experience of human rights impact assessment', *Impact Assessment and Project Appraisal*, 31:2, pp.107-117; James Harrison (2010), *Measuring human rights: Reflections on the practice of human rights impact assessment and lessons for the future,* Legal Studies Research Paper No. 2010-26, University of Warwick School of Law; James Harrison and Mary-Ann Stephenson (2010), *Human Rights Impact Assessment: Review of Practice and Guidance for Future Assessments,* Edinburgh: Scottish Human Rights Commission; Christina Hill (2009), *Women, communities and mining: The gender impacts of mining and the role of gender impact assessment*, Melbourne: Oxfam Australia; Gillian MacNaughton and Paul Hunt (2011), 'A Human Rights-based Approach to Social Impact Assessment', in *New Directions in Social Impact Assessment: Conceptual and Methodological Advances*, F. Vanclay and A. M. Esteves (Eds), Cheltenham: Edward Elgar, pp.355-368; Norwegian Agency for Development Cooperation (2001), *Handbook in Human Rights Assessment: State Obligations, Awareness and Empowerment,* Oslo: NORAD; United Nations Office of the High Commissioner for Human Rights (2006), *Frequently asked questions on a human rights-based approach to development cooperation,* New York and Geneva: United Nations; Office of the United Nations High Commissioner for Human Rights (2012), *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide,* New York and Geneva: United Nations; Rights & Democracy (2011), *Getting it Right: Human Rights Impact Assessment Guide*. [online]. Available from: http://hria.equalit.ie/en/index.html; United Nations Human Rights Council (2011), *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, A/HRC/17/31; Frank Vanclay, Ana Maria Esteves, Ilse Aucamp and Daniel M. Franks (2015), *Social Impact Assessment: Guidance for assessing and managing the social impacts of projects*, Fargo ND: International Association for Impact Assessment; Simon Walker (2009), *The Future of Human Rights Impact Assessments of Trade Agreements*, Antwerp: Intersentia; World Bank and Nordic Trust Fund (2013), *Human Rights Impact Assessments: A Review of the Literature, Differences with other forms of Assessments and Relevance for Development,* Washington: World Bank and Nordic Trust Fund.

A.6 APPLYING INTERNATIONAL HUMAN RIGHTS STANDARDS AND PRINCIPLES

Human rights standards and principles should set the foundation for HRIA. It is therefore important that those involved in HRIA have a solid understanding of the nature, sources, content and jurisprudence of human rights, including what is expected of States and businesses with regard to upholding human rights, and the principles of a human rights-based approach.

The following provides a short overview of some human rights basics that should be considered and applied when assessing human rights impacts.

A.6.1 WHAT ARE HUMAN RIGHTS?

Human rights are rights inherent to all human beings, they are universal legal guarantees protecting individuals and groups against actions which interfere with fundamental freedoms and human dignity. Human rights are:

- **Universal and inalienable**, meaning that they apply to all human beings
- **Interdependent and indivisible**, meaning that there is no hierarchy between human rights; the improvement of one right facilitates advancement of the others, and likewise the deprivation of one right adversely affects the others; and
- **Equal and non-discriminatory**, meaning they are enjoyed by everyone equally, irrespective of nationality, place of residence, sex, national or ethnic origin, colour, religion, language or any other status.

A.6.2 HOW ARE INTERNATIONAL HUMAN RIGHTS IMPLEMENTED?

International human rights are articulated in international conventions, treaties and declarations, as well as customary international law. International human rights treaties become binding on nation States through ratification. By ratifying an international human rights convention, a State commits itself to implementing the international convention into domestic laws and policies. The primary method for human rights enforcement is therefore the ability of individuals to make administrative or legal claims against a State for breaches of the State to respect, protect and fulfil human rights. In addition, individuals may be able to raise human rights cases in regional human rights courts or by submitting complaints to the UN treaty bodies responsible for overseeing the implementation of specific human rights conventions (e.g. the Committee on the Elimination of Discrimination Against Women).

Human rights are sometimes divided into civil and political rights (e.g. the right to freedom from torture, the right to partake in public affairs and the right to property) and economic, social and cultural rights (e.g. the right to an adequate

standard of living, the right to education and the right to the highest attainable standard of physical and mental health). Although human rights are considered to be interdependent and indivisible, one important difference between these two categories of rights is the concept of 'progressive realisation' with regard to economic, social and cultural rights.

Progressive realisation means that States are expected to take appropriate measures towards the full realisation of economic, social and cultural rights to the maximum of their available resources. As such, it is recognised that not all economic, social and cultural rights can be fully realised immediately when a State ratifies the treaties protecting these rights in international law, but also that a lack of resources cannot justify inaction or indefinite postponement of measures to implement these rights.

In particular, irrespective of their available resources, States must take immediate action towards the full realisation of economic, social and cultural rights in five areas:[4]

1. The elimination of discrimination, meaning that discrimination must be prohibited
2. With regard to those economic, social and cultural rights that are not subject to progressive realisation, e.g. the right to freedom of association, equal remuneration for work of equal value and the obligation to protect children and young persons from economic and social exploitation
3. The obligation to 'take steps', e.g. implementing strategies and plans, adopting the necessary laws and policies, and regularly monitoring and assessing the progress made towards the full implementation of the rights
4. Non-retrogressive measures, meaning that the protection of the rights should not deteriorate; and
5. Minimum core obligations, i.e. States are required to meet the minimum essential levels of each of the rights, e.g. the right to minimum essential food, basic shelter, sanitation and adequate drinking water.

A.6.3 WHAT ARE THE STATE DUTIES TO RESPECT, PROTECT AND FULFIL HUMAN RIGHTS AND HOW DO THESE DIFFER FROM THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS?

With regard to human rights, States have the duties to:

1. **Respect**: refrain from interfering with the enjoyment of the right
2. **Protect**: prevent others, including third parties such as businesses, from interfering with the enjoyment of the right, through appropriate legislation, policies, regulation and adjudication; and
3. **Fulfil**: to take steps to facilitate the enjoyment of human rights.

For example, with regard to the right to work a State would be obliged to: *respect* the right by e.g. not using forced labour or denying political opponents work opportunities; *protect* this right by e.g. ensuring that employers pay the minimum wage and provide adequate working conditions; and *fulfil* the right by e.g. undertaking educational and informational programmes to facilitate public awareness of the right to work.[5]

Currently, businesses are not considered to have direct legal obligations under international human rights law. Instead, according to the UN Guiding Principles, businesses have a 'responsibility to respect' human rights, that is, to 'do no harm'.[6] However, it is important to note that the responsibility to respect is not strictly a 'negative' obligation of non-interference, as businesses are required to take active steps to avoid adversely impacting on human rights, through a process of human rights due diligence.[7] The responsibility to respect is considered to be an international norm of expected conduct, rather than a legal duty under international human rights law. However, this does not mean that the corporate responsibility to respect is unrelated to legal duties. For example, companies have a legal duty to respect human rights where these have been integrated into domestic laws, i.e. following ratification of international instruments and adoption of implementing legislation. Companies may also be subject to duties under international humanitarian and international criminal law in certain circumstances.

A.6.4 WHAT TYPES OF HUMAN RIGHTS ARE BUSINESSES EXPECTED TO RESPECT?

Businesses can impact on virtually all human rights, as such, all internationally recognised human rights are envisaged by the corporate responsibility to respect. According to the UN Guiding Principles, when exercising human rights due diligence, businesses are required to consider at minimum, the rights captured in the International Bill of Human Rights (comprising the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) and the International Labour Organisation's eight core conventions outlined in the Declaration of Fundamental Principles and Rights at Work (addressing non-discrimination, bonded and forced labour, child labour and freedom of association).[8] Additional human rights standards should be considered as relevant in the particular context (e.g. the rights of indigenous peoples if the business project or activities may impact on indigenous peoples, or international humanitarian law in conflict-affected areas).

A.6.5 WHAT ARE THE SOURCES OF HUMAN RIGHTS THAT SHOULD BE CONSIDERED IN HRIA?

The substantive content of human rights is elaborated in sources such as:

- **International treaties, conventions and declarations** on human rights, including elaboration of these in general comments and concluding observations by UN treaty bodies, reports by UN special procedures on specific themes (e.g. the Special Rapporteur on adequate housing or the Working Group on the issue of discrimination against women in law and in practice)
- **Regional human rights instruments and jurisprudence** (e.g. the African Charter on Human and Peoples' Rights and the African Court on Human and Peoples' Rights)
- **State constitutions and human rights legislation** (e.g. national human rights acts); and
- **State thematic legislation and jurisprudence** (e.g. non-discrimination laws and workplace health and safety laws).

Such sources should inform HRIA and be carefully consulted by HRIA practitioners in impact assessment.

A.6.6 WHAT ARE ABSOLUTE RIGHTS, CORE CONTENT AND AAAQ?

To determine whether an adverse human rights impact has occurred, or is likely to occur, a number of factors will need to be taken into consideration, including the substantive content of the right, the nature of the business interaction or interference with the right, causality, data and evidence collection, the experiences and views of the rights-holders in question and so forth. The following are some key concepts and principles from international human rights law that should inform HRIA analysis:

- **Substantive content of human rights:** The substantive content of the right in question should constitute the benchmark against which the impact is evaluated. This has been elaborated in sources such as those listed above, which should be carefully considered in the HRIA analysis.
- **Any particular status and rights of the rights-holders who are impacted:** Human rights apply to everyone. However, in addition to this principle of universality, a number of rights-holder groups enjoy additional or particular protections. For example, children enjoy specific protection under the Convention on the Rights of the Child with regard to both rights and process, such as the right to play and the right to be consulted. Indigenous peoples, for example, have particularly rights under ILO Convention No.169 and the Declaration on the Rights of Indigenous Peoples, recognising the particular

attachment of indigenous peoples to their lands, territories and waters, and the principle of free, prior and informed consent.

- **Availability, accessibility, acceptability and quality (AAAQ):** The content of some economic, social and cultural rights is elaborated in terms of AAAQ (in particular health, education, water and housing). These parameters might usefully inform analysis in HRIA. For example, in considering whether an adverse impact on the right to housing has occurred, the availability, accessibility, acceptability and quality of housing should constitute the parameters for baseline data collection (including selection of indicators), assessment of impact severity, and the design and implementation of mitigation measures (See Box 6, below, for further details on AAAQ).
- **Core content:** Under the International Covenant on Economic, Social and Cultural Rights, certain obligations are considered to be 'minimum core obligations', that is, these are the aspects that a State is obliged to implement immediately, irrespective of available resources. Even where a State has inadequate resources available, it is expected to introduce low-cost and targeted programmes to assist those individuals who are most in need.
- **Absolute and non-derogable human rights:** Human rights are considered to be universal and inalienable. Some rights are absolute and non-derogable, meaning that they cannot be limited in any way, at any time, for any reason (e.g. the right to be free from slavery and servitude or the right to be free from torture and other cruel, inhuman or degrading treatment or punishment). Nevertheless, it is recognised in international human rights law that certain human rights may be limited in certain circumstances. Derogations allow States to suspend part of their legal obligations and restrict some rights under certain circumstances; essentially, where there is a serious public emergency, providing that the derogation is for a limited period of time, proportionate to the emergency and non-discriminatory.
- **Progressive realisation:** As explained above.
- **Non-discrimination:** Is a core cross-cutting human right and principle and therefore needs to be a key consideration in assessing whether a human rights impact has occurred.
- **Human rights-based principles:** The human rights-based approach includes a number of 'process' principles, namely: participation and inclusion, non-discrimination and equality, and transparency and accountability. Whether such principles have been respected therefore needs to be a component of HRIA analysis. For an introduction to the human rights-based approach see Box 5, below. For how the human rights-based approach can be applied in HRIA see 10 Key Criteria for HRIA, above.

Box 5: A human rights-based approach

A human rights-based approach (HRBA) to development is "a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights."[9]

A human rights-based approach can be described in different ways. According to the United Nations Stamford Understanding, it consists of the following three core elements:

1. **Application of the international human rights framework:** A HRBA implies that practices are guided by, and strive to uphold, international human rights standards and principles.
2. **Application of human rights principles, including in processes:**
    i) Universality and inalienability: All people everywhere in the world are entitled to human rights.
    ii) Indivisibility: All civil, cultural, economic, political and social human rights have equal status as rights and cannot be ranked in a hierarchical order.
    iii) Interdependence and interrelatedness: The realisation of one right often depends on the realisation of other rights. For example, realisation of the right to health may depend on the right to education or the right to information.
    iv) Equality and non-discrimination: All individuals are entitled to their human rights without discrimination. This includes paying particular attention to vulnerable and marginalised individuals and groups, as well as gender. It also involves taking steps to ensure that all affected and impacted women and men, girls and boys, are empowered to understand and participate in decisions that affect them.
    v) Participation and inclusion: In a human rights-based approach, participation is both an objective as well as a means of development. Participation should aim to create genuine ownership by people over the development processes with which they are involved and that impact on them. For this, participation should be 'active, free and meaningful'. From a rights-based perspective, participation is more than consultation or a technical add-on to development activities; instead, it is an integral part of shaping these.
    vi) Transparency, accountability and the rule of law: States and other duty-bearers are answerable for the observance of human rights. Where they fail to do so, aggrieved rights-holders are entitled to

proceedings for appropriate redress.

3) **Rights-holders and duty-bearers analysis:** Accountability is a cornerstone of a HRBA. This includes identifying who are the rights-holders and duty-bearers in a given context, and taking steps to ensure that rights-holders have the capacity to claim their rights, and correspondingly, that duty-bearers uphold these rights. This has implications for how stakeholders are included in HRIA. For example, applying a HRBA, the individuals affected by the project would be seen as *rights-holders* rather than as *stakeholders* – that is, as people who have entitlements for which they can hold a relevant duty-bearer accountable.

The importance of adopting a HRBA in the context of HRIA has been noted in the majority of HRIA methods, guidance and literature. For example, pointing to the importance of: drawing on relevant expertise; meaningful consultation with potentially affected stakeholders; paying particular attention to vulnerable groups and different risks faced by women and men; including all internationally recognised human rights as a reference point; and undertaking impact assessments at regular intervals.[10] This reflects the HRBA emphasis on the application of international human rights standards, as well as the process principles of participation, non-discrimination and accountability.

Source: Drawing on: United Nations Office of the High Commissioner for Human Rights (2006), *Frequently asked questions on a human rights-based approach to development cooperation*, New York and Geneva: United Nations.

Box 6: Availability, Accessibility, Acceptability and Quality (AAAQ)

Certain economic, social and cultural rights are elaborated in international human rights treaties and jurisprudence according to the four inter-related criteria of availability, accessibility, acceptability and quality; specifically: the right to an adequate standard of living, including food, clothing and housing; the right to the highest attainable standard of health; and the right to receive an education.

- **Availability** refers to facilities, goods and services that must be available in sufficient quantities and continuous supply within the country. It is considered an objective criterion, which can be measured through quantitative data.
- **Accessibility** details that services must be accessible to everyone without discrimination. It is further divided into four sub-criteria: physical accessibility, economic accessibility, non-discrimination and information accessibility. This criterion is considered highly complex, and will therefore require a high level of participation of rights-holders to identify relevant

indicators for each of the sub-criteria as well as both qualitative and quantitative data.

- **Acceptability** concerns both the consumer acceptability and cultural acceptability. Both are subjective assessments of rights-holders' perceptions. The former is concerned with the characteristics (i.e. odour, taste, and colour of water) as well as procedural consideration (i.e. the behaviour of water suppliers), while the latter is concerned with the perceptions based on the culture of the rights-holders.
- **Quality** refers to that services must be of good quality; this is based on objective, scientific terms that are closely related to international and national quality standards.

AAAQ can be a useful tool in a HRIA in that it elaborates on the content of economic, social and cultural rights, which can be used in impact analysis. For example, in considering whether an adverse impact on water has occurred, the availability, accessibility, acceptability and quality of water should constitute the parameters for baseline data collection, as well as the indicators for measuring against the benchmark.

Source: Danish Institute for Human Rights (2014), *The AAAQ Framework and the Right to Water: International indicators for availability, accessibility, acceptability and quality,* Copenhagen: Danish Institute for Human Rights.

PHASE 1

1 PLANNING AND SCOPING

What happens in Phase 1?	**Good planning and scoping will go a long way to ensuring that a HRIA is effectively conducted and that it achieves the desired results.** **Key steps in planning include drafting or responding to terms of reference for the assessment and deciding on who should be on the assessment team. Both the company commissioning the assessment and impact assessment practitioners have a role to play; the company in drafting a terms of reference that clearly requires the application of international human rights standards and principles, and impact assessment practitioners by proposing a responsive methodology and an assessment team that is tailored to the particular context, taking account of specifics such as the location, industry, and envisaged timeframe for the HRIA.** **The purpose of scoping is to define the parameters for the assessment by considering (i) the type of business project or activities, (ii) the human rights context, and (iii) who the relevant stakeholders are. While in the scoping phase most of this information is collected through desk-top research, a short and targeted scoping trip by the assessment team to the assessment site(s) to gain an initial on-the-ground overview can be extremely beneficial, and should be included if appropriate based on the complexity of the HRIA context and the scale of the assessment.**

?	**Key questions addressed in this section:** • **What kind of information is necessary for scoping of the business project or activities, human rights context and relevant stakeholders?** • **Who should be on the assessment team for a HRIA?**

	• **What should be included in the terms of reference for a HRIA?**

1.1 SCOPING FOR HRIA

The purpose of scoping is to define the parameters for the HRIA, through gathering preliminary information to determine the area of impact of the business project or activities. HRIA scoping should include consideration of the:

- Business project or activities
- Human rights context; and
- Relevant stakeholders for the HRIA.

Most of the information gathered as part of the scoping will be found through desk-top research. However, depending on the context of the business project or activities, it may be desirable to undertake preliminary field research as part of the scoping. For example, through a three-five day visit to the operations to get an on-the-ground introduction to the business operations and human rights context through a select set of interviews with key stakeholders.

This information is then used to inform the development of the terms of reference (TOR) for the assessment, baseline data collection and subsequent impact analysis. Scoping and TOR should always provide some flexibility, to allow for the subsequent exclusion of topics and issues that are not relevant, as well as the inclusion of unanticipated human rights impacts.

Sufficient time should be allowed between the scoping and subsequent fieldwork as part of the data collection and baseline development phase, to allow the HRIA team to make best use of the information gathered through the scoping to plan the field work and data collection.

Figure 2, below, provides an overview of the areas for consideration for the scoping process. In the Scoping Practitioner Supplement, you can find example questions and resources for the scoping of the business project or activities and the scoping of the human rights context. In Stakeholder Engagement further information is provided on the relevant stakeholders to include in HRIA.

Figure 2: Scoping of the business project or activities, human rights context and the preliminary identification of stakeholders

1.1.1 SCOPING OF THE BUSINESS PROJECT OR ACTIVITIES

The scoping of the business project or activities to be considered by the HRIA will largely focus on understanding the *sphere of impact* of the project or activities.

It is important to note that the scoping of business activities to be considered for HRIA should proceed from a *sphere of impact* rather than *sphere of influence* basis. In short, impacts that the business contributes to or that are directly linked to business activities through business relationships must be included (not only those that the business causes); and the impacts to be considered are not necessarily strictly defined by geographical boundaries.

To explain, the 'sphere of influence' concept has been used to attribute responsibility of business actors for their human rights impacts, but the UN Guiding Principles suggest focusing on impact instead. According to a sphere of influence analysis, those impacts which are the most *proximate* would be those that are deemed most relevant for the business to address (e.g. impacts on employees or environmental damage on company lands caused by company operations), whereas more *remote* impacts imply a lower level of company responsibility (e.g. impacts in the supply chain or on downstream communities). Instead, a UN Guiding Principles approach establishes responsibility based on "the company's web of activities and relationships".[11] This clear inclusion of impacts that the business *contributes to* and that are *directly linked*, and assessing and addressing these impacts based on their severity (as opposed to including and addressing impacts based on considerations of proximity and control), is a critical feature of HRIA.

Furthermore, HRIA considers some areas of business activity that are not commonly addressed in SIA, EIA or ESHIA. For example: inclusion of the consideration of the labour rights of employees, workers and contractors; security and human rights related issues, including impacts on women; and human rights impacts associated with revenue, benefit agreements and/or State-investor contracting. The scoping of business activities for a HRIA should take care to include these aspects, or provide clear and sound reasons as to why they have not been included (e.g. they are adequately addressed in another due diligence process of the company).

Scoping of the business project or activities should therefore include consideration of the different impact areas, such as:

- Communities (noting that communities are not homogenous and not always located at the project site)
- Environment
- Security
- Workers and contractors
- Suppliers and procurement; and
- Government relations and legal affairs.

Reflection on the industry in question, including through comparative analysis such as by considering impact assessments of similar business projects or activities, and consideration of any industry-specific standards and frameworks, will also be useful. Depending on whether the business project or activities are in mining, agriculture, manufacturing or another industry, relevant industry-standards should be included in the scoping analysis.

1.1.2 SCOPING OF THE HUMAN RIGHTS CONTEXT

The purpose of scoping the human rights context is to understand the level of protection and enjoyment of human rights in the given context; in particular, by analysing the implementation of international human rights in national legislation, policies, regulation and adjudication, and considering their implementation and effectiveness in practice.

In addition to legal analysis, the human development profile of the country and region can provide essential information. That is, scoping of the human rights context should include not only a legal analysis but also more practical information that provides insight into actual human rights enjoyment on the ground. For example, the scoping should include an analysis of the space and safety for human rights defenders, NGOs and CSOs and trade unions more broadly to engage in human rights work and comment on the adverse impacts of business projects and activities.

Factors to consider in scoping of the human rights context include:

- Status of ratification and implementation of international human rights law at the national level
- Level of implementation of national laws and regulations resulting in human rights enjoyment in practice
- Whether laws applicable to business projects and activities enable or constrain respect for human rights
- Effectiveness of judicial remedies and other grievance mechanisms; and
- Barriers to access to justice.

Sources can include:

- National laws, policies, regulation and jurisprudence
- Reports by local and international NGOs and CSOs
- Reports by national human rights institutions
- UN treaty bodies concluding observations; and
- Recommendations and reports by UN special procedures (e.g. special rapporteurs or representatives) and regional human rights bodies.

Data on the human conditions covering economy, inequality, poverty, food, water, health, education, freedoms and corruption, should also be considered. Sources can include the Human Development Index of the UN Development Group, as well as national and regional census and development data.

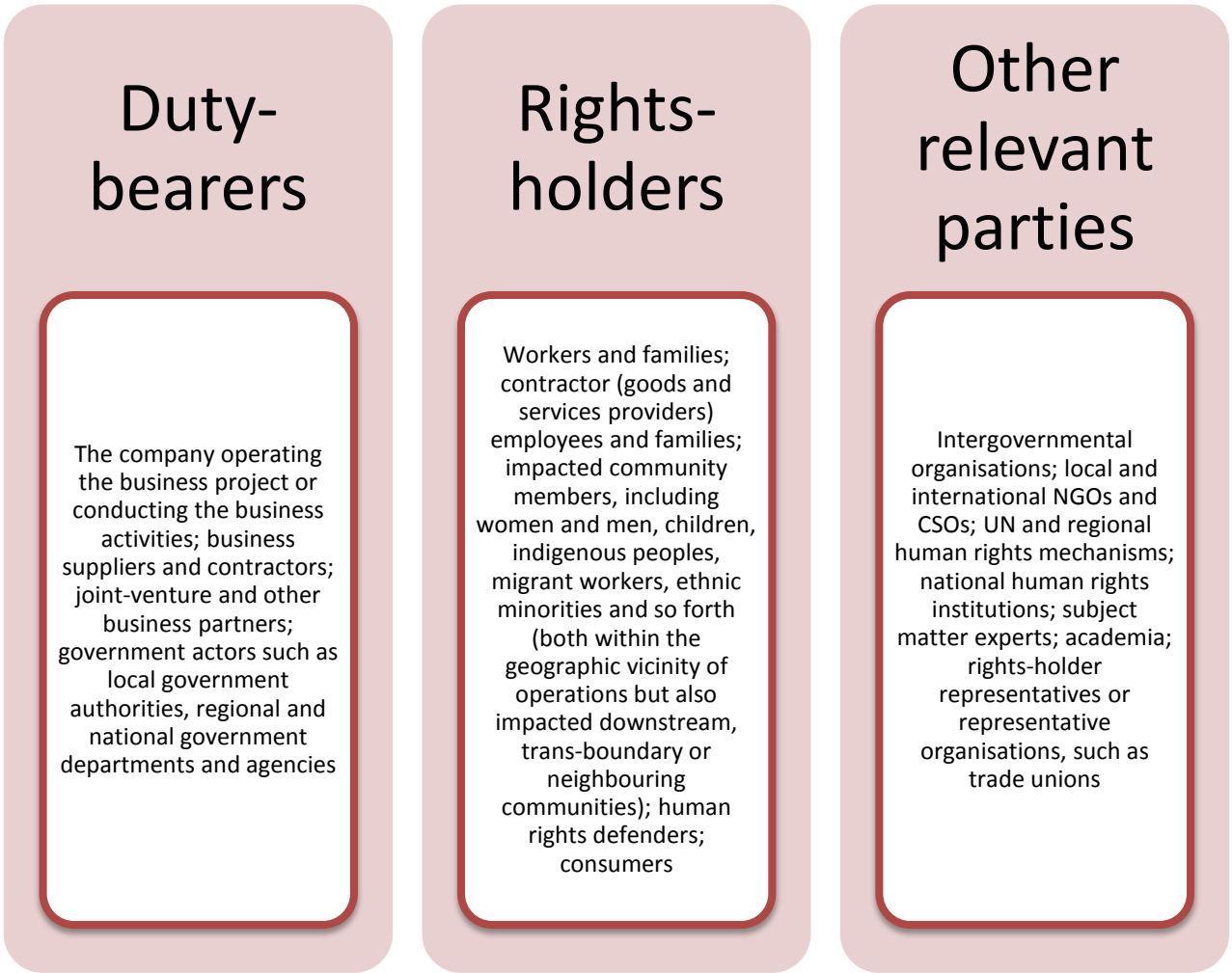
See the Scoping Practitioner Supplement for further details on scoping of the human rights context.

1.1.3 IDENTIFYING RELEVANT STAKEHOLDERS

During the scoping process, it is important to identify and conduct a mapping of the relevant stakeholders in the given context, including analysing what type of stakeholder they are, their level of influence and if/how they may be impacted by the business project or activities. Stakeholder mapping should pay particular attention to rights-holders and include gender analysis and consideration of vulnerability factors in the given context.

Figure 3, below, provides an overview of the types of stakeholders to consider in the initial stakeholder mapping. In the Stakeholder Engagement Practitioner Supplement you can find a suggested format for stakeholder mapping for the scoping process, and in Stakeholder Engagement you can find additional information about the different types of stakeholders to be included in HRIA.

Figure 3: The different types of stakeholders to engage in HRIA



1.2 THE HRIA TEAM

It is critical to ensure that the people on the HRIA team have the requisite skills and expertise to ensure that the process is professional, effective and applies a human rights-based approach.

In order to ensure independence and legitimacy of the process, the HRIA should be conducted by an assessment team that is independent from the company. Practice shows that in HRIA of business projects or activities, businesses often choose to compose HRIA teams entirely of their own in-house personnel or by including both in-house experts and external experts. This can limit the independence of the assessment and be problematic in terms of factors such as ensuring the legitimacy of findings and building trust between the impact assessment team and rights-holders. Rather than having company representatives on the HRIA team, it may be desirable to form a steering or governance group for the HRIA that comprises HRIA team members, company representatives and other stakeholders as relevant.

If insufficient resources are allocated for the HRIA, this is also likely to limit the composition of the HRIA team.

Table C, below, highlights key factors to consider when putting together a HRIA team. The examples listed in Box 7, below, illustrate the role that a steering committee or advisory group can play in complementing the HRIA team.

Table C: Factors to consider in composing a HRIA team	
Factors	**Steps to take**
Skill-set of HRIA team	• Make sure to include team members who have the following skills: human rights expertise and experience in field research; local context knowledge; the right language skills; and knowledge of the particular industry and understanding of how it relates to human rights. • Consider to include technical experts who can measure certain impacts (e.g. environmental and health impacts) and assess the technical and financial feasibility of mitigating measures. • Ideally, the team should be diverse with members from different cultural and educational backgrounds with sensitivity to the local context. This could include lawyers, sociologists, anthropologists and other relevant experts.
Neutrality	• Pay attention to the neutrality of the persons who are conducting the assessment. They should be considered

Table C: Factors to consider in composing a HRIA team	
Factors	**Steps to take**
	neutral and trustworthy by the rights-holders and other stakeholders who are engaged as part of the HRIA process.
Gender	• Make sure to include women on the HRIA team, including in leadership positions.
Local outreach	• Make sure to include local team members, including women, who are from the country/region/location where the business project or activities are taking place. This is extremely important as these people will be critical in building trust with the rights-holders, and can help with understanding the dynamics within the communities and the cultural context in which the HRIA is taking place. The local team members should have a pre-existing network to support the identification and mapping of stakeholders and to help with reaching out to the rights-holders. • Consider to include persons from the affected communities, women and men, in the HRIA team, bearing in mind implications regarding the neutrality of the team. • Consider to make use of a local ´fixer´. In certain situations, for example when operating in a specific region in the country, a so-called local 'fixer' may be required, who has a broad network, knows various stakeholders with different opinions and can facilitate setting up meetings.
Local language	• Include person(s) in the team who speak the local language of rights-holders and other stakeholders. • Consider to hire an interpreter if only part of the team speaks the local language(s). The person conducting the interview cannot be constantly playing that role. In some contexts, it can be difficult to find a professional interpreter. If it is not possible to hire a professional interpreter, preparation with the person so that he/she understands the key concepts and terms as well as his/her own role – as a neutral party to the process who should strive to interpret everything that is said and not give his/her personal interpretation of what a person is saying.

Table C: Factors to consider in composing a HRIA team	
Factors	**Steps to take**
	Interpreters should be independent and not have any connections to the party who has commissioned the HRIA to ensure neutrality and impartiality.
Reference group/ steering committee	• Consider to form a reference group/steering committee, which advises and supervises the HRIA team on methodological and ethical questions. Especially in the context of bigger and more difficult business projects this might be necessary. The reference group could also be the place where people can direct any questions or grievances that they might have about the HRIA process. See further Box 7, below, for some examples of the role that a steering committee or advisory group can play.

Box 7: Steering committees and advisory groups in HRIA

Kuoni Kenya and India HRIAs

The Kuoni group is a global travel service company that has conducted a HRIA in Kenya in 2012, and in India in 2014. Both assessments had a stakeholder advisory group to accompany the team and process. The projects' team itself were led by the Kuoni Corporate Responsibility Team, and in the case of the Kenya pilot project it included the management consultancy TwentyFifty Ltd., Tourism Concern (an NGO, who acted as in independent advisor), and a business partner. The core HRIA team was supported by independent advisers who made up the international stakeholder advisory group. Advisers came from some of the following organisations: Arbeitskreis für Tourismus und Entwicklung, Fair Trade in Tourism South Africa, Tourism Concern, UNICEF, and the Swiss Centre for Expertise in Human Rights. It should be noted that some advisers remained on for the subsequent India HRIA. The advisory groups role included:

- Advising on stakeholder identification, on who to engage with prior to and during the assessment
- Providing the HRIA team with local context knowledge on tourism and human rights impacts (including past impacts)
- Utilising the group's network of CSOs to have meaningful consultations with rights-holders and their representatives; and
- Providing feedback on the design and the methodology of the HRIA as well

as the final report.

Marline Mine Human Rights Assessment

In 2008, Goldcorp Inc. established a steering committee consisting of a member of the Guatemalan civil society, a shareholder group representative, and a Goldcorp representative to oversee and direct the human rights assessment concerning the company´s operations around the Marlin Mine (Guatemala). The steering committee was responsible for overseeing the assessment process, setting the scope and timeline of the assessment and selecting the HRIA team. The steering committee mandated On Common Ground Consultants as the HRIA team to conduct the assessment. While conducting the HRIA, the consultants reported regularly to the steering committee and discussed the challenges encountered in implementing the HRIA methodology on the ground (e.g. the limited possibilities to engage with certain stakeholder groups due to security and conflict risks). The steering committee supported the HRIA team by adjusting the scope and timelines of the assessment to permit additional efforts and approaches to stakeholder engagement. This model of a steering committee could be replicated and expanded to provide a mechanism for the participation of stakeholders in the assessment process and to support further transparency and accountability of HRIAs. It has been cited by Oxfam America as "nearing a hybrid approach" for collaborative HRIAs that involve both company and community representatives.

Sources: Kuoni Travel Holding Ltd., TwentyFifty Ltd., and Tourism Concern (2012), *Assessing Human Rights Impacts: Kenya Pilot Project Report*, Zurich: Kuoni Travel Holding Ltd; Kuoni Travel Holding Ltd. (2014), *Assessing Human Rights Impacts: India Project Report*, Zurich: Kuoni Travel Holding Ltd; On Common Ground Consultants Inc. commissioned on behalf of Goldcorp by the Steering Committee for the Human Rights Assessment of the Marlin Mine (2010), *Human Rights Assessment of Goldcorp's Marlin Mine*, Canada: On Common Ground Consultants Inc.

1.3 TERMS OF REFERENCE FOR HRIA

The TOR is a written document that presents the scope and purpose of the HRIA. A well constructed TOR can be critical for ensuring that the subsequent assessment is conducted according to the expected standards and principles.

In short, TOR should provide a clear description of:[12]

- The rationale for undertaking the assignment
- The expected methodology and work plan (activities), including timing and duration

- The anticipated resource requirements, particularly in terms of personnel; and
- The reporting requirements.

TOR serve as a tool for:[13]

- Identifying and selecting the most qualified and suitable HRIA team
- Communication between the company commissioning the assessment and those undertaking the HRIA
- Following up and monitoring the contract during the impact assessment implementation; and
- Evaluation (i.e. because the TOR is part of the contract between the company and those undertaking the assessment it can be used to evaluate the performance of the HRIA team upon completion of the assessment).

In the Terms of Reference Practitioner Supplement you can find example questions to guide the development of TOR for a HRIA.

Some additional aspects to keep in mind when developing TOR for HRIA are:

- A TOR may cover both the scoping as well as the actual assessment phases of HRIA. However, depending on the scale of the business project or activities and the HRIA, it may be desirable to separate these two stages, so that the scoping is conducted before the development of the TOR for the remainder of the HRIA phases, allowing the information and analysis gained to feed into the TOR for these. This will provide increased opportunities to include the views of rights-holders in the drafting of the TOR for the assessment, as the information gathered during the scoping can be applied in the TOR. It is also likely to allow for a better estimation of the necessary budget to conduct the HRIA.
- Whilst it may be difficult to anticipate exactly what time and resources will be required for the implementation of mitigation measures, it is a good idea to include at least the development of a concrete impact management plan in the TOR. This avoids the HRIA process ending with a report that includes recommendations without a concrete follow-up plan for their implementation.
- To the greatest extent possible, it is desirable to involve rights-holders and/or their representatives in the development of the TOR for the assessment. For example, through consultation and engagement with rights-holders or key interlocutors during the scoping phase, to verify key information and priorities.

PHASE 2

2 DATA COLLECTION AND BASELINE DEVELOPMENT

What happens in Phase 2?	**In the scoping phase, a number of human rights areas for further investigation will have been identified, as well as the stakeholders to be interviewed and engaged in the HRIA process.** **The core activity in phase two is gathering data to better understand the key human rights areas identified in the scoping, in particular through primary data collection such as interviews and other types of stakeholder engagement. Whilst the scoping phase may have relied primarily on desk-top research and analysis, in phase two of the HRIA fieldwork and stakeholder engagement are critical. Through gathering primary data and additional secondary data, the assessment team can develop a baseline for the HRIA, which documents the current state of human rights enjoyment, based on which any actual impacts can be identified and future impacts can be predicted. The selection of human rights indicators to inform the data collection, as well as subsequent impact mitigation and management, should also take place in this phase.** **Primary data collection for HRIA should allow sufficient resources for rights-holders to participate at their own pace and on their own terms, in particular, it is important that enough time is allocated for this phase to allow for meaningful engagement.**

?	**Key questions addressed in this section:** • **What is a baseline in the context of HRIA?** • **How can human rights standards and principles inform data collection and baseline development?** • **What are human rights indicators and how can they be used in HRIA?**

2.1 DEVELOPING A HRIA BASELINE

Collecting baseline data is critical to enable the analysis of actual and potential human rights impacts from business projects and activities. Some HRIA literature and methods also refer to this phase as the 'data collection' or 'evidence gathering' phase. Developing a baseline consists of the targeted gathering of environmental, socio-economic, political and other such data, to understand the current state of human rights enjoyment. This can then be analysed to determine what human rights impacts have occurred as a result of the business project or activities (in the case of ex-post assessments) and from which future impacts can be predicted (in the case of ex-ante assessments).

Based on the initial identification of human rights issues in the scoping phase, data needs to be collected in the baseline phase to inform the subsequent assessment of impacts. During the scoping phase, the sphere of impact of the business project or activities will have been identified, which will set the parameters for the data to be collected in phase two. The baseline builds on the scoping phase by elaborating the analysis through further research, in particular through field work and stakeholder engagement. Whilst it might be desirable to already undertake some field work in the scoping phase, for the baseline phase this becomes the primary activity. In particular, gathering primary data through engagement with rights-holders, duty-bearers and other relevant parties through interviews, focus groups and so forth, will take place. Whilst the baseline should focus on those human rights issues that have been identified through the scoping as likely to be key issues, it should always allow for additional issues that emerge to be integrated, reflecting the iterative nature of a HRIA process. The selection of targeted human rights indicators can help to inform baseline data collection, as well as subsequent impact mitigation and management for tracking changes over time.

Box 8, below, explains the role of a baseline, benchmark and indicators in HRIA in more detail.

Box 8: Baseline, benchmark and indicators in HRIA

A **baseline** in HRIA is an evidence-based description of human rights enjoyment in practice, as compared with rights in international human rights instruments and domestic law, at a specific point in time.[14] It consists of the information about environmental, socio-economic, political and other data based on which actual and potential impacts of the business project or activities can be assessed. This includes a detailed description of the stakeholders involved, in particular the communities and workers who are or may be impacted (in SIA this is what is sometimes referred to as a 'community profile') developed through field work and stakeholder engagement. It is

important to note that in HRIA a baseline is not to be considered a 'neutral' point of comparison, i.e. which risks accepting the status quo uncritically by accepting the business project or activity as long as it does not worsen the current human rights situation. Instead, in HRIA the baseline should serve to both assess the current level of human rights enjoyment as well as to address potential future impacts.[15] In short, the baseline is used to analyse existing impacts (in the case of ex-post assessments) and to predict future impacts (in the case of ex-ante assessments), in either case referring to international human rights standards as the benchmark, i.e. using these as the point of comparison.

A **benchmark** is an external point of comparison, in the case of HRIA the benchmark is international human rights standards, as defined in international instruments and elaborated in jurisprudence, reports from special rapporteurs, regional human rights frameworks, and international bodies such as the UN.

Indicators are specific information (quantitative and/or qualitative) on the state or condition of an object, event, activity or outcome that can be related to internationally recognised human rights norms and standards. Indicators can be used to measure human rights impacts in that they describe and compare situations, which can help with early impact identification as well as with measuring change over time.[16]

Developing and using a baseline will be slightly different depending on whether it is for an ex-ante or an ex-post assessment. Table D, below, provides a description and examples of the difference.

Table D: The role of a baseline in ex-ante and ex-post HRIA

Assessment	**Ex-ante**	**Ex-post**
Description of role of baseline	In the case of an *ex-ante* assessment (i.e. an assessment that occurs before the business project or activities commence) the baseline data collected will be used to predict any potential human rights impacts by considering the data and forecasting change, with reference to the benchmark of international human rights standards. Based on the	In the case of *ex-post* assessment (i.e. an assessment that occurs once the business project or activities are already well underway), the baseline data collected can be used to assess and address both actual impacts (i.e. impacts that have already occurred) as well as potential impacts (i.e. impacts that may occur in the future).

Table D: The role of a baseline in ex-ante and ex-post HRIA		
Assessment	**Ex-ante**	**Ex-post**
	prediction of impacts, the baseline data should also inform the selection of human rights indicators, against which predicted change and any measures to address the predicted impacts can then be measured and tracked over time.	
Example	The proposed business project is predicted to involve the resettlement of two communities, which has the potential to impact on the right to housing. From international human rights standards, it is known that housing should be: available, accessible, acceptable and of good quality (AAAQ). In combination with contextually relevant information (e.g. what is 'accessible' or 'acceptable' in the given context) these criteria can inform the design of measures to avoid and mitigate the potential impact; as well as the selection of indicators for tracking change over time to verify whether these are effective (e.g. a first order response might be to avoid the resettlement, if this is not possible and the communities are relocated to alternative housing, such housing should be designed to meet the AAAQ criteria, and	The business project involved a resettlement of two communities last year. From international human rights standards it is known that housing should be: available, accessible, acceptable and of good quality (AAAQ). In combination with contextually relevant information (e.g. what is 'accessible' or 'acceptable' in the given context) these criteria can be used as the benchmark against which to compare the baseline data collected, to determine whether a human rights impact has occurred or not, and if so, how severe this impact is and what type of measures might be proposed to remediate the impact. The process for predicting impacts will follow the same process as for an ex-ante assessment.

Table D: The role of a baseline in ex-ante and ex-post HRIA		
Assessment	**Ex-ante**	**Ex-post**
	can subsequently be evaluated against these over time).	

2.2 SOURCES FOR DATA COLLECTION

When collecting data for HRIA, it is important to draw on a variety of sources. While some data can come from pre-existing sources such as statistics, reports, previous impact assessments, thorough field work and stakeholder engagement is an essential component of HRIA. It is important to note that there are limitations to data sources, and often impact assessments can uncover gaps in statistical data. Such limitations illustrate the importance of primary data collection in HRIA. Table E, below, provides an overview of some common sources of data, which can be used for baseline data collection as well as in selecting indicators.

In collecting the necessary data for a HRIA, the assessment team should take steps to apply human rights principles in the data collection process. In the Data Collection and Baseline Development Practitioner Supplement you can find a suggested checklist for data collection.

Table E: Examples of types of data for HRIA	
Type of data	**Description**
Data provided by rights-holders	Data provided by rights-holders offers direct access to information on actual levels of rights enjoyment, whether they have been affected by the business project or activities, and if so how. More specifically, rights-holders are able to describe and give a direct comprehensive overview on human rights impacts, as well as specific data pertaining to such impacts. For example, rights-holders can provide detailed, qualitative accounts on the water they are provided with in terms of availability, accessibility, acceptability and quality.[17]
Events-based data	Events-based data is both quantitative and qualitative data that can be linked to events characterised as adverse human rights impacts, it can be collected through desk-top research and field work. For example, forced resettlement of community members or an on-site explosion. The data from this source is

Table E: Examples of types of data for HRIA	
Type of data	**Description**
	unique in that it is directly linked to specific incidences, which can immediately show how a business project or activities is negatively impacting human rights. Data sources can include testimonies by those directly harmed and/or witnesses; as well as information from the media and reports of State agencies (administrative data), NGOs and CSOs, national human rights institutions, academic works and findings from international human rights monitoring mechanisms (e.g. the Universal Periodic Review, or reporting to treaty bodies on the status of implementation of international human rights instruments.
Socio-economic and administrative statistics	Socio-economic and administrative statistics refers to data or indicators based on quantitative or qualitative information related to the various living conditions of the population. At the national level, it is the State that compiles this information whilst at the international level, the UN and international conferences and summits have played an important role in the development of socio-economic statistics. The sources are often referred to as administrative data, statistical surveys and census data.
Perception and opinion surveys	Perception and opinion are considered to be a necessary source in HRIA in that they can assist with ensuring the participation of rights-holders and other relevant parties in the process. Qualitative and subjective in nature, these sources of data are key for actually identifying and analysing the impacts that rights-holders might be experiencing and for discussing, understanding and designing measures to prevent, mitigate and remediate these impacts. This data can be collected through interviews, surveys, and consultation with relevant stakeholders such as rights-holders, subject matter experts, intergovernmental organisations etc. For further guidance, refer to Stakeholder Engagement.
Data from expert judgments and human rights actors	Data based on expert judgements are generated by those that are considered to have a certain informed expertise. In the case of HRIA, human rights actors in particular, should be drawn on as sources of data. This might include organisations, institutions, individuals and mechanisms working in the field of

Table E: Examples of types of data for HRIA	
Type of data	**Description**
	human rights, such as: human rights NGOs and CSOs; national human rights institutions; academics; as well as government, regional and UN human rights experts. Human rights actors can play an important role in HRIA as they will have insights into how international human rights norms play out in specific contexts.
Source: Based on: United Nations Office of the High Commissioner for Human Rights (2012), *Human Rights Indicators: A Guide to Measurement and Implementation,* Geneva and New York: United Nations Office of the High Commissioner for Human Rights, HR/PUB/12/5; Simon Walker (2009), *The Future of Human Rights Impact Assessments of Trade Agreements,* Antwerp: Intersentia, p.37.	

2.3 INTRODUCTION TO HUMAN RIGHTS INDICATORS

"A human rights indicator is specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion or implementation of human rights."[18]

Human rights indicators can be both quantitative and qualitative, and should be based on human rights standards and principles; they can be used to measure human rights impacts for both civil and political and economic, social and cultural rights. Furthermore, indicators can be applied to describe and compare situations, which can be useful for identifying adverse impacts as early as possible as well as for measuring change over time.[19]

In HRIA, selecting a set of indicators based on the scoping phase can be a useful way to frame subsequent data collection and baseline development. The indicators selected can then also be used in mitigation and monitoring, to track whether the measures proposed to address impacts are effective or not. The consistent use of specific indicators can also facilitate comparative analysis between different projects or sites. Whilst the HRIA process may involve the design of specific indicators based on the context, there are a number of existing resources that can be drawn on in the selection of human rights indicators for HRIA, these are outlined in the practitioner supplement.

It should be noted that the use of indicators to measure human rights implementation, impacts and changes over time is still an evolving field. A key reference framework, however, is the human rights indicator framework

developed by the Office of the High Commissioner for Human Rights.[20] This framework has taken a two-step approach to the development of sets of indicators for different rights. The first step involves establishing the normative content of specific international human rights, as this has been elaborated in international human rights treaties and conventions, general comments, the reports of special procedures, international and domestic human rights jurisprudence (e.g. adjudication of human rights in regional human rights courts, or under constitutional provisions at the domestic level) and so forth. Based on this normative content, the framework breaks indicators for measuring human rights implementation into *structural*, *process* and *outcome* indicators. The framework is State-based, i.e. it seeks to target measuring human rights implementation by States, rather than businesses. However, the structure adopted by the Danish Institute for Human Rights' Human Rights Indicators for Business, follows a similar logic while specifying the application to businesses rather than States, by using the structure of *policy*, *process*, and *impact*. Both of these frameworks can serve as useful resources for HRIA practitioners in selecting indicators for HRIA. A number of further sources of human rights indicators are provided in the Data Collection and Baseline Development Practitioner Supplement.

The following Table F, provides an overview of different types of indicators and how they can be applied in HRIA. Box 9, below, provides some reflections on the rationale for using indicators in HRIA as well as noting some of the limitations.

Table F: Examples of different indicators for HRIA			
Indicator type	**Description**	**Examples**	**Usage in HRIA**
Quantitative	Quantitative indicators refer to attributes of a situation, process or activity to which a number, percentage, ratio or other statistical descriptor can be attached. They can be drawn from data systems and records that already exist or are specifically collected, e.g. during consultations with community members/groups.	• Number of workplace accidents • Number of community incidents • Number of complaints	When identifying and assessing human rights impacts both quantitative and qualitative data are relevant. Quantitative indicators provide numerical evidence whereas qualitative indicators add context in the forms of description, opinions and experiences. This context is often essential in understanding the full nature of a human rights impact. For example, quantitative data may show that all rights-holders have access to water; however, qualitative data can provide the context regarding: accessibility i.e. can all rights-holders access water without physical threats; is it affordable; and is the
Qualitative	Qualitative indicators refer to attributes of a situation, process or activity whose status or condition is determined by opinions, perceptions, or personal judgments, or by quality of an experience expressed as a story.	• Interviewing project affected individuals to understand the impact the business has had on them, their land, their livelihood and their cultural and social norms. • Employees' experience of the company's commitment to human rights through, established through surveys. • Whether or not the community experiences that the company's security forces respect human	

Table F: Examples of different indicators for HRIA			
		rights, established through interviews.	supply of water available on a regular basis?
Source: Adapted from: Rio Tinto (2013), *Why Human Rights Matter: A resource guide for integrating human rights into communities and social performance work at Rio Tinto,* Australia and United Kingdom: Rio Tinto.			
Indicator categorisation	**Description**	**Examples**	**Usage in HRIA**
Structural (policy)	Structural indicators are commitment indicators, that is, they seek to establish the level of intent and commitment of a company for respecting human rights. These often focus on policy commitments.	• Date of implementation and coverage of corporate policy on respect for international human rights standards. • Overall finance commitments for respecting human rights. • Commitment from top management for respecting human rights.	Structural, process and outcome indicators examine different aspects related to human rights impacts, and therefore serve different but inter-related purposes. Outcome indicators are critical in HRIA as these establish what impacts have or may occur that can be attributed to the business project or activities. Structural and process indicators complete the picture by providing insight to the management commitments and
Process (procedure)	Process indicators seek to measure the level of effort by the business in respecting human rights. This can include inputs such as financial, human, material, technological and information resources, as well as outputs such as the completion of specific activities such as training.	• Company procedures provide that workers be paid in accordance to the work performed and in a timely manner. • Net expenditure on implementation and enforcement of human rights policies and procedures as a proportion of gross corporate	

Table F: Examples of different indicators for HRIA			
	These often focus on the procedures and processes in place to identify, avoid and address any adverse human rights impacts.	income. • Number of employees and community members that have access to complaints, disputes, and grievance processes. • Efforts in working with the local host-government on meeting international human rights standards.	structures that are in place, or need to be put in place, in order to effectively manage the impacts identified. Some process indicators will also speak directly to substantive human rights (e.g. access to remedy, access to information or participation) as well as human rights principles such as transparency, non-discrimination and participation. Further examples of the different categories of indicators are provided in the Data Collection and Baseline Development Practitioner Supplement as well as the Human Rights Indicators for Business.
Outcome (impact)	These indicators assess impacts, thereby evaluating whether company efforts in meeting their responsibility to respect human rights have been effective or not. These can also be referred to as impact indicators.	• Proportion of company workers in precarious employment (e.g. short and fixed-term, casual, seasonal workers). • Impact monitoring shows an increase in water scarcity in the community since the commencement of the business project. • Interviews from part-time workers show that there is deterrence among management regarding starting a union.	
Source: Adapted from: United Nations Office of the High Commissioner for Human Rights (2012), *Human Rights Indicators: A Guide to Measurement and Implementation,* Geneva and New York: United Nations Office of the High Commissioner for Human Rights, HR/PUB/12/5, p.16.			

Box 9: Using human rights indicators to assess the human rights impacts of business: possibilities and limitations

The selection and application of human rights indicators in HRIA can offer a structured way to collect relevant data, thereby also informing the analysis of human rights impacts, subsequent mitigation and monitoring. According to UN Guiding Principle 20, "In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response." In addition, "[t]racking should… [b]e based on appropriate qualitative and quantitative indicators."[21]

The consistent use of relevant human rights indicators in HRIA can help to ensure that the assessment is comprehensive and clearly based on international human rights standards and principles, and to identify and assess whether a company is meeting its responsibility to respect these. It can also allow businesses, rights-holders and other stakeholders to assess the corporate policies, procedures and practices regarding human rights that are explored in HRIA, thereby contributing to accountability by offering a way to track business responses to potential and actual adverse human rights impacts.

This being said, it is important to remember that while indicators are a useful tool in HRIA, analysis of human rights impacts cannot rely on indicators and other types of 'measurements' alone as the analysis of human rights impacts will always require qualitative and description based analysis. As noted by OHCHR, for example, "Indicators are tools that add value to assessments with a strong qualitative dimension; they do not replace them."[22]

PHASE 3

3 ANALYSING IMPACTS

What happens in Phase 3?	**Phase three involves analysing the data that has been collected during scoping and data collection, to identify any business-related impacts and assess their severity. This will involve drawing on the normative content of international human rights standards and principles, comparative projects, findings from stakeholder engagement and so forth. In practice, some of this analysis will occur during data collection itself, but it is nevertheless important to allocate time and space specifically for impact analysis.** **It is important to include not only those impacts that seem the most 'immediate' but to consider impacts that the business has caused, contributed to, as well as impacts that are directly linked to business operations, products and services through business relationships. Impact analysis should also involve assessing impact 'severity', including by considering the scope, scale and irremediability of the impacts. This requires considering impacts from the perspectives of those who are experiencing them.** **Lastly, to contribute to business respect for human rights, HRIA of business projects or activities should first and foremost focus on identifying and addressing adverse human rights impacts; therefore, whilst positive effects may be noted, the identification of 'positive' human rights impacts is not the primary objective and should not detract from identifying and addressing adverse impacts.**

?	**Key questions addressed in this section:** • **What are the different types of impacts to be considered: actual; potential; caused by the business; contributed to by the business; and directly linked to business operations, products and services through business relationships?**

	• **Why do the UN Guiding Principles focus on 'adverse' impacts and what does this mean for the inclusion of project benefits in HRIA?** • **How can the 'severity' of human rights impacts be assessed?**

3.1 TYPES OF HUMAN RIGHTS IMPACTS TO BE CONSIDERED

3.1.1 EXAMPLES OF HUMAN RIGHTS IMPACTS

An adverse human rights impact occurs when an action or omission removes or reduces the ability of an individual to enjoy her or his human rights.[23]

According to the UN Guiding Principles, businesses are required to consider actual and potential human rights impacts which are: *caused* by the business; impacts that the business *contributes* to; and impacts that are *directly linked* to a company's operations, products or services through business relationships, including both contractual and non-contractual relationships.[24]

Box 10, provides some examples of actual and potential impacts, and Table G, below, presents some examples of the three categories: caused; contributed to; and directly linked. You can find more examples in the Analysing Impacts Practitioner Supplement.

Box 10: Examples of actual and potential impacts

Examples of actual impacts (has or is occurring, including legacy impacts and inherited legal liabilities):

- The effluents of an agricultural company pollute local waterways affecting the right to water and health of local communities.
- A previous operator of a mine-site provided insufficient compensation to communities in a resettlement process, leading to livelihood and housing disputes with the current operator.

Examples of potential impacts (may occur in the future):

- The project may involve extensive use of local water supplies.
- The project may involve the resettlement of local communities, depending on how it is designed and implemented this may lead to potential impacts on the right to housing and an adequate standard of living.

Table G: Examples of different types of human rights impacts	
Type of impact	**Examples**
Caused (by the business's action or omission)	• A company discriminates in its hiring practices, for example by not affording equal opportunity to indigenous applicants.
Contributed to (through own activities or through a third party, including cumulative impacts)	• Providing information about internet users to a government that uses it for surveillance of political opponents. • Discharging a permissible amount of pollution into the local environment which, together with permissible discharges by other companies, impacts community use of ecosystem services (e.g. water).
Directly linked (to operations, products or services through business relationships, including both contractual and non-contractual relationships)	• Embroidery on a retail company's clothing products being subcontracted by the supplier to child labourers in homes, contrary to contractual obligations.
Source: Some of these examples come from: Office of the United Nations High Commissioner for Human Rights (2012), *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide,* New York and Geneva: United Nations.	

3.1.2 IMPACTS TO WHICH THE BUSINESS CONTRIBUTES AND COMPLICITY

The categories of impacts to which the business *contributes* or is *directly linked* are broader than a strict legal definition of complicity. However, the concept of complicity might prove useful for impact assessment practitioners when analysing such impacts and communicating about them to certain audiences (e.g. when communicating with legal professionals on the impact assessment team or in the company).

The term 'complicity' in the context of business and human rights can have both non-legal and legal meanings. In a non-legal context, human rights organisations and activists, international policy makers, government experts and businesses might use the term to describe what they view as undesirable business involvement in human rights abuses, or benefiting from the actions of a third party.[25] Examples of situations that may invoke allegations of complicity in a non-

legal context may include: inadequate supply chain management, for example where workers in the supply chain are not adequately paid; if a business takes over land where the people have been forcefully displaced by the government; or even situations where business revenues are paid to an oppressive State.

As a legal matter, complicity in criminal law refers to being legally accountable, or liable for a criminal offense, based upon the behaviour of another. Most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of businesses in such cases.[26] The standards for legal complicity vary from jurisdiction to jurisdiction, however, civil or criminal legal sanction will generally require establishing three key elements, namely that the company:[27]

1. *Caused* or *contributed to* the human rights abuse(s) by enabling, exacerbating or facilitating the abuse
2. *Knew* or should have *foreseen* that human rights abuse(s) would be likely to result from its conduct; and
3. Was *proximate* to the human rights abuse(s) either geographically or through the strength, duration or tone of its relationships.

The UN Guiding Principles suggest that businesses should consider both legal and non-legal, and actual or potential, instances of complicity, paying particular attention to risks of complicity in those operating environments where there are heightened risks of human rights violations and abuses occurring. As such, complicity might provide a reference framework for impact assessment practitioners in analysing those impacts to which the business contributes or is directly linked.

3.1.3 CUMULATIVE IMPACTS[28]

Impacts to which the business contributes include cumulative impacts. Cumulative impacts are the successive, incremental and combined impacts from multiple projects or multiple activities located in the same region or affecting the same resource.[29] Different projects or different phases of the same project can contribute incremental impacts to other existing, planned, or future projects, leading to an accumulation of impacts. Box 11, below, outlines some areas of concern about cumulative impacts from a human rights perspective.

Box 11: Human rights concerns regarding cumulative impacts

Cumulative impacts are areas of concern from a human rights point of view for a number of reasons:

- Cumulative impacts are often much harder to predict than singular impacts from one project. Unless an increased effort is done by businesses and the

authorities to assess and analyse the potential for such impacts, it is much harder to prevent environmental and social changes that can have long term impacts on human rights, such as the rights to life and security of person, health, education and an adequate standard of living.

- Cumulative impacts can be severe – both in terms of the type of impact (e.g. the cumulative burden on poor infrastructure causes it to collapse) or the widespread nature of the impact (e.g. cumulative water use due to tourism development reduces water tables, resulting in drought with widespread effect on food security in the local community) or because repetition increases the severity (e.g. a singularly-occurring, minor impact may not pose a human rights risk, but a series of minor impacts may add up to a human rights impact).
- Companies may not consider themselves responsible for cumulative impacts as they make only a *contribution* to these impacts. This may especially be the case where their activities individually fit within acceptable regulatory limits, but the regulatory regime is not advanced enough to take account of accumulation of impacts over time or space.
- Populations most at risk are affected by cumulative impacts, as they are likely to have the least resilience to respond and the least capacity to demand a response from the authorities or businesses. This is particularly problematic in the case of cumulative impacts where it may be more challenging for vulnerable or marginalised individuals and groups to seek a response to address impacts from multiple actors contributing to the cumulative impact.
- Cumulative impacts are sometimes slow and may build up incrementally over time. Accordingly, it may be difficult to draw attention to the issues and prompt action from responsible parties.

Source: Myanmar Centre for Responsible Business (MCRB), Institute for Human Rights and Business (IHRB) and Danish Institute for Human Rights (DIHR) (2015), *Tourism Sector-Wide Impact Assessment (SWIA),* Yangon: MCRB, IHRB and DIHR.

Often, impacts from one project alone may not necessarily be significant. Instead, it is the building of smaller impacts over time or within the same physical footprint, that have a cumulative effect. Sometimes a series of smaller events can trigger a much bigger environmental or social response if a tipping point is reached, changing the situation abruptly. A response can also be triggered by poorly designed policies that prompt companies to repeat the same mistakes. The resilience of the environment or society to cumulative impacts depends upon the nature of the impacts and the vulnerability (or sensitivity) of

the society or ecosystem. In other words, resilience is the degree to which society is susceptible to and able to cope with injury, damage, or harm.[30]

Because project developers and regulators tend to focus on assessing impacts of individual projects, they often do not consider the incremental impacts on areas or resources used or directly impacted by a project from other existing, planned or reasonably defined developments.[31]

Cumulative impacts are of growing importance in regions where environmental and social systems have reached their maximum capacity to absorb and adapt to additional impacts.[32] But they can also be important in regions that have not yet reached maximum capacity but will undergo significant growth.

For these reasons, it is important that HRIA includes consideration of cumulative impacts.

3.1.4 ADVERSE IMPACTS AND PROJECT BENEFITS

Human rights due diligence as outlined in the UN Guiding Principles focuses on the 'adverse' human rights impacts of business activities. This raises the question of how generating and maximising project benefits for impacted rights-holders is to be considered in HRIA.

According to the UN Guiding Principles it is not acceptable for businesses to offset adverse impacts through positive contributions to human rights elsewhere.[33] For example, businesses causing adverse impacts may focus the attention of the general public on community development projects being implemented, jobs being created and so forth, as strategies for legitimising the presence of the project, rather than effectively addressing adverse impacts. The UN Guiding Principles seek to change this behaviour, by emphasising that first and foremost companies should identify and address any adverse human rights impacts associated with their activities, with any positive contributions being separately considered.

Making a clear distinction between human rights due diligence (avoiding, mitigating and remediating adverse impacts) and that of positive contribution (through, for example, employment creation, skills transfer or social investment) is arguably important for a number of reasons, such as:

- Including both adverse impacts and positive contributions facilitates a space for the **implicit offsetting** of adverse impacts, e.g. where a company showcases local employment and job creation opportunities as a way of moving the emphasis away from adverse impacts caused by the operation, for example human rights issues caused by in-migration and boomtown effects; and

- A human rights perspective places a significant emphasis on accountability, including the ability of rights-holders to claim rights and respective duty-bearers to meet their duties and responsibilities with regard to human rights. This includes recognising the **differentiated yet complimentary duties and responsibilities of government and non-government duty-bearers**. Essentially, a human rights analysis asks for caution regarding any provisions that may give rise to a company assuming government responsibilities as human rights duty-bearers.

It is therefore important that any actions taken as part of company human rights due diligence are distinguished from contributions to human rights that a business makes beyond the core responsibility to respect. Whilst HRIA of business activities will include and refer to positive steps or outcomes to the extent that these are relevant in impact analysis and mitigation planning, the assessment itself is not focused on an evaluation of the business's contribution to human rights enjoyment. Whilst the distinction between an action to address adverse impacts and a 'positive impact' or contribution may not necessarily always be clear-cut in practice, the point is that the HRIA should focus on the actual and potential adverse human rights impacts with which the business is involved and not on ad hoc positive contributions that do not relate to addressing such impacts.

One further aspect to note is that community development and strategic social investment projects are considered to be a part of company operations and as such, need to be included in the scope of HRIA. However, again the primary focus would be on whether such initiatives have any adverse impacts on human rights in the way that they are selected, designed, implemented and monitored.

In sum, HRIA of business activities should focus first and foremost on identifying and addressing adverse impacts, and clearly distinguish this from any discussion of positive impacts or benefits, which might be included as a secondary component of the HRIA analysis or as a part of the impact mitigation measures.

3.2 ESTABLISHING IMPACT SEVERITY

All human rights are created equal and there is no list of priority human rights. The purpose of establishing impact severity is therefore not to establish which impacts need to be addressed, but to determine the order of priority in which the identified impacts should be addressed. How these impacts should be addressed is discussed in Phase 4: Impact Mitigation and Management. According to the UN Guiding Principles:[34]

- All human rights impacts need to be addressed
- Where it is not possible to address all impacts simultaneously, the impacts should be addressed in order of their 'severity'
- Severity is determined by the scope (number of people affected), scale (seriousness of the impact) and irremediability (any limits to restore the individual impacted to at least the same as, or equivalent to, her or his situation before the adverse impact occurred); and
- While it is not necessary for an impact to have more than one of these characteristics to be considered 'severe', it is often the case that the greater the scale or the scope of an impact, the less it is 'remediable'.

It is important to note that 'severity' is not the same as 'significance', which is the approach found in many environmental and social impact assessments for establishing significance and prioritising impacts. Box 12, below, explains the differences between severity and significance in more detail. In short:

- Significance includes consideration of *probability* in the assessment of the impact, and results in a consequent ranking of impacts that indicates which impacts should be addressed; and
- Severity *does not* include consideration of probability, focusing instead on the human rights consequences of the impact (on how probability becomes relevant in the prioritisation of actions to address impacts see Phase 4: Impact Mitigation and Management).

Box 12: Impact severity and significance

Establishing impact 'significance' is the approach commonly used in ESHIA. The UN Guiding Principles, however, recommend that impacts are assessed according to their 'severity'.

"'Significance' is used in ESHIA to indicate the nature of a potential impact's consequences. It is determined through an assessment, primarily, of gravity of impact (i.e. 'magnitude'), number of individuals affected (i.e. 'extent'), and their sensitivity and resilience. The purpose of attributing a degree of significance is to show a level of materiality of the potential impacts in order to make project and/or permitting decisions. The UNGPs [UN Guiding Principles]

state that all impacts should be addressed, but recognizes that it may not always be possible to address them simultaneously. If prioritization of actions to address impacts is necessary, the UNGPs indicate that a business should begin with addressing those human rights impacts that will be most severe (UNGP 12)."[35]

The terminology used to describe the constituent parameters of severity and significance can be varied and sometimes confusing. The summary in Table H, below, provides one interpretation. Having an overview and understanding of the different types of terms used can be important when working in cross-disciplinary assessment teams in practice. For example, it might be helpful to understand any differences in terminology when those conducting a HRIA work closely with EIA or SIA practitioners, or when drawing on ESHIAs as part of the knowledge base for a HRIA.

Table H: Assessment parameters used in ESHIA and the UN Guiding Principles

Assessment parameter	**UN Guiding Principles terminology**	**Common ESHIA terminology**
Seriousness of the impact	Scale or gravity	Intensity
Number of people affected	Scope	Extent or scale
Ease of impact mitigation/remediation	Irremediability	Mitigability
Irreparability of the harm caused by the impact	Irremediability	Irreplaceability
Probability	-	Likelihood or probability
Comprehensive assessment of the impact	*Severity*	*Significance*

Source: Prepared by Danish Institute for Human Rights and Community Insights Group based on UN Guiding Principles and ESHIA frameworks.

There are five further points to note regarding the assessment of impact severity:

1. Establishing impact severity must be undertaken **in dialogue** with the individual rights-holders such as workers and community members who are impacted, and/or their representatives or organisations that represent them.
2. Establishing impact severity needs to consider **vulnerability** as an integral component of establishing the scale/gravity of the impact. For example, if a company's use of land means the water access point is now 2km away from the local community, rather than 200 metres, the impact will be more severe on those who have to walk to the water point, rather than those who have vehicles. To take another example, if the company impacts on livestock by causing the death of one farm animal, the impact would be more severe if that animal is the only source of income for a family, than if the impacted person is a farmer with 100 such animals. For further explanation of the different factors that might give rise to vulnerability see Stakeholder Engagement.
3. In considering the scope, i.e. the number of people affected, it is essential to look not only at the absolute numbers of individuals affected, but to also consider in detail **who the individuals are**, to ensure that any actual or potential discrimination is identified and included in assessing the impact's severity. For example, an analysis that focuses purely on the number of people affected might identify that for ten impacts, five out of 100 people experience each impact, however, if these five people impacted are always the same type of people (e.g. Indigenous People, women, persons with disability), this should be observed in the analysis as it may be due to systemic discrimination against the particular group of people, or their vulnerability in the given context.
4. **Human rights expertise** is key to ensure that the assessment processes are adequately informed.
5. Severity **is not an absolute concept**, it involves professional judgment, dialogue, consideration of the interrelatedness of impacts and long-term consequences.

You can find a framework for assessing impact severity, including some examples, in the Analysing Impacts Practitioner Supplement.

PHASE 4

4 IMPACT MITIGATION AND MANAGEMENT

What happens in Phase 4?	**Planning for effective impact management should be an integral part of a HRIA process. Anticipating time and resources for developing a detailed impact management plan at the outset of the HRIA can be very helpful for facilitating this.** **Determining what actions should be taken to address the impacts identified should include: applying a human rights compatible mitigation hierarchy that always focuses on avoiding and minimising impacts; finding ways to exercise leverage to address impacts that involve third parties, such as cumulative impacts involving other operators in the area, impacts that involve government stakeholders or actors in the supply chain; and identifying how rights-holders can be meaningfully involved in impact management, for example through participatory monitoring.** **The role of an operational-level grievance mechanism in impact management, both as a resource to identify impacts as well as to address any grievances associated with the HRIA process itself, should also be considered.** **As human rights impacts may relate to a variety of business unit functions, it is also useful to consider how these different business unit functions might be involved in, and appropriately resourced, to play a part in human rights impact management.**

?	**Key questions addressed in this section:** • **What can contribute to effective planning and resourcing for human rights impact management?** • **What types of actions is a business expected to take in response to the different impacts identified?** • **What is the role of leverage in impact management?**

	• **What is participatory monitoring and how can it be applied in impact management?** • **What is the role of an operational-level grievance mechanism in human rights impact management?**

4.1 PLANNING AND RESOURCING FOR HUMAN RIGHTS IMPACT MANAGEMENT

Impact mitigation and management involves the design and implementation of measures to address impacts (through prevention, mitigation and remediation); including resourcing for the implementation of impact mitigation measures and monitoring of their effectiveness.

To ensure that a HRIA contributes to effectively addressing the human rights impacts that are identified, it is essential that adequate resources are assigned by the business for impact mitigation as well as for monitoring its effectiveness, addressing unanticipated impacts, and grievance resolution. It is also important to involve rights-holders and duty-bearers in the development of the impact management plan (see Box 13) and its implementation, as relevant and appropriate.

In a HRIA process, resources and approaches for impact management should therefore be considered and accounted for from the outset, including through steps such as:

- Ensuring that the development of an **impact management plan is an integral part of the HRIA process**, by providing for the development of an impact management plan in the TOR for the assessment.
- Developing a detailed impact management plan that **assigns specific persons to the implementation of the mitigation measures**, and ensuring that the people assigned have the relevant skills, time, management support and other resources necessary to effectively implement the mitigation measures.
- **Developing the impact management plan collaboratively**, involving workers, women and men from the affected communities, government actors and other relevant parties, for example, through a community workshop and bilateral engagement with government actors to establish their buy-in for the proposed mitigation measures.
- Ensuring that the impact mitigation measures are based on and build on the **human rights indicators** that have been established in the baseline and scoping phases.
- Allowing scope to **integrate different mitigation measures into the relevant management plans and systems** of the business.

- Ensuring that the business for which the HRIA is undertaken commits to dedicating **adequate and appropriate resources for the implementation of impact mitigation measures and ongoing impact management**, including considerations such as assigning adequate budget, time and human resources to impact management, as well as developing specific key performance indicators for staff with responsibilities for impact management.
- Taking a **multi-disciplinary and cross-functional approach to impact management**; often it is the case that the community relations, social or sustainability function within the business will be assigned the responsibility for implementing impact mitigation measures, however, as human rights impacts may relate to many different areas of the business it is necessary and appropriate to involve the relevant business unit functions in impact management.
- Investigating and adopting **collaborative impact monitoring processes** as and where appropriate.
- **Involving relevant State actors in impact management,** as appropriate. For example, through involving local land councils when addressing impacts associated with land tenure and housing, or aligning impact mitigation strategies with local development plans where possible and appropriate.
- **Involving relevant organisations and experts in impact management,** as appropriate. For example, if impacts on women's rights have been identified a local NGO or CSO on women's rights might be involved in the impact mitigation planning and implementation.
- The **development, implementation and/or review of an operational-level grievance mechanism** that can assist with identifying any adverse human rights impacts throughout and beyond the HRIA process.

Box 13: Impact Management Plans

An impact management plan, sometimes also referred to as a 'mitigation' or 'action' plan, serves as a tool through which the company specifies how it will address the identified impacts, as well as notes specific actions that will be implemented across the company's operations to manage the impacts that have been identified. Therefore, the plan serves not only as a way to guide management internally, but also to clarify the roles and responsibilities of various actors involved in the impact mitigation, management and monitoring. Essentially, impact management plans are a strategy for ongoing management, they summarise impact findings from the assessment and detail the measures to address these. Additionally, an impact management plan provides estimates of the timing, frequency, duration and cost of management procedures, as

well as establishing the monitoring and reporting procedures.

Source: Drawing on: Daniel M. Franks and Frank Vanclay (2013), 'Social Impact Management Plans: Innovation in corporate and public policy', *Environmental Impact Assessment Review*, 43, p.57; Daniel M. Franks (2011), 'Management of the social impacts of mining', in *SME Mining Engineering Handbook,* P. Darling (Ed.) (3rd end), Littleton: Society for Mining, Metallurgy and Exploration, pp.1817-1825.

4.2 DEVELOPING ACTIONS TO ADDRESS IMPACTS AND EXERCISING LEVERAGE

In developing actions to address the human rights impacts that have been identified, several points should be considered:[36]

- All human rights impacts need to be addressed, and the most severe impacts should be addressed as a matter of priority, as explained in Phase 3: Analysing Impacts
- The identification of actions to address the identified impacts should involve the rights-holders who are impacted, as well as relevant duty-bearers and other relevant parties
- The mitigation hierarchy applied should be compatible with international human rights standards and principles
- Whether the business has caused or contributed to the adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship will imply different types of mitigation measures; and
- For impacts that the business contributes to or is directly linked to, the extent of leverage that the business can exercise in addressing the impacts will need to be examined.

Box 14, below, outlines some points to consider for developing a human rights-compatible mitigation hierarchy.

Box 14: The mitigation hierarchy

The majority of mitigation hierarchies in EIA, SIA or ESHIA take the following approach:

- Avoid: making changes to the project or plan to avoid the impact.
- Reduce: implementing actions to minimise the impacts.
- Restore: taking actions to restore or rehabilitate to the conditions that existed prior to the impact.
- Compensate: where other mitigation approaches are neither possible nor effective it may be considered to compensate in kind or by other means for

the impact.

In broad terms, a similar approach can be adopted in HRIA; i.e. an approach that always beings with avoiding impacts, and only if this is not possible moves to consider ways to reduce and mitigate the impact. However, from a human rights perspective, there are three things which warrant attention when adapting the above 'approach for HRIA:

1. Any measures taken must be compatible with international human rights standards as well as a human rights-based approach
2. Remediation should be explicitly included; this includes understanding and explaining that compensation and remediation are not synonymous, and that compensation should only be considered as a last resort; and
3. Human rights impacts cannot be subject to 'offsetting' in the same way that, for example, environmental impacts can be. For example, a carbon offset is a reduction in emissions of carbon dioxide made in order to compensate for or to offset an emission made elsewhere. With human rights impacts on the other hand, due to the fact that human rights are indivisible and interrelated, it is not considered appropriate to offset one human rights impact with a 'positive contribution' elsewhere. For example, if business activities have caused an adverse impact on the right to health of workers due to inadequate personal protective equipment and health and safety procedures, these impacts cannot be offset by the business offering more jobs to local workers. Or if a business has caused an adverse impact on the adequate standard of living of communities through the pollution of groundwater that in turn reduces the ability of people to grow their food, such impacts cannot be offset by the business providing a community development project that provides educational and schooling material.

In determining what type of action to take to address a particular impact, there will be differences depending on whether the impact is *caused, contributed to* or *directly linked.*

In short, for impacts that the business causes it will be expected to develop and implement actions to cease and address these impacts. For impacts that the business contributes to or that are directly linked through business relationships, the business should take the necessary steps to cease its contribution to the impacts and this should include exercising 'leverage' (see further immediately below). In determining appropriate actions to address identified impacts that are linked through business relationships the UN Guiding Principles suggest that the following factors should be considered:[37]

- The business's leverage over the entity/entities concerned

- How crucial the relationship is to the business
- The severity of the situation; and
- Whether terminating the relationship with the entity itself would have adverse human rights consequences.

Table I, below, provides an overview for determining appropriate business responses for each of the different types of impacts.

Table I: Determining appropriate actions to address the impacts identified

Type of impact	Impacts *caused* by the business	Impacts to which the business *contributes*	Impacts *directly linked* to a business's operations, products or services through its business relationships (contractual and non-contractual)
Required actions	• Take necessary steps to cease and prevent the impact; and • Provide for, or collaborate in, remediation for actual impacts caused.	• Take necessary steps to cease or prevent contribution to the impact, including through exercising leverage and taking steps to increase leverage if this is needed; and • Provide for, or cooperate in, the remediation of adverse impacts.	• Exercise existing leverage to prevent or mitigate the impact • Increase and exercise leverage if existing leverage is inadequate; and • The business is not required to provide for remediation, although it may take a role in doing so.

Source: UN Guiding Principles.

'Leverage' is considered to exist where a business has the ability to effect change in the practices of another entity that causes harm. "In other words, leverage is a company's ability to influence the behaviour of others."[38] If the business has leverage, it is expected to exercise it. If the business lacks leverage, it is expected to seek ways to increase it, for example, by offering capacity building or other

incentives to the third party to address the impact, or engaging in collaboration with other actors and stakeholders to influence the behaviour of the party causing or contributing to the impact. Table J, below, gives an overview of some examples of different types of leverage and how leverage might be exercised.

It is important to remember that *severity* is relevant for determining the *order of priority* in which the identified impacts should be addressed, whereas leverage becomes relevant for determining *how* to address impacts that the business contributes to or is directly linked to through its business relationships. Where a business has contributed to, or is directly linked to an impact through its business relationships, it has a responsibility to act to address the impact; leverage, on the other hand, is a relevant consideration in determining what types of actions to take to address the identified impacts. In sum, the absence of leverage does not absolve a business from responsibility to address the impacts that have been identified (this reiterates the importance of differentiating between a sphere of influence and a sphere of impact, see Phase 1: Planning and Scoping for an explanation of the difference between these two concepts).

Table J: Examples of exercising and increasing leverage to address human rights impacts

Examples of types of leverage	**Examples of exercising leverage**
Traditional commercial leverage: leverage that sits within the activities the company routinely undertakes in commercial relationships, such as contracting.	• Include human rights standards in contracts • Audit for compliance with the human rights standards included in the contract • Include human rights in pre-qualification criteria in bidding processes; and/or • Provide commercial incentives for suppliers that are based on human rights considerations, e.g. targets for local content.
Broader business leverage: leverage that a company can exercise on its own but through activities that are not routine or typical in commercial relationships, such as capacity building.	• Build the capacity of suppliers to meet the responsibility to respect human rights • Ensure that procurement and purchasing staff send the same messages on human rights in their conversations with suppliers and decision-making about contracts; and/or • Use relevant international and industry standards to drive expectations by requiring supplier compliance with such standards.

Table J: Examples of exercising and increasing leverage to address human rights impacts	
Examples of types of leverage	**Examples of exercising leverage**
Leverage together with business partners: leverage created through collective action with other companies in or beyond the same industry.	• Work with business peers to establish common requirements of suppliers; and/or • Engage bilaterally with peer companies who may be facing similar supply chain issues to share lessons learnt and to identify possible solutions.
Leverage through bilateral engagement: leverage generated through engaging bilaterally and separately with one or more other actors, such as: government; business peers; an international organisation; or a CSO.	• Engage CSOs and relevant international organisations who can provide relevant information on local actors or circumstances in supplier countries; and/or • Engage with a range of actors bilaterally to identify and implement solutions to specific human rights supply chain issues that have been identified.
Leverage through multi-stakeholder collaboration: leverage generated through collaborative action – collectively with business peers, governments, international organisations and/or NGOs or CSOs.	• Develop shared standards for suppliers through multi-stakeholder initiatives, thereby enhancing the credibility of the standards; and/or • Use the business's brand and reputation to convene relevant stakeholders to address any systemic issues that have been identified.
Source: Adapted from: Shift (2013), *Using Leverage in Business Relationships to Reduce Human Rights Risks,* New York: Shift, pp.14-24.	

4.3 MONITORING

Once the adverse human rights impacts have been identified and an impact management plan has been determined, it will be important to follow-up on whether the actions to address the identified impacts are implemented and that they effectively address the impacts. Planning for the monitoring of impact mitigation measures should therefore be an integral component of a HRIA and be included in the impact management plan. It is important that the planning for monitoring considers precisely what is to be monitored, when, how often and by whom. In addition to monitoring whether the impact mitigation measures are effective, and making any necessary adjustment if not, ongoing monitoring provides an opportunity to identify any unforeseen impacts.

Involving rights-holders, duty-bearers and other relevant parties in impact monitoring, as appropriate in the given context, can provide a valuable opportunity for strengthening accountability and building trust between different parties. It can also provide a way to involve the necessary expertise, or vice versa, to contribute to building the capacity of the stakeholders involved in impact management. One strategy for facilitating the participation of different stakeholders is participatory monitoring. Box 15, below, provides an overview of participatory monitoring.

Box 15: What is participatory monitoring?

Participatory monitoring can be defined as "a collaborative process of collecting and analysing data, and communicating the results, in an attempt to identify and solve problems together. It includes a variety of people in all stages of the monitoring process, and incorporates methods and indicators meaningful to the stakeholders concerned. Traditionally, companies and agencies initiate and undertake monitoring. Participatory monitoring requires changing the dynamic so that a wider range of stakeholders assume responsibility for these tasks, and learn and benefit from the results. Participatory monitoring is not only scientific, but also social, political, and cultural. It requires openness, a willingness to listen to different points of view, a recognition of the knowledge and role of different participants, and the ability to give credit where credit is due."[39]

Participatory monitoring can be a way to build understanding and trust between the different stakeholders involved in HRIA. In particular, it can provide an avenue for dialogue between affected rights-holders and the business that stretches beyond a HRIA process. HRIA can play a role in identifying the different rights-holders and duty-bearers who might be involved in participatory monitoring, as well as identify and address the need for any capacity building of

those who are anticipated to participate in the community monitoring of the impact mitigation measures. Box 16, below, provides some example good practices of participatory monitoring initiatives from the extractive industries sector.

Box 16: Example good practices of participatory monitoring initiatives from the extractive industries

According to the International Finance Corporation a common practice in the extractive industries sector is the creation of a Participatory Environmental Monitoring and Oversight Committee. These Committees have the purpose of taking water samples at pre-established collection points; usually consisting of community-appointed representatives who either take the water samples themselves or witness a third party (technical team, university professor, consultant, etc.) take the samples, which are sent to laboratories chosen by the parties. The taking of samples could be done monthly, bimonthly, every three months or quarterly, and the Committees meet regularly and document their findings. Funding is often made available by the extractive industries company, with the increasing participation of the government environmental agencies to take part in these Committees, sometimes providing financial resources and more often technical assistance to the process.

Source: Based on: International Finance Corporation (2010), *International Lessons of Experience and Best Practice in Participatory Monitoring in Extractive Industry Projects*, Washington: International Finance Corporation.

According to the International Finance Corporation's review of participatory monitoring programmes, there is no 'one size fits all' solution as the success of such schemes is very dependent upon each specific local context.[40] This emphasises the importance of good context analysis as well as stakeholder engagement throughout a HRIA process, which can then inform the design of any participatory monitoring to be implemented.

Participatory monitoring is likely to be most effective when designed and implemented at the outset of a project and moreover, used throughout all the stages of the project-cycle and not only when impacts cause community contention. If implementing a participatory monitoring scheme in a reactive way, community groups may view it suspiciously as a tool designed to silence and co-opt dissenting voices, and therefore it may suffer credibility issues along with further contributing to community conflict and tensions. Furthermore, in some scenarios communities may need time to develop the capacity and technical skills to participate in the monitoring. Participatory monitoring programmes should therefore include a focus on rights-holders' access and abilities to

participate in the process. Having access to a participatory monitoring programme without having the abilities to meaningfully participate will be out of synch with a human rights-based approach. The same applies for the reverse where capacities exist, but the participatory monitoring programme is not accessible.

4.4 ACCESS TO REMEDY AND OPERATIONAL-LEVEL GRIEVANCE MECHANISMS

Operational-level grievance mechanisms can have an important role to play in HRIA. Workers and community members may have grievances to raise with regard to the HRIA process and/or the specific impacts that have been identified. Access to remedy, of which operational-level grievance mechanisms is one component, is a core pillar of the UN Guiding Principles, which also outline eight effectiveness criteria for non-judicial grievance mechanisms (see Box 17, below).

A lot has been written about operational-level grievance mechanisms theory and practice, including how these might be designed in collaboration with local communities to ensure responsiveness to the specific context, and case studies that analyse the effectiveness of operational-level grievance mechanisms.

However, current guidance on operational-level grievance mechanisms has focused less on how such mechanisms might interact with impact assessment processes, including HRIA. In short, an operational-level grievance mechanism can relate to a HRIA in a number of ways, including:

- For established operations, where a grievance mechanism is already in place:
  - Information from the grievance mechanism can be used to feed into the scoping as well as the impact assessment, to inform of any patterns or trends identified from the grievances that have been submitted are likely to provide useful information about the concerns of community members and workers; and vice versa
  - The HRIA can provide insights about if and how the existing grievance mechanism might need to be revised to ensure effectiveness.
- For planned or new operations, or where a grievance mechanism is not already in place:
  - The information gained through the HRIA can provide insights about how an operational-level grievance mechanism could be designed and implemented, to ensure responsiveness to the local context, including, for example, identifying any existing methods, approaches or community preferences for grievance resolution; and
  - A preliminary channel for grievance resolution throughout the HRIA process should be established as part of embarking on a HRIA.

Overall, an operational-level grievance mechanism can be important for the early identification of impacts, as well as for the ongoing monitoring of the effectiveness of impact mitigation. The development, review and/or implementation of an operational-level grievance mechanism should therefore be an integral component of a HRIA process.

Box 17: Effectiveness criteria for non-judicial grievance mechanisms

UN Guiding Principle 31 outlines eight effectiveness criteria for non-judicial grievance mechanisms:

(a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes

(b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access

(c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation

(d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms

(e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake

(f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights; and

(g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

Operational-level mechanisms should also be:

(h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

Source: UN Guiding Principle 31.

PHASE 5

5 REPORTING AND EVALUATION

What happens in Phase 5?	**Communicating and reporting on HRIA processes and findings are critical components of the process. Through stakeholder engagement, communication about the HRIA will happen throughout the assessment. However, writing and publishing a final assessment report is also important. A detailed HRIA report that is available and accessible to rights-holders, duty-bearers and other relevant parties can foster dialogue and accountability by documenting the impacts that have been identified and the measures taken to address them.** **If done carefully and acted upon, evaluation of the HRIA process, findings and outcomes can further contribute to continuous improvement in terms of improving company due diligence and human rights outcomes.**

?	**Key questions addressed in this section:** • **Why is it important to publish a HRIA report?** • **What are some of the common challenges when reporting on HRIA processes and findings, and how can these be addressed?** • **What should be included in a HRIA report?** • **How can evaluation of HRIA processes contribute to continuous improvement?**

5.1 WHY REPORT ON HRIA?

Access to information is both a human right as well as a key process principle of a human rights-based approach. Communicating clearly to stakeholders about the process and findings of a HRIA, including through reporting, can be seen as an essential step towards securing a transparent and accountable process.

Additionally, it is also a way of ensuring that rights-holders, duty-bearers and other relevant parties can meaningfully participate by providing input to the findings.

Communicating and reporting on human rights due diligence processes, including on human rights impacts, is expected by both the UN Guiding Principles as well as the OECD Guidelines for Multinational Enterprises (see Box 18, below). Communicating and reporting are essential for fostering the accountability of businesses for addressing their adverse human rights impacts. Furthermore, publishing of HRIA reports and associated impact management plans can be a key way by which businesses can demonstrate that they 'know and show' that they are undertaking human rights due diligence and exercising respect for human rights. From a community, civil society and public interest perspective, a public HRIA report can be a basis for strengthening communities' strategies in demanding corporate accountability, taking a facts- and evidence-based approach.[41]

Reporting on HRIA processes and findings can also provide a platform for dialogue about the process and outcomes of the assessment, and foster relationship building between the different stakeholders involved.

Box 18: Reporting about human rights impacts in the UN Guiding Principles and OECD Guidelines

The UN Guiding Principles on Business and Human Rights

According to the UN Guiding Principles: "In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating context pose risks of severe human rights impacts should report formally on how they address them."[42] The UN Guiding Principles also note that communications should always: "(a) Be of a form and frequency that reflects and enterprise's human rights impacts and that are accessible to its intended audiences; (b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved; (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality."[43]

The OECD Guidelines for Multinational Enterprises

Section III of the OECD Guidelines set the expectation that enterprises "ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance".[44] The definition of 'material' information relevant for disclosure includes issues regarding workers and other stakeholders. In

addition, enterprises are encouraged to communicate additional information on, amongst other things, relationships with workers and other stakeholders. Section III also outlines expectations regarding the quality and timeliness of disclosed information in order that information disclosure meets its intended purpose: to improve public understanding of enterprises and their interactions with society and the environment.[45]

Source: United Nations Human Rights Council (2011), *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, A/HRC/17/31, Guiding Principle 21; Organisation for Economic Co-operation and Development (2011), *OECD Guidelines for Multinational Enterprises,* Paris: OECD Publishing.

Reporting and communicating on a HRIA process and outcomes can be undertaken in different ways, depending on the precise circumstances. "Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholders, and formal public reports."[46] If possible, communicating about the HRIA process and findings should include a combination of dialogue and engagement based strategies, in particular involving rights-holders, as well as the publication of a HRIA report. Through this the company can demonstrate commitment to transparency and engagement, as well accountability.

A final impact assessment report should outline the impact assessment methodology and process, findings and mitigation measures, as well as a forward-looking plan for monitoring and evaluation.[47] Up to now, there have been divergent views and approaches regarding HRIA reporting. Some argue for full disclosure at all times, whilst others argue that while HRIA is an emerging practice, and in human rights sensitive environments, it may be acceptable to work towards full disclosure on a continuous improvement basis. From a good practice perspective, the publication of a final HRIA report should be considered to be an integral component of any HRIA process. However, in cases where full disclosure would be harmful, for example, where it might cause risks to rights-holders or be counterproductive for engagement on human rights with business partners or the government, other alternatives to the publication of a full report may be considered. Such alternatives may include conducting meetings with stakeholders where findings are shared and/or publication of a summary report of key findings. Such alternatives should be considered to constitute interim measures only, while companies work towards full disclosure of HRIA processes and findings. In working towards disclosure of HRIA processes and findings, some companies have also published HRIA reports with aggregate data rather than country- and site-specific findings as an interim measure. Some examples of reporting on HRIA are provided in Box 19, below.

Box 19: Examples of public reporting on HRIA

Reporting publicly on a HRIA process and findings can be important for demonstrating a commitment to transparency and accountability, as well as providing a platform for ongoing dialogue between the different stakeholders involved. The following are some examples of public reporting on HRIA:

- Kuoni, a Swiss tourism company, conducted two HRIAs in 2012 and 2013, in Kenya and India respectively. Kuoni has published the reports of both impact assessments, which looked at human rights in general, with a specific focus on children's rights.[48]
- The Marlin Mine Human Rights Assessment report provides an overall assessment and status on Goldcorp's due diligence standards including recommendations for the ongoing process. The Marlin Mine has applied a range of strategies and mechanisms to secure ongoing consultations with stakeholders, in particular the local community. Each of the priority issues were identified from the concerns raised through prior stakeholder consultations and address means of improvement for the specific areas.[49]
- Nestlé, together with the Danish Institute for Human Rights, published a report describing the methodology that was applied for HRIAs conducted in seven country operations since 2010, the aggregate findings of the HRIAs, as well as a number of lessons learnt from the process. Nestlé has found that engaging in discussions with labour unions by sharing the HRIA report findings led to improved relations between the country operations and labour unions.[50]
- The Mary River assessment consists of a number of assessments; the HRIA was conducted as a part of the overall assessment but in a stand-alone version. The Mary River HRIA is an ex-ante assessment, meaning that the HRIA was conducted prior to the construction approval. This enabled rights-holders and other stakeholders to engage throughout the process and provide input to the report prior to the establishment of the project.[51]

5.2 CHALLENGES WHEN REPORTING ON HRIA PROCESSES AND FINDINGS

Reporting on human rights impacts and HRIA can pose a number of challenges for rights-holders, businesses, assessment teams and other stakeholders. For example, businesses may be hesitant to report on HRIA processes and findings in operating environments where such reporting may be perceived as critical of joint-venture partners or the host-country government. It is of utmost importance that any HRIA reporting does not pose risks to the rights-holders involved, for example, through the disclosure of sensitive information that could

result in retaliation against participating rights-holders. Further challenges may be associated with ensuring real accessibility of the report to rights-holders, for example, addressing language, literacy, physical accessibility, and information complexity considerations. As HRIA is an emerging practice, businesses may also be hesitant to commit to full disclosure while methodologies and practices are developing. Finally, in determining the best means of communication and reporting, the timeframe in which a HRIA is conducted can also be identified as a challenge.

Clearly, these are real and important aspects to consider when advocating for the disclosure of HRIA reports. However, it is important to re-iterate that from a human rights perspective, transparency and accountability are critical aspects of a HRIA and reporting on the HRIA process and findings should therefore be considered to be an integral part of the assessment. This should also include careful consideration of how the HRIA findings should be published and communicated to rights-holders and other stakeholders, in order for them to be able to meaningfully utilise the HRIA report for ongoing dialogue, monitoring and evaluation.

The Reporting Practitioner Supplement outlines some examples of challenges and possible approaches relating to HRIA reporting in more detail.

5.3 CONTENT OF A HRIA REPORT

The introduction of an assessment report should outline the main purpose of the report in a clear manner, including a background explanation of the HRIA's objectives, the funding source and the authors.

The methodology section should include a statement about the overall assessment design, i.e. which methods and approaches to community engagement were used, and how ethics were approached throughout the assessment, and so forth. These points could be presented through an overview of each of the process phases and their respective outputs, in which each phase clearly states the goals and tasks as well as the key findings. It is also important to include the limitations of the applied methodology and decisions made to narrow or broaden the scope of the assessment.[52]

Key findings and actions should be reflected through a presentation either covering each of the human rights separately or in a thematic form such as 'labour issues', 'women's rights' or 'community impact'. Each section should clearly state the context of the impacts, their severity, the mitigation measures proposed, the timeline as well as who is responsible for implementing the mitigation measures.[53]

The report should also include a description of the role of ongoing stakeholder engagement processes and grievance mechanism(s) as part of the impact management.[54]

In the Reporting Practitioner Supplement a 'reporting checklist' is provided with some illustrative questions of what should be included in a HRIA report.

5.4 EVALUATION AND CONTINUOUS IMPROVEMENT

Undertaking a HRIA is to be recognised as a commitment to human rights, and as such, the process is not concluded with the publication of a final report. Human rights situations are dynamic, and it is therefore important that the assessment includes measures for evaluation and continuous improvement.[55]

The evaluation stage consist firstly of an assessment of the HRIA process itself. Where the objective of the evaluation is to identify and determine to what extent the HRIA has met the initial objectives. During this process, it is key to consider whether the actions to address the identified impacts (i.e. measures to prevent, mitigate and remediate impacts) have been duly implemented and are effective.[56] The second stage of the HRIA evaluation process should be initiated after the publication of the final report, hereby considering unforeseen impacts and substantial changes made to the company's policies and practices. This can take the form of assessment reports on the actual implementation of measures to address the impacts, where rights-holders as well as duty-bearers are consulted about the effectiveness and outcomes of the interventions. Systematically monitoring and reporting back to affected rights-holders on the steps taken will encourage on-going follow-up reports as well as securing transparency throughout the life span of a project or operation. It also provides the opportunity of looking back at lessons learnt, thereby facilitating on-going improvement of HRIA processes.[57]

It is important to ensure the continuous improvement of the company's performance. The assessment team will, in most cases, only be involved until all initial issues have been addressed and suitable systems have been put in place to address them.[58] To overcome potential claims of bias in an ex-post HRIA, the company might find it useful to seek verification from a suitable and qualified third party e.g. an external consultant or an organisation with a proven record of working on improving companies human rights due diligence processes.[59]

Periodic review of the business project or activities will facilitate addressing any issues that may arise after the assessment. Periodic review conducted every three-five years, depending on the size and scope of the project, also serves the purpose of determining if the HRIA methodology used is up to date with current international good practice.[60]

B STAKEHOLDER ENGAGEMENT

What happens in stakeholder engagement?	**Stakeholder engagement needs to be at the core of a HRIA, and in particular the participation of rights-holders is crucial at all stages of the assessment process. In the planning and scoping phase, the HRIA team will identify the stakeholders who should be engaged in the process. In the data collection and baseline development phase, interviews with rights-holders, duty-bearers and other relevant parties will be one of the main sources of primary data. Perspectives of rights-holders themselves will be used for assessing the severity of impacts in the analysing impacts phase. In the impact mitigation and management phase, stakeholders should be involved in participating in designing and implementing actions that effectively prevent, mitigate and remediate adverse impacts; as well as in monitoring their implementation, which may include participatory monitoring. Finally, stakeholders, especially rights-holders, should be involved in the reporting and evaluation phase.** **In short, ensuring the meaningful participation of those who are affected should be the prerequisite of a process seeking to assess human rights impacts. For rights-holders, participation in the HRIA should enable them to access information and to better understand both the business project or activity and its impacts, but also to learn about their human rights and the respective responsibilities of duty-bearers to uphold these rights. If carefully done, participation can be a way to empower rights-holders. Lastly, the engagement of duty-bearers and other relevant parties in a HRIA is essential for ensuring a comprehensive assessment and fostering accountability.**

?	**Key questions addressed in this section:** • **Why engage rights-holders and other stakeholders in HRIA?** • **Who are the rights-holders, duty-bearers and other relevant parties that should be engaged in HRIA?** • **How should rights-holders be engaged?** • **What types of considerations need to be made for the engagement of specific rights-holder groups? What is the role of capacity building in HRIA engagement and participation?** • **At which points during a HRIA should stakeholders be engaged?** • **What are some of the human rights-based principles and ethics that the assessment team should apply in stakeholder engagement?**

B.1 INTRODUCTION TO ENGAGING WITH STAKEHOLDERS IN HRIA AND PARTICIPATION OF RIGHTS-HOLDERS

Stakeholder engagement is critical in HRIA and has therefore been included as the key cross-cutting theme in this Guidance and Toolbox. The following sections provide guidance on how to engage with rights-holders throughout the HRIA process to ensure that they can meaningfully participate in the process and influence decision-making that impacts on their lives; as well as other stakeholders who have duties and responsibilities with regard to respecting the human rights of workers and community members.

Stakeholders to be engaged in a HRIA include rights-holders, duty-bearers and other relevant parties. See Box 20, below, for more details on these different types of stakeholders and examples.

Box 20: Overview of the different stakeholders to be engaged in HRIA

When assessing human rights impacts it is important to recognise and engage the full range of relevant stakeholders, including considering their different roles and responsibilities.

- **Stakeholders:** a stakeholder is a person, group or organisation with an interest in, or influence on, a business project or activity, as well as those potentially affected by it. Relevant stakeholders for the assessment of human rights impacts include affected rights-holders, duty-bearers and other relevant parties.
- **Rights-holders:** all individuals are human rights-holders. In the context of HRIA the focus is on those rights-holders who are actually or potentially adversely affected by the business project or activities. Rights-holders are entitled to enjoy and exercise their rights by virtue of being human, as well as to access to effective remedy where their rights have been breached. Organisations or entities, such as trade unions or religious institutions, are not human rights-holders, but may act in a representative capacity. Examples of rights-holders whose human rights can be impacted by business projects or activities include: workers; supply chain workers; local community members including women, children, indigenous peoples, migrants, persons with disabilities etc.; human rights defenders; customers; and end-users.
- **Duty-bearers:** are actors who have human rights duties or responsibilities towards rights-holders. States are the primary human rights duty-bearers—they have a legal obligation to *respect, protect* and *fulfil* human rights. Companies have a *responsibility to respect* human rights; to avoid infringing upon the rights of others and to address those impacts with which they are involved. Examples of duty-bearers in a business context include: a company operating a project or conducting business activities; business suppliers and contractors; joint-venture or other business partners; and government actors such as government authorities.
- **Other relevant parties:** these may include individuals or organisations whose knowledge or views could assist in the assessment of human rights impacts. This may include: specialist representatives from multilateral organisations, e.g. the UN or the International Labour Organisation; National Human Rights Institutions; NGOs and CSOs; local, regional and international human rights mechanisms and experts; as well as rights-holder representatives or representative organisations.

People often ask the question: **what is the difference between a rights-holder and a stakeholder?** Essentially, rights-holders are a particular stakeholder group: the affected workers and community members (sometimes referred to

as ‘impacted communities’ or ‘project-affected people’). These individuals are rights-holders, and the reason for recognising them as such (rather than as stakeholders), is to acknowledge that they may have entitlements towards the business project or activities to have associated adverse impacts addressed.

Engagement should occur throughout the impact assessment process and for the life of the business project or activities. It should be done early and in a proactive and ongoing manner. Stakeholder engagement is commonly used in the area of corporate social responsibility (CSR) and there are different forms of stakeholder engagement (see Box 21, below, on typical CSR stakeholder engagement vs. HRIA stakeholder engagement).

Box 21: Typical CSR stakeholder engagement vs. HRIA stakeholder engagement

Stakeholder engagement is commonly used in the area of corporate social responsibility to refer to a process through which a business strives to “understand and involve stakeholders and their concerns in its activities and decisions.”[61] There are different ways to engage stakeholders. Companies can inform stakeholders with the purpose of *providing information* about the project, which is considered one-way communication. A second mode of engagement is *consultation*, which is two-way communication focused on sharing information and collecting information to adequately understand the project’s context and the preferences, concerns and expectations of different parties, and to ensure that all parties understand and learn from one another’s perspectives. Connected to this, a form of engagement is *responding*, where companies take action in response to an issue, concern or certain information identified during consultation.[62] Finally, *negotiation* is a form of two-way communication between the company and stakeholders, focused on sharing decisions with the objective of coming to a shared agreement. One of the key elements for **meaningful stakeholder engagement** is ongoing engagement with stakeholders that is two-way, conducted in good faith and is responsive to the views, experiences and expectations being exchanged.[63] **Participation** is often used as a synonym for meaningful stakeholder engagement.

Taking a point of departure in the human rights-based approach, HRIA stakeholder engagement focusses in particular on engagement with rights-holders as the key stakeholder group. Furthermore, HRIA identifies the entitlements of these stakeholders as well as the respective responsibilities of duty-bearers, another central stakeholder group. Lastly, human rights organisations, mechanisms and experts have a particular role to play in HRIA engagement, through contributing their human rights knowledge and

expertise to the analysis.

In the context of HRIA, stakeholder engagement pays particular attention to rights-holders, including to their rights to be consulted and to participate. Consultation and participation of rights-holders in decision-making that affects them has been incorporated in a number of international legal instruments as well as in national legislation (see Box 22, below, on participation and consultation in international human rights law). In the case of indigenous peoples, their right extends to consultation according to the principle of free, prior and informed consent (FPIC).

Box 22: Participation and consultation in international human rights law and other frameworks

The right to public participation is enshrined in international human rights law. A number of treaties and conventions include provisions related to participation and consultation, for example:

- Article 25 of the International Covenant on Civil and Political Rights provides for the right of citizens to take part in political affairs and Article 19 guarantees the right to freedom of expression, including the right to seek information; and
- UN treaty bodies have issued numerous general comments that point to government responsibility to inform and hear the opinions of groups affected by political decisions, in particular with regard to their economic, social and cultural rights.[64]

Furthermore, under international human rights law, certain groups have an explicit right to be heard and consulted:

- In the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention No. 169, it is mentioned that indigenous peoples have a right to be consulted according to the principle of free, prior and informed consent (FPIC);
- The Convention on the Rights of the Child (CRC) states that children have the right to participate in decision-making processes that may be relevant in their lives and to influence decisions taken—within the family, the school or the community;
- The Convention on the Rights of Migrant Workers and Members of their Families (ICMW) demands consultation with, and participation of, migrant workers and their families in decisions concerning the life and administration of local communities;
- A call for consultation has also been built into the Convention on the Rights

of Persons with Disabilities (CRPD);[65] and

- The Convention against the Elimination of All Forms of Discrimination against Women (CEDAW) has also insisted on the importance of the right to participation of women.[66]

In recent years, participation has been reflected in the human rights-based approach to development as a goal as well as a cross-cutting principle. For more information about the human rights-based approach see the Welcome section.

In relation to businesses, their obligation to consult those affected by their activities has also increasingly been defined, for example:

- UN Guiding Principle 18 explicitly points out that the process of identifying human rights impacts should involve "meaningful consultation with potentially affected groups and other relevant stakeholders". In the associated commentary, it is specified that businesses should seek to understand the concerns of potentially affected stakeholders "by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society."[67]
- The OECD Guidelines for Multinational Enterprises (2011) also state that multinational enterprises should engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision-making for projects or other activities that may significantly impact on local communities.[68]
- The International Finance Corporation (IFC) requires from its clients that they undertake a process of consultation in a manner that provides the affected communities with opportunities to express their views on project risks and impacts. The extent and degree of engagement required by the consultation process is commensurate with the particular project's risks and adverse impacts.[69]

Participation of rights-holders in the HRIA process is key for actually identifying and analysing the impacts that they might be experiencing and for discussing, understanding and designing actions that effectively prevent, mitigate and remediate these impacts. Ensuring the participation of those who are affected should thus be the prerequisite of a process seeking to assess human rights impacts.

For rights-holders, participation in the HRIA should enable them to access information and to better understand both the business project or activity and its impacts, but also to learn about their human rights and the respective

responsibilities of duty-bearers to uphold these rights. If carefully done, participation can be a way to empower rights-holders. As highlighted in the *Rights & Democracy Getting it Right Guide*, "A human rights impact assessment should not be just about gathering information, but also an exchange of knowledge between participants throughout the assessment process."[70] Box 23, below, provides an insight into how HRIA can act as a tool for rights-holder empowerment.

Box 23: Community-led HRIA as a tool for empowerment of rights-holders

Community-led HRIA is a method, which gives ownership to affected communities to assess and document the potential or actual human rights impacts of a large-scale project.

For the assessment of impacts of private investment, the former Canada-based organisation Rights & Democracy has designed such a step-by-step methodology to guide communities and NGOs.

"Community-based HRIA assessments use a bottom-up approach, which contributes to empowering affected communities in claiming their rights and ensuring accountability. Such assessments help to voice the concerns of affected individuals and local communities, putting them on a more equal footing with the public and private actors involved."[71]

Experiences of community-based HRIAs in different countries have shown that such processes can help communities mobilise around their rights. It should, however, be acknowledged that community-led HRIAs have limitations, such as limited access to company representatives and internal company systems, which may hinder obtaining the full picture.

Source: Rights & Democracy (2011), *Getting it Right: Human Rights Impact Assessment Guide*. [online]. Available from: http://hria.equalit.ie/en/index.html

B.2 IDENTIFYING THE RELEVANT STAKEHOLDERS TO ENGAGE WITH

B.2.1 STAKEHOLDER IDENTIFICATION AND ANALYSIS

In order to engage with the relevant stakeholders as part of a HRIA process, it is necessary to first identify the different stakeholders in order to understand their situation and their relationship to the business project, as well as the power dynamics between them.

The identification of relevant stakeholders will depend on various factors, such as the nature of the business project or activities, the impacts anticipated, geographic location, and so forth. There is no set list of stakeholders. However, it

is essential that the stakeholders identified and included in a HRIA include the impacted rights-holders, responsible duty-bearers, as well as other relevant parties (see Box 20, above, for further explanation of these different types of stakeholders). During the HRIA, further stakeholders might be identified, which were not included at the outset of the process. The HRIA team should therefore remain flexible and open to including such stakeholders during the HRIA process.

The identification of different stakeholders will assist the assessment team in understanding who the relevant individuals, groups and organisations are and what the relationships are between them. It will also provide insight into stakeholders' interests in relation to the business project or activities, as well as their knowledge and capacity to engage. This in turn will enable the HRIA team to identify where capacity building may be necessary to ensure meaningful participation. In understanding how different rights-holders might be impacted, it is important to be especially mindful of any vulnerable or marginalised individuals and groups requiring specific attention (see further section B.3, below).

The Stakeholder Engagement Practitioner Supplement can be used for an initial stakeholder identification and mapping process for HRIA.

After having identified the relevant stakeholders and their various rights, interests and obligations with regard to the impacts of the business project or activities, it will be necessary to map the stakeholders to determine which stakeholders to engage with in the HRIA and how. There are different methods for mapping stakeholders, for example, through a table, chart, grid or zoning map. Dimensions used in such stakeholder mapping and analysis exercises include power, influence, rights, interests, proximity and needs.[72] The use of a so-called 'power map' can help to determine which stakeholders are most vulnerable and affected by the business project or activities. Stakeholders are placed in a matrix with two axes: influence of the stakeholder on the business project or activities (influence/power axes), and impact of the business project or activities on the stakeholder (impact axes) (see Figure 4, below).

Stakeholder mapping for HRIA requires a different approach to that which is typically taken in stakeholder mapping, see Figure 5. Whilst HRIA mapping focuses on the risk to rights-holders, typical stakeholder mapping focuses on the risk to business. In HRIA stakeholder mapping special attention is given to those stakeholders in the bottom right corner in orange (i.e. vulnerable or marginalised rights-holders, which are categorised as having the least influence yet are highly impacted by the business project or activities); whereas typical stakeholder mapping would focus more on those in the top right corner in grey (i.e. highly relevant stakeholders that have both high impact and influence over the business project or activities).[73]

Figure 4: HRIA stakeholders power map[74]

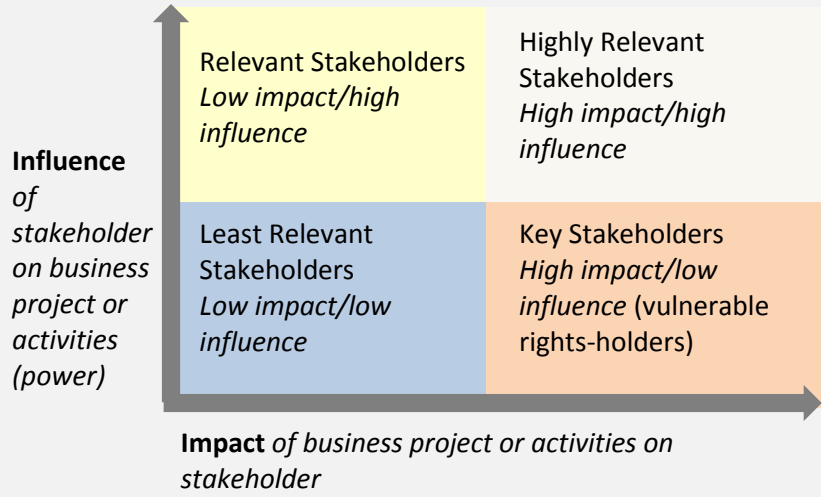
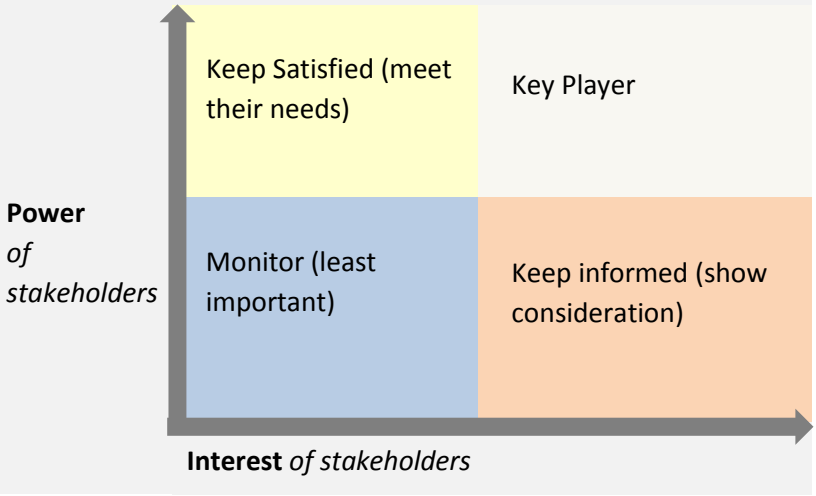


Figure 5: Example of a typical stakeholder power map[75]



In sum, an effort should be made at the outset to identify and contact all stakeholders, including groups or individuals with different or opposing views. When key stakeholders do not agree or cannot participate in the impact assessment for various reasons, it is important to mention this in the final HRIA report to demonstrate that an effort has been made to take into consideration the perspectives of all relevant stakeholders.[76]

B.2.2 ENGAGEMENT WITH RIGHTS-HOLDERS IN PARTICULAR

Engagement and participation opportunities should in the first place prioritise potentially affected rights-holders and/or their legitimate representatives, with particular attention to vulnerable individuals and groups.[77]

Table K, below, provides some examples of different rights-holders as well as considerations for their engagement in HRIA.

Table K: Examples of rights-holders and engagement considerations in HRIA

Rights-holders	Considerations for engagement
Potentially impacted community members These can include residents living near the project, land owners, farmers, indigenous peoples, community associations/ organisations, community or religious leaders, schools, local interest groups etc.; as well as community members living downstream from operations or in the supply chain.	● Identifying the communities affected by a business project or activities requires a good understanding of the local context. ● It is important to consider that not all communities or individuals within a community are affected in the same way. Nor are all community members likely to share the same point of view of a business project or activities. Some may support the business project, while others may oppose it. These different perspectives should be represented and analysed during the assessment. ● It is important to take the time to engage and consult with as many different rights-holders within communities as possible in order to identify precisely who is affected, how and to what degree. It may not always be possible to include everyone at each stage of the assessment or to ensure that all views are represented. In those cases, consultation with legitimate representatives could be a viable solution. If some groups are left out, the reasons for this must be justified and clearly stated in the assessment findings. ● Care should be taken to identify any differences in how impacts are experienced by women, men and children, including through taking gender-sensitive and child-rights approaches to engagement. ● Rights-holders should be engaged directly in the impact assessment process. However, in cases where this is not possible or appropriate it may be necessary to engage through rights-holder

Table K: Examples of rights-holders and engagement considerations in HRIA	
Rights-holders	**Considerations for engagement**
	representatives or representative institutions. Where this is the case, care needs to be taken to try to establish that representatives present a faithful account of rights-holders' views, interests and concerns. In some situations, it may also be appropriate for the HRIA process to provide for the creation of, or capacity building of, representative organisations. ● HRIA engagement strategies should be cognizant of the particular rights to participation and consultation that some community members may be entitled to, for example free prior and informed consent in the case of indigenous peoples, or the particular principles for engagement with children outlined in the Convention on the Rights of the Child (on engaging with specific rights-holders see further section B.3, below).
Workers and trade unions (as their representatives) These include workers presently working for the company in question, employees, former workers, workers in the company's supply chain, outsourced and casual/informal workers. National and local unions or site-level workers' organisations should also be consulted as the representatives	● Workers can provide crucial information about human rights issues in the workplace and may have important information on the functioning of the company. ● Where they exist, independent trade unions should be consulted as the legitimate representative organisations of workers. ● Workers should be directly consulted (individually and/or in groups) to understand their concerns and any actual or potential impacts that they experience. ● Ensure that workers are protected in their anonymity when giving their statement as they might face pressure from other workers or superiors. ● Care should be taken to identify any differences in how impacts are experienced by women and men, including through taking gender-sensitive approaches to engagement. ● Worker representatives may have insights into

Table K: Examples of rights-holders and engagement considerations in HRIA	
Rights-holders	**Considerations for engagement**
of these rights-holders.	potential impacts not only on workers themselves, but also on local communities, since workers often come from these communities. ● To better understand the impacts of a business project or activities on workers, national trade unions federations as well as International Trade Union Federations (e.g. International Trade Union Confederation (ITUC), The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), UNI Global Union, IndustriALL) may also be consulted. ● In countries where trade unions are prohibited by law, it is important to take into consideration the sensitivities regarding this topic and the risks associated with consultations. Assessors should find alternative means to obtain data regarding workers' rights and freedom of association. This could include adaptation of the language regarding freedom of association and trade unions when engaging with workers.
Consumers/clients/ customers/end-users Under this rights-holder group fall those individuals who buy and/or use products and/or services of the company in question. They can include direct and indirect consumers; and consumer protection groups and user groups as representatives of	● Consumers can be adversely affected when a product or service they acquire is of inadequate quality and has negative impacts, e.g. the plastics used to manufacture children's toys contain chemicals that are harmful to the physical development of children. ● Depending on the sector and product/service, consumers or consumer protection groups should be consulted to understand the actual and potential impacts of the business activities on the human rights enjoyment of consumers.

Table K: Examples of rights-holders and engagement considerations in HRIA	
Rights-holders	**Considerations for engagement**
these rights-holders.	
Human rights defenders, including trade union or labour activists	● Human rights defenders concerned about a business project or activities can be at risk of retaliation from repressive host-government agencies, paramilitary groups etc. ● Trade union activists may be at risk of discrimination by employers. ● Human rights defenders are likely to have valuable insights into potential and actual impacts of the business project or activities on workers and communities.

Whilst care should be taken to engage with rights-holders directly, in some circumstances it might not be possible to fully involve all rights-holders in the impact assessment. For example, it may be difficult to reach out to certain rights-holders, especially in situations where there is a lack of trust between rights-holders and the business in question. Another example could be a HRIA in a conflict-affected area where the security of both rights-holders and the assessment team is at stake. Additionally, in countries with repressive governments, interviewing rights-holders might put them at risk.

It is important that the assessment team take all necessary precautions to make sure that the rights-holders who are engaged in a HRIA process are safe. If the risk of engaging rights-holders directly is high, or when direct engagement with rights-holders proves impossible or inappropriate (e.g. when engagement may interfere with certain processes, including collective bargaining or consultation of indigenous peoples conducted by the government), it may be useful to consider alternatives. In such cases, it may be necessary to engage with credible representatives or representative organisations, third parties or interlocutors such as CSOs, trade unions and experts, who may have sufficient knowledge and experience engaging with the rights-holder groups, and can therefore convey the potential concerns related to the business project or activities on their behalf.

Practical reasons, such as financial and time constraints or infrastructural challenges, might also impede participation of some individuals and/or groups in a HRIA process. In some circumstances, certain rights-holders might not be willing to participate, in particular if there have previously been conflicts with the business, and if the HRIA is commissioned by the business. They might also fear

repercussions from the government when giving certain statements. Another challenge is when rights-holders or CSOs experience consultation fatigue or have been disappointed about the outcomes of similar processes. Furthermore, within a community there may be conflicting interests; certain community members may be in favour of a business project or activities, e.g. because they are employed by the company in question and are dependent on their salary, while other community members may oppose the project. There might also be conflicting interests among different rights-holders. Lastly, and critically, no individual should be coerced to take part in a HRIA against her/his will.

In all cases, HRIA practitioners should take care to identify any potential limitations, be transparent about them in the assessment process, and explain the steps that have been taken to overcome them.

With regard to rights-holder representatives, it should be noted that sometimes it is difficult to identify legitimate representatives of rights-holders. An NGO, a member of parliament, or a community leader might state to represent a certain rights-holder group; however, those persons/organisations might be involved in the business project or activities and/or not represent the opinions of the community members who they claim to represent. Understanding the local context is essential for understanding such dynamics. When consulting with indigenous communities it is important to understand the cultural and organisational characteristics of indigenous peoples and the hierarchy of authorities in order to engage with the right people at the right time.

Box 24, below, outlines some further potential challenges for HRIA practitioners in conducting effective stakeholder engagement with rights-holders, as well as offers some suggestions for how these might be addressed.

Box 24: Challenges for HRIA practitioners in conducting effective stakeholder engagement with rights-holders

The presence of company representatives in meetings with rights-holders

As a HRIA practitioner, one should be independent and have full control over the interview process of rights-holders, and should be able to engage with rights-holders without interference e.g. from company representatives. However, there may be circumstances where the company's headquarters or local team commissioning the assessment does not agree to it and/or where the impact assessment team will require some assistance and presence from the company because of security or logistical concerns.

Even if the company representative is not present during the meeting, the HRIA practitioner/team should be aware of the perceptions of stakeholders. For instance, if the practitioner/team are seen by community members dining with company representatives or being driven in the company vehicle, this may be

negatively perceived by the community. Additionally, having the company representative close by but merely staying outside the meeting may not create a safe space for rights-holders.

On the other hand, in some circumstances, the presence of the company representative for some of the consultations might be an advantage as it allows her/him to hear directly from rights-holders on what their experiences are rather than reading it from a report. This can be invaluable in sensitising company representatives and incentivising them to act on the HRIA findings. In the case of ex-ante assessments, when the business project or activity has not been concretised, this might be especially important. Additionally, the presence of a company representative at the beginning of a focus group discussion with a group of community members can be vital to engage stakeholders who suffer consultation fatigue, by demonstrating that the company is committed and clearly communicating the planned follow-up action.

It should, however, be acknowledged that in a company-commissioned HRIA, the relation between the assessor(s) and company representative(s) will inherently be close given that the HRIA is commissioned by the company, and this proximity could lead to criticism. Specific recommendations to be considered by HRIA practitioners to ensure and demonstrate independence include:

- Agreeing with the company representative(s) beforehand on the respective roles of the assessment team and the company representative(s) in stakeholder engagement activities
- Informing the people engaged with clearly about who is on the assessment team and who is the company representative(s), and explaining their respective roles in the impact assessment process; and
- Ensuring that the majority of stakeholder engagement activities occur without any company representative(s) present. This will also help to validate the findings.

The presence of government representatives in meetings with rights-holders

As mentioned, HRIA practitioners should be independent from company and government stakeholders and have full control over stakeholder engagement processes in HRIA, without interference. In some cases, however, government representative(s) insist on being present during the HRIA or attending interviews, for example for security reasons. In these cases, it should be explained to the government representative(s) that they can introduce themselves and their role as well as the purpose of the assessment, but cannot be present during the interviews themselves. However, there may be cases where asking government representatives to leave could lead to them no longer supporting the presence of the HRIA team and this could undermine the entire

process. This could be the case in areas where there is ongoing conflict or where the military is powerful. In such cases it may be preferable to allow the government representatives to be present rather than to abandon the HRIA process altogether; however, the assessors should take this into consideration, for example by leaving out any sensitive questions to rights-holders which could lead to retaliation. The assessors should try to obtain such information through other means, such as through representatives or off-site interviews at another time where there is no government presence. Finally, all such limitations must be clearly explained and justified in the HRIA report.

B.2.3 ENGAGEMENT WITH DUTY-BEARERS

The human rights framework places particular emphasis on accountability, including through the recognition of rights-holders' entitlements and the corresponding obligations of duty-bearers to uphold rights. It is therefore important that duty-bearers and their obligations are identified in HRIA stakeholder analysis and engagement. This includes recognising and differentiating between the expectation that businesses respect human rights, and State duty-bearers' obligations to respect, protect and fulfil human rights. It should be noted that duty-bearers can also be rights-holders; for example in the case of company managers, who can be held accountable for human rights impacts, but can be negatively impacted themselves as well.

Table L, below, provides an illustrative list of the different types of duty-bearers that should be engaged in HRIA, including points for consideration when engaging with them. Additionally, Box 25 elaborates on engagement with company representatives and engagement with host-government representatives in HRIA.

Table L: Examples of duty-bearers and engagement considerations in HRIA

Duty-bearers	Considerations for engagement
Host-government actors These could include national authorities, local government representatives of specific government agencies or departments, policymakers and	● In certain contexts, negative impacts arise through relationships with government actors. Therefore, it is important to identify such relationships. For example: the company in question could be in a joint-venture with a government body; the government could have granted access to land where people have been forcefully evicted; or public security forces stationed to protect company assets may be engaged in human rights abuses.

Table L: Examples of duty-bearers and engagement considerations in HRIA	
Duty-bearers	**Considerations for engagement**
regulators.	● Engagement with host-government actors can take place at various stages in the impact assessment and can have advantages as well as disadvantages. ● Government authorities can be useful to consult as they have access to documents, contracts, concessions, maps, and so forth, which may be relevant for the impact assessment. ● Access to government authorities might be difficult, especially when the government is not favourable on the topic of human rights. In such cases it can be helpful to ask UN agencies like the ILO and UNICEF to facilitate contact in order to get access.
Company representatives These include company representatives at the Head Office and country operations level, including top management, middle-management, and various business unit managers, departments and subject matter experts.	● Dialogue with internal stakeholders from the company can provide a good understanding of the nature of the business project or activities, which can help to understand and potentially predict human rights consequences. ● Engagement with internal company staff is also an excellent opportunity to gain buy-in for changes that may be needed as an outcome of the impact assessment. Make sure to include staff members from different departments and provide anonymity. ● Local management should be involved to ensure ownership, capacity and resources for follow-up at the project- or site-level.
Business partners, including joint-venture partners, suppliers and subcontractors	• It is important to identify any business partners involved in or linked to the business activities through business relationships, and the key people within these businesses to understand how they might contribute to or are directly linked to human rights impacts; as well as consider their processes for identifying and managing impacts.

Table L: Examples of duty-bearers and engagement considerations in HRIA	
Duty-bearers	**Considerations for engagement**
	• Suppliers and subcontractors hired by the business to perform certain jobs, as well as the suppliers who sell goods and services to the company should also be engaged.
Investors and shareholders	● Investors and shareholders in companies should also be considered duty-bearers. ● Investors have the responsibility to respect human rights and undertake appropriate human rights due diligence. The UN Guiding Principles and the OECD Guidelines for Multinational Enterprises both consider investors as entities that have a business relationship and can therefore be linked to adverse impacts of companies they invest in. ● Investors and shareholders have an interest in the human rights track record of the businesses they invest in; therefore, it is important to consult them and hear their views. They have often gathered social and environmental data with regard to the business project or activities in question, which can be useful information for the assessment team.

Box 25: Engaging with company representatives and government actors

Engaging with company representatives

In externally facilitated HRIA, company representatives should be consulted at the headquarters as well as at the operations-level. When conducting stakeholder interviews in the area of operations, it can be beneficial to consult with relevant business representatives early in the process to get a better understanding of the business's operations and country context. This may be helpful to predict potential impacts before speaking to affected rights-holders and other stakeholders. On the other hand, it can also be beneficial to engage with company representatives after having consulted with affected rights-holders. Thus, the assessment team is in the position to ask more targeted questions related to specific priority issues to company representatives based on the findings from interviews with rights-holders. As opinions can vary within

the company, it is also important to meet with people from various departments or business units. The person in charge of Human Resources will share a different perspective than the CSR manager, while the Operations Manager may have yet another view. Furthermore, the assessment team should provide company representatives with the opportunity to speak privately so that they may express their opinion freely, without fear of retaliation.

Overall, these nuances indicate that stakeholder engagement in HRIA should be an iterative process and occur not just once, but throughout the impact assessment process.

Engaging with government actors

The assessment team will need to engage with government actors at various stages of the impact assessment. In countries where the government may not be favourable towards organisations working on human rights, direct engagement with the government may pose a challenge. In some cases, the government could perceive HRIA of a business project or activities as an assessment of government policies and practices rather than of a business's impacts. Points to take into consideration include:

- Consider how the impact assessment and its purpose is presented to government authorities. Assess what are the risks of not obtaining a visa and consider whether it is better to apply for a visa in the organisations' name, as an individual, or in the name of the company who has commissioned the HRIA. When considering the latter option, bear in mind the ethical considerations of posing as a company representative rather than an independent assessor.
- In some countries, local permits or local visas are required to enter as a foreigner. The host-government may not appreciate foreign assessors traveling to certain high-risk areas, which could lead to denial of local visa permits.
- Engagement with national and local government entities also takes place at other stages of the assessment. Government officers should be consulted in the assessment process. They may possess specific subject matter expertise, relevant company information, and have access to specific regulations and policies, maps, environmental reports, information on concessions, and so forth. In certain contexts and cultures it is also necessary to meet with national-level government actors or local government officers as part of an impact assessment as a matter of courtesy. Where it is difficult to get direct access to ministries and local government officials UN agencies such as the ILO, UNDP and UNICEF may be able to facilitate contact.

B.2.4 ENGAGEMENT WITH OTHER RELEVANT PARTIES

In addition to the above rights-holders and duty-bearers, there are a number of other relevant parties who can inform HRIA assessment teams and as such should be engaged in the process. These stakeholders may include individuals whose rights are not impacted by the project, but who may nevertheless usefully inform the HRIA, for example representatives from civil society, experts or journalists; and/or organisations that hold relevant and important information for the HRIA. It is particularly important to engage human rights actors as part of the HRIA. These could include: NGOs and/or CSOs working on specific human rights issues; intergovernmental agencies such as the Office of the High Commissioner for Human Rights in the specific country, or other agencies working on specific rights issues such as the ILO on labour rights, or UNICEF on children's rights; national human rights institutions; and independent human rights experts. Involving such actors in HRIA can help to ensure that essential human rights information and analysis from different perspectives is included in the assessment.

Examples of some other relevant parties for engagement in HRIA are listed in Table M, below.

Table M: Examples of other relevant parties and engagement considerations in HRIA

Stakeholder group	Considerations for engagement
Civil society organisations (CSOs) These can include international and local non-governmental organisations (NGOs), community-based organisations, faith-based organisations, labour unions, etc.	● Engaging with CSOs can help to understand the human rights legal framework and landscape relevant for the project. ● They can provide insights on specific human rights topics. ● They can facilitate contact with, or act as interlocutors, to potentially affected rights-holders.
International organisations These can include UN agencies such as the International Labour Organisation, United Nations Development Programme, UNICEF, etc. Regional bodies such as the European Union,	● International organisations can provide insights on specific topics relevant for the impact assessment, e.g. UNICEF on children's rights or the ILO on labour issues. ● The ILO might be useful for helping to connect with local governments and/or trade unions in the case of the ILO

Table M: Examples of other relevant parties and engagement considerations in HRIA	
Stakeholder group	**Considerations for engagement**
African Union, Association of Southeast Asian Nations, as well as development banks such as the World Bank, etc.	tripartite structure. ● These organisations might be able to provide data in the scoping phase as well as for developing a baseline.
Home-government actors These could include embassies in the host-country.	● Embassies of the host-country of the company in question can provide useful information as they can be strongly connected to the company and/or have existing networks for engagement with the company.
Public security	● Public security forces may be able to provide useful information about the security situation in the project area, which could be particularly relevant for projects in conflict-affected regions.
National human rights institutions (NHRIs) A NHRI is an autonomous body established by the State with a constitutional or legislative mandate to promote and protect human rights; institutional forms commonly adopted include commissions, advisory institutes, ombudsman offices and public defenders' offices.	● The NHRI of the country of operation may provide valuable information on the general human rights situation in the country or on specific regions, projects or affected rights-holder groups. ● NHRIs may also be able to provide support in identifying and getting in touch with affected rights-holders, in particular vulnerable or marginalised individuals and groups.
Experts and journalists These could include subject matter experts including academics and journalists on specific human rights issues or experts related to the business sector or technical	● Engaging with experts can help to provide insights on specific topics relevant to the sector, country or assessment in general (for example water or environmental experts, mining experts, etc.) ● Journalists can serve as an important source of information on issues related to

Table M: Examples of other relevant parties and engagement considerations in HRIA	
Stakeholder group	**Considerations for engagement**
issues.	the business project or activities. They can also be helpful in identifying other stakeholders. When engaging with journalists, clear agreements have to be made between the assessment team and the journalist on the purpose of the engagement; whether the journalist may publish something, or whether she/he is only being consulted for information gathering purposes, etc.
Industry These include industry peers, competitors, as well as industry associations.	● Other companies in the sector and industry associations can be consulted in order to better understand the sector and human rights issues associated with the sector and/or the particular region of operation. ● It is worth mentioning so-called sector-wide impact assessments (SWIA), which look at the impacts of a sector as a whole rather than the impacts of one company. Such assessment reports can be a useful reference for a project-level HRIA.[78] ● Industry associations sometimes also provide detailed guidance and good practices. ● In order to have a bigger impact in mitigating impacts, collective action by the sector may be necessary. Therefore, it is important to involve industry peers at an early stage.

B.3 CONSIDERATIONS FOR ENGAGING WITH SPECIFIC RIGHTS-HOLDERS

A human rights-based approach to impact assessment requires that engagement of rights-holders is conducted in a **non-discriminatory manner** and requires that the **prioritisation of especially vulnerable or marginalised individuals or groups**

(e.g. women, elderly, children and youth, minorities and indigenous peoples) is taken into consideration.

In addition to the cross-cutting right and principle of non-discrimination, as flagged above, there are a number of rights-holder groups who enjoy specific protection under international human rights law, including children, women, indigenous peoples, and persons with disability. This is based on the recognition that specific individuals may have particular characteristics that warrant attention and protection. For example, the particular needs and rights of women with regard to reproductive health, the fact that children's bodies react differently to environmental pollutants, or the special relationships of indigenous peoples to their lands, territories and waters. It is also based on a recognition that such rights-holders may be subject to systemic and entrenched discrimination in certain contexts. As such, international human rights standards and principles recognise that there is a need to ensure not only 'formal' equality, i.e. treating people the same, e.g. making sure all people have the same access to employment opportunities, but also to take 'special measures' to foster 'substantive' equality, i.e. recognising that equal access does not always equate to equal opportunities, and e.g. that where systemic discrimination exists that this needs to be addressed through affirmative action or positive measures.

In the context of HRIA, it is therefore important that stakeholder engagement facilitates:

- Taking into account the particular participation rights that specific rights-holder groups may be entitled to; and
- Taking steps to identify and address discrimination, vulnerability and marginalisation in engagement processes.

Box 26: Defining vulnerability, marginalisation and discrimination

- **Vulnerability** of individuals or groups refers to being "at a higher risk of being unable to anticipate, cope with, resist and recover from project-related risks and/or adverse impacts […]. Vulnerable individuals or groups may include women, children, the elderly, the poor, ethnic, religious, cultural or linguistic minorities, or indigenous groups."[79]
- **Marginalisation** can be defined as "a form of acute and persistent disadvantage rooted in underlying social inequalities."[80] Moreover, "poverty, gender, ethnicity and other characteristics interact to create overlapping and self-reinforcing layers of disadvantage that limit opportunity and hamper social mobility."[81] Essentially, marginalisation describes those individuals or groups that are limited or even excluded (i.e. extreme marginalisation or social exclusion) from certain benefits that others i.e. non-marginalised persons in society have access to and benefit

from. This can include certain rights, opportunities, and resources, which are not available to those who are marginalised. Individuals or groups that may be marginalised in certain contexts can include women and girls, minorities, indigenous peoples, rural populations, migrants, refugees and internally displaced people, persons with disabilities etc. Such exclusion can limit the participation of marginalised individuals in society in terms of political, economic, and/or social dimensions.

- **Discrimination,** according to the UN Human Rights Committee overseeing the International Covenant on Civil and Political Rights, "should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms."[82]

'Vulnerability' or 'marginalisation' is not the same as discrimination, however, often vulnerability can be caused or exacerbated by discrimination. See Box 26, above, for definitions of vulnerability, marginalisation and discrimination. Vulnerability can stem from an individual's status or characteristics (such as race, colour, sex, language, religion, national or social origin, property, disability birth, age or other status) or from their circumstances (such as poverty or economic disadvantage, dependence on unique natural resources, illiteracy, ill health). These vulnerabilities may be reinforced through norms, societal practices, or legal barriers. See Table N, below, for some examples of factors that may contribute to vulnerability.

Vulnerable or marginalised individuals can experience adverse impacts more severely than others. They may require specific consultation and mitigation measures to ensure that they do not face adverse impacts in a disproportionate manner. Specific methods of engagement can help in identifying, avoiding, mitigating and remediating such impacts.

Table N: Examples of factors contributing to vulnerability

Factors	**Probable implications**
Discrimination in access to employment and equal wages	High levels of unemployment and inadequate standard of living
Restrictions on land ownership; land tenure	High levels of landless and homeless people; high crime rates; low incentives for investment;

insecurity	inadequate standard of living
Inaccessibility or inadequate level of public services or employment	Lower health levels and life expectancy; higher levels of child and maternal mortality; higher rates of unemployment; lower levels of education; less trust in government institutions
Less access to education and higher rates of illiteracy across generations	Low employment skills; less capability to access and participate in political affairs; inadequate standard of living; high levels of social insecurity
Unequal or unfair treatment before the law; poor law enforcement	Weak rule of law; social insecurity; high crime rates; less trust in government institutions; heightened risk of third party human rights violations; weaker social cohesion; lower human capital. This may have an impact on decision-making capacity and participation
Poor political representation and low participation in democratic processes	Undemocratic development decision-making; increased inequality; less trust in government and other institutions
Source: Drawing on: United National Development Programme (2010), *Marginalised Minorities in Development Programming: A UNDP Resource Guide and Toolkit,* New York: UNDP.	

Vulnerable or marginalised individuals or groups may be illiterate, physically handicapped or not accustomed to certain modes of engagement (e.g. certain languages, workshop formats, etc.) that would typically be used in stakeholder engagement. Local context and human rights experts can play an important role in designing appropriate engagement methods for these individuals and groups, which can include children, women, indigenous peoples, minorities and workers. It should be noted that engaging with vulnerable or marginalised individuals and groups may require more time and resources, which should be anticipated and taken into consideration in the design of HRIA.

Table O, below, describes a number of areas for attention that should be taken into consideration in order to ensure that engagement with specific rights-holders, including individuals or groups who may be vulnerable or marginalised, is conducted in an appropriate and meaningful manner.

Table O: Engagement with specific rights-holders[83]					
Rights-holders group	**Example points of discrimination, vulnerability or marginalisation in the context of business projects or activities**	**Example points of consideration when engaging with rights-holder group**	**Treaty protecting the rights-holder group / giving particular participation rights**	**Existing tools and resources for the engagement of specific rights-holders**	**Examples of organisations, experts or proxies**
Children and Young people	● Child labour ● Product design and advertising ● Behaviour of staff/ subcontractors toward children ● Community resettlement ● Relocation of schools ● Pollution of water ● Scarcity of food	● Conduct consultation with children in coordination with child participation experts to facilitate participation respecting ethical standards ● Design process so it is accessible, inclusive and meaningful for children ● Ensure voluntary participation in child-friendly environment	● Convention on the Rights of the Child (CRC)	● ILO Programme on the Elimination of Child Labour ● UNICEF´s tool on engaging stakeholders on children´s rights[84] ● UN Committee on the Rights of the Child (2013), *General Comment No.16 on State obligations regarding the impact of the*	● Parents/carers ● Professionals in contact with children (e.g. teachers, doctors, health workers, lawyers, child protection and/or social workers). ● Child protection experts

Table O: Engagement with specific rights-holders[83]					
				business sector on children's rights ● Business and Human Rights Resource Centre Business and Children Portal	
Women and girls	● Women and girls are often disproportionately adversely affected in the context of business projects and activities ● Disproportionately affected by resettlement due to no recognised land rights/titles for women in many traditional societies, and thus exclusion from national compensation schemes	● Consult women separately in a gender sensitive manner ● Include women HRIA team members ● Include HRIA team members with knowledge of the particular rights and experiences of women and girls ● Exclude male team members at interviews ● Provide safe and comfortable space for interviews	● Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	● International Labour Organisation Bureau for Gender Equality ● UN Women ● UN Global Compact, Women's Empowerment Principles ● Sector specific resources[85]	● UN Women ● Women's rights NGOs ● Women's associations

Table O: Engagement with specific rights-holders[83]					
	● Increased (domestic) workload because of environmental impacts / absent men working for company ● Health and security impacts due to in-migration of male workforce in community, including sexual intimidation, harassment and/or rape ● Violence, including sexual violence, associated with increased use of alcohol and drugs in the community due to company presence ● Lack of consultation and participation of female-headed	● Include particular vulnerable sub-groups (e.g. female heads of household, children, etc.)			

Table O: Engagement with specific rights-holders[83]					
	households				
Indigenous peoples	• Resettlement and relocation • Special connection of indigenous peoples to land, water, and other natural resources, which might be polluted/changed by a business project or activities • Destruction of tangible and intangible cultural heritage	• Include HRIA team members with knowledge of indigenous peoples´ rights and local context (including any regulatory requirements for engagement specific to indigenous peoples) • Respect indigenous representative institutions; be sure to understand the cultural and organisational characteristics of indigenous peoples and hierarchy of authorities in order to engage with the right people in the	• UN Declaration on the Rights of Indigenous Peoples (UNDRIP) • ILO Convention No. 169 • Indigenous peoples rights under customary law (e.g. intellectual property rights and rights of indigenous peoples)	• IFC Performance Standards (2012), *Performance Standard 7: Indigenous Peoples* • International Working Group for Indigenous Affairs • Sector specific resources[86]	• UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples International, regional and local indigenous peoples rights organisations include e.g.: • International Working Group for Indigenous Affairs (IGWIA) • Minority Rights Group International • Survival International, • Cultural Survival • Amazon Watch

Table O: Engagement with specific rights-holders[83]					
		right order and manner ● Use appropriate language for the context			
Workers and trade unions	● Forced labour ● The vulnerability of migrant workers and/or undocumented workers ● Freedom of Association ● Discrimination towards trade union members	● Make sure to meet different categories of workers and trade union leaders (e.g. by gender, position, unionised vs. non-unionised etc.) ● Include informal workers in HRIA ● Fix a time that suits their work schedule ● Consider to interview workers outside of company premises and outside working hours	● ILO Core Conventions (No. 87, 98, 39, 105, 138, 182, 100, 111)	● Business and Human Rights Resource Centre - labour rights	● UN Special Rapporteur on the rights to freedom of peaceful assembly and of association ● International Labour Organisation ● Trade union confederations ● Labour rights groups
Minorities (national, ethnic,	● Marginalised in society or by law ● At risk of becoming	● Minorities may speak another language than the	● International Covenant on Civil and Political	● UNDP Marginalised Minorities in	● UN Special Rapporteur on minority issues

Table O: Engagement with specific rights-holders[83]					
linguistic, religious or political)	victims of violence, harassment or discrimination, e.g. in employment and access to basic services	national language; engagement with minority groups should be conducted in a language they understand and feel most comfortable communicating in ● Engagement should be culturally appropriate ● Given the different characteristics of specific minority groups, it can be useful to include an anthropologist in the team who has expertise in engaging with the minority group in question	Rights (Article 27) ● United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities	Development Programming: A UNDP Resource Guide and Toolkit[87]	● NGOs such as Minority Rights Group International or Society for Threatened Peoples International) ● UN independent expert on minority issues ● NGOs focusing on specific minority groups ● Associations of people from specific minorities
People with disabilities	● Societal or cultural discrimination ● Engagement can be challenging as persons with	● When engaging with people with physical or psychological disabilities, ensure that the location for	● Convention on the Rights of Persons with Disabilities	● Business and Human Rights Resource Centre – disability discrimination	● UN Special Rapporteur on the rights of persons with disabilities ● NGOs such as

Table O: Engagement with specific rights-holders[83]					
	disability may be 'invisible' due to social taboos ● Their physical and/or psychological conditions may require specific engagement methods	meetings is accessible and measures are taken to make engagement meaningful (such as providing a sign language interpreter, having documents available in braille, etc.)			International Disability Alliance and Handicap International ● UN Committee on the rights of persons with disabilities ● ILO Global Business and Disability Network
Elderly people	● Their physical and/or psychological conditions may require specific engagement methods	● When engaging with elderly people, ensure that the location for the meetings is accessible to them (for example wheelchair friendly access).	● United Nations Principles for Older Persons ● ILO Convention No. 128 concerning Invalidity, Old-Age and Survivors' Benefits	● UN OHCHR- Human Rights of older persons ● Independent Expert on the enjoyment of all human rights by older persons	● NGOs such as HelpAge International ● Caregivers ● Elderly people associations
Migrants, refugees and displaced persons	● Insecure legal status ● At risk of abuse and discrimination ● Due to their status they might face difficulties in	● Due to their insecure legal status, individuals belonging to this rights-holder group, especially those without a	● International Convention on the Protection of the Rights of All Migrant Workers and Members of	● Business and Human Rights Resource Centre – Migrant and immigrant workers	● UN Special Rapporteur on the human rights of migrants ● NGOs working on migrant issues such as

Table O: Engagement with specific rights-holders[83]					
	accessing basic services	residence permit, may be hesitant to speak openly, fearing that they may be arrested; it is important to provide a safe space when engaging with migrants, refugees and/or displaced persons ● While for engagement with rights-holders is in general imperative to keep identities of interviewees confidential, for this group confidentiality requires extra special attention	Their Families, 18 December 1990 ● ILO, Migration for Employment Convention (Revised), 1949 ● ILO, Recommendation No. 86 concerning Migration for Employment (Revised 1949) ● ILO, Convention No. 143 concerning Migrant Workers ● ILO, Recommendation No 151 concerning Migrant Workers (1975) ● Convention relating to the Status of Refugees	● UNHCR – The UN Refugee Agency	Migrants Rights International, Internal Displacement Monitoring Centre, ● International organisations such as The Office of the United Nations High Commissioner for Refugees (UNHCR) - The UN Refugee Agency, UN Office for the Coordination of Humanitarian Affairs (OCHA), International Organization for Migration (IOM), International Committee of the Red Cross (ICRC) ● UN Special Rapporteur on the human rights of migrants ● UN Committee on Migrant Workers

Table O: Engagement with specific rights-holders[83]					
Lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals	• May experience discrimination and exclusion • They can become victims of violence and harassment both in the workplace and in the community	• Assessors should be appropriately trained on LGBTI issues when engaging with them • Ensure that LGBTI people feel comfortable to provide information by ensuring that the collected data remains confidential	• The Yogyakarta Principles	• UN OHCHR - Combating discrimination based on sexual orientation and gender identity	• UN Special Rapporteur Combating discrimination based on sexual orientation and gender identity • Regional, national and local LGBTI organisations, • International NGOs such as Amnesty International, Human Rights Watch • The International Gay and Lesbian Human Rights Commission • International Lesbian, Gay, Bisexual, Trans and Intersex Association.
Persons living with HIV & AIDS or other diseases	• May experience discrimination and marginalisation within society • They may face health related	• Assessors should be appropriately trained and sensitive to health issues related to HIV & AIDS or other	• International Covenant on Economic, Social and Cultural Rights: art. 12 • International	• World Health Organisation	• UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical

Table O: Engagement with specific rights-holders[83]					
	physical and/or psychological conditions that may require specific engagement methods	diseases depending on the persons' conditions when engaging with them ● Clear understanding prior to consultation on the local context: e.g. are there workplace health and safety issues that put such individuals more at risk? Discuss issues such as hiring discrimination or companies requiring personal health information during job applications and/or interviews, which can be a form of discrimination	Convention on the Elimination of All Forms of Racial Discrimination: art. 5 (e) (iv) ● Convention on the Elimination of All Forms of Discrimination against Women: arts. 11 (1) (f), 12 and 14 (2) (b) ● Convention on the Rights of the Child: art. 24 ● Convention on the Rights of Persons with Disabilities (2006): art. 25.		and mental health ● International health NGOs such as Medecins Sans Frontieres, The International Red Cross and Red Crescent Movement, ● Community health organisations ● Caregivers

GLOSSARY

Adverse human rights impact: when an action or omission removes or reduces the ability of an individual to enjoy her or his human rights.

Area of impact: refers to the geographic and other scope of the actual and potential human rights impacts of the business project or activities that are to be considered in the human rights impact assessment; it includes impacts that are caused by the business, that the business contributes to, and that the business is directly linked to through its operations, products or services through contractual and non-contractual business relationships. For example, it would include impacts in the immediate geographic vicinity, in the supply chain, related to ancillary infrastructure, and on downstream communities.

Baseline: An evidence-based description of human rights enjoyment in practice, as compared with rights in international human rights instruments and domestic law, at a specific point in time. It consists of information about environmental, socio-economic, political and other data, based on which actual and potential human rights impacts of the business project or activities can be assessed.

Business project or activities: Business operations, for example, the mine site, oil & gas plant, factory, hydropower dam, hotel and so forth, but also business activities such as a company sourcing raw materials for use in products, or the activities of service industries; operated and/or conducted by a publicly owned or privately owned business.

Business relationships: contractual and non-contractual relationships that a business has with business partners, entities in its value chain and any other non-State or State entity directly linked to its business operations, products or services.

Complicity: the fact or condition of being involved with others in an activity that is unlawful or morally wrong. Complicity in criminal law refers to being legally accountable, or liable for a criminal offense, based upon the behaviour of another. In a non-legal context, human rights organisations and activists, international policy makers, government experts and businesses might use the term to describe what they view as business involvement in human rights abuses committed by a third party, or benefiting from the actions of a third party.

Corporate responsibility to respect: a business's responsibility to avoid infringing on the human rights of others and to address adverse human rights impacts with which it is involved, including through exercising human rights due diligence; an international norm of expected conduct.

Corporate social responsibility: Corporate social responsibility (CSR) refers to companies taking responsibility for their effects on society and the environment. The term is often applied to efforts taken on a voluntary basis, rather than legislation or regulation.

Duty-bearers: are actors who have human rights duties or responsibilities towards rights-holders. States are the primary human rights duty bearers—they have a legal obligation to *respect, protect* and *fulfil* human rights. Businesses have a *responsibility to respect* human rights. Examples of duty-bearers in a business context can include: a company operating a project or conducting business activities; business suppliers and contractors; joint-venture or other business partners; and government actors such as local or national government authorities.

Ex-ante: In advance, i.e. before a business project or activities commence; a prediction about the likely impacts of a planned intervention.

Ex-post: After a business project or activities have already begun; ex-post assessments are in effect evaluations of the impacts of a particular project.

Gender analysis: a process to understand the relationships between women and, their access to and use of resources, their activities, and the constraints they face relative to each other. A gender analysis is important to understand the different patterns of involvement, decision-making, behaviour and activities that women and men have in community, economic, social and legal structures.

Human rights-based approach: a conceptual framework that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. The approach rests on three core components outlined in the United Nations Stamford Common Understanding: (i) international human rights standards; (2) the application of human rights-based principles, including in processes; and (3) accountability through the rights-holder and duty-bearer framework.

Human rights due diligence: a process by which a business can identify, prevent, mitigate and account for how it addresses the adverse human rights impacts with which it is involved.

Human rights impact assessment: a process for identifying, understanding, assessing and addressing the adverse effects of a business project or activities on the human rights enjoyment of impacted rights-holders such as workers and community members.

Impact mitigation and management: the design and implementation of measures to address impacts (through prevention, mitigation and remediation); including resourcing for the implementation of impact mitigation measures and monitoring of their effectiveness.

Indicators: in the human rights context, are specific information (quantitative and/or qualitative) on the state or condition of an object, event, activity or outcome that can be related to internationally recognised human rights norms and standards. They can be used to measure human rights impacts in that they

describe and compare situations, which can help with early impact identification as well as with measuring change over time.

Leverage: where a business has the ability to effect change in the practices of another entity that causes harm; a business's ability to influence the behaviour of others. For example, through contractual requirements, dialogue, and/or multi-stakeholder initiatives and approaches.

Other relevant parties: individuals or organisations (at local, regional and international levels) whose knowledge or views could assist in the assessment of the human rights impacts. For example: human rights mechanisms; subject matter experts; intergovernmental organisations; academia; national human rights institutions; non-government and civil society organisations; and rights-holder representatives or representative organisations.

Rights-holders: all human beings are human rights-holders. In the context of human rights impact assessment the focus is on those rights-holders who are actually or potentially adversely affected by the business project or activities. Organisations or entities, such as trade unions or religious institutions, are not human rights-holders, but may act in a representative capacity. Examples of rights-holders whose human rights can be impacted by business projects or activities include: local community members (including women and men, vulnerable individuals and groups, downstream, trans-boundary or neighbouring communities); employees; contractor and supply chain workers; and consumers.

Risk: the probability of an event occurring; non-technical risks relate to the managerial, legal, social and political issues of a business project or activity, whereas the technical risks are the physical, structural, engineering and environmental aspects.

Remediation/remedy: refer to both the process of providing access to remedy for an adverse human rights impact and the substantive outcomes that can counteract the adverse impact; these may take a range of forms, such as apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions, as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.

Scoping: an initial consideration of the business project or activities, the human rights context and the identification of relevant stakeholders and identification of human rights potentially affected, to set the parameters for the impact assessment.

Stakeholder: a person, group or organisation with an interest in, or influence on, a business project or activity, as well as those potentially affected by it. Relevant stakeholders for the assessment of human rights impacts include affected rights-holders, duty-bearers and other relevant parties.

FURTHER RESOURCES

The UN Guiding Principles and OECD Guidelines

Office of the United Nations High Commissioner for Human Rights (2012), *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide,* New York and Geneva: United Nations.

Organisation for Economic Co-operation and Development (2011), *OECD Guidelines for Multinational Enterprises*, Paris: OECD Publishing.

United Nations Human Rights Council (2011), *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, A/HRC/17/31.

United Nations Human Rights Council (2007), *Human rights impact assessments – resolving key methodological questions*, A/HRC/4/74.

Human Rights Impact Assessment Guidance and Tools

Abrahams, Désirée and Yann Wyss (2010), *Guide to Human Rights Impact Assessment and Management*, Washington: International Finance Corporation, UN Global Compact and International Business Leaders Forum.

Danish Institute for Human Rights (DIHR) and IPIECA (2013), *Integrating human rights into environmental, social and health impact assessments: A practical guide for the oil and gas industry,* IPIECA and DIHR.

Hill, Christina (2009), *Women, communities and mining: The gender impacts of mining and the role of gender impact assessment*, Melbourne: Oxfam Australia.

Lenzen, Olga and Marina d'Engelbronner (2009), *Guide to Corporate Human Rights Impact Assessment Tools,* Utrecht: Aim for human rights.

Natour, Faris and Jessica Davis Pluess (2013), *Conducing an Effective Human Rights Impact Assessment*, London: BSR.

Nomogaia (2012), *Human Rights Impact Assessment: A toolkit for practitioners conducting corporate HRIAs,* Denver: Nomogaia.

Norwegian Agency for Development Cooperation (2001), *Handbook in Human Rights Assessment: State Obligations, Awareness and Empowerment*, Oslo: NORAD.

Rights & Democracy (2011), *Getting it Right: Human Rights Impact Assessment Guide.* [online]. Available from: http://hria.equalit.ie/en/index.html.

Social Impact Assessment Guidance

Franks, Daniel (2012), *Social impact assessment of resource projects,* International Mining for Development Centre, University of Queensland and University of Western Australia.

Vanclay, Frank, Ana Maria Esteves, Ilse Aucamp and Daniel M. Franks (2015), *Social Impact Assessment: Guidance for assessing and managing the social impacts of projects*, Fargo ND: International Association for Impact Assessment.

Literature on Human Rights Impact Assessment

Beco, Gauthier de (2009), *Human Rights Impacts Assessments*, Netherlands Quarterly of Human Rights, 27:2, 139–166.

Boele, Richard and Christine Chrispin (2013), *What directions for human rights impact assessments?,* Impact Assessment and Project Appraisal*,* 31:2, 128-134.

Gonzalez, Alejandro (2014), *Evaluating the human rights impact of investment projects: Background, best practices, and opportunities,* Project on Organizing, Development, Education, and Research (PODER).

Gotzmann, Nora (2014), *Human rights and impact assessment: Conceptual and practical considerations in the private sector context,* Matters of Concern Human Rights Research Paper Series No. 2014/2, Danish Institute for Human Rights.

Harrison, James and Mary-Ann Stephenson (2010), *Human Rights Impact Assessment: Review of Practice and Guidance for Future Assessments*, Scottish Human Rights Commission.

Harrison, James (2010), *Measuring human rights: Reflections on the practice of human rights impact assessment and lessons for the future,* Legal Studies Research Paper No. 2010-26, University of Warwick School of Law.

Harrison, James (2011), *Human Rights Measurement: Reflections on the Current Practice and Future Potential of Human Rights Impact Assessment*, Journal of Human Rights Practice, 2:2, 162-187.

Harrison, James (2013), *Establishing a meaningful human rights due diligence process for corporations: learning from experience of human rights impact assessment*, Impact Assessment and Project Appraisal, 31:2, 107-117.

Kemp, Deanna and Frank Vanclay (2013), *Human rights and impact assessment: clarifying the connections in practice*, Impact Assessment and Project Appraisal, 31:2, 86-96.

Oxfam America and Rights and Democracy (2010), *Community-based human rights impact assessments: Practical lessons,* Report from an international meeting, Canada.

Salcito, Kendyl et. al. (2013), *Assessing human rights impacts in corporate development projects*, Environmental Impact Assessment Review, 42, 39-50.

Walker, Simon (2009), *The Future of Human Rights Impact Assessments of Trade Agreements,* Antwerp: Intersentia.

Watson, Gabrielle, Irit Tamir and Brianna Kemp (2013), *Human rights impact assessment in practice: Oxfam's application of a community-based approach*, Impact Assessment and Project Appraisal*,* 31:2, 118-127.

World Bank and Nordic Trust Fund (2013), *Human Rights Impact Assessments: A Review of the Literature, Differences with other forms of Assessments and Relevance for Development,* World Bank and Nordic Trust Fund.

Examples of Human Rights Impact Assessments

Bansal, Tulika and Yann Wyss (2013), *Talking the Human Rights Walk: Nestlé's Experience Assessing Human Rights Impacts in its Business Activities,* Danish Institute for Human Rights and Nestlé.

Hamm, Brigitte, Anne Shax and Christian Scheper (2013), *Human Rights Impact Assessment of the Tampakan Copper-Gold Project,* Aachen: MISEREOR and Fastenopfer in collaboration with Bread for All.

International Federation for Human Rights, FIDH (2011), *How much are human rights worth in the Brazilian mining and steel industry?*, FIDH, Justiça Global and Justiça nos Trilhos.

Kuoni Travel Holding Ltd., TwentyFifty Ltd., and Tourism Concern (2012), *Assessing Human Rights Impacts: Kenya Pilot Project Report,* Zurich: Kuoni Travel Holding Ltd.

Kuoni Travel Holding Ltd; Kuoni Travel Holding Ltd. (2014), *Assessing Human Rights Impacts: India Project Report,* Zurich: Kuoni Travel Holding Ltd.

LKL International Consulting Inc. commissioned by Nevsun Resources Ltd. and Eritrean National Mining Corporation (ENAMCO) (2015), *Human Rights Impact Assessment of the Bisha Mine in Eritrea 2015 Audit.*

Myanmar Centre for Responsible Business (MCRB), Institute for Human Rights and Business (IHRB) and Danish Institute for Human Rights (DIHR) (2014), *Myanmar Oil and Gas Sector Wide Impact Assessment*, Yangon: MCRB, IHRB, DIHR.

Myanmar Centre for Responsible Business (MCRB), Institute for Human Rights and Business (IHRB) and Danish Institute for Human Rights (DIHR) (2015), *Myanmar Tourism Sector-Wide Impact Assessment*, Yangon: MCRB, IHRB, DIHR.

Myanmar Centre for Responsible Business (MCRB), Institute for Human Rights and Business (IHRB) and Danish Institute for Human Rights (DIHR) (2015), *Myanmar ICT Sector-Wide Impact Assessment*, Yangon: MCRB, IHRB, DIHR.

On Common Ground Consultants Inc., commissioned on behalf of Goldcorp by the Steering Committee for the Human Rights Assessment of the Marlin Mine (2010), *Human Rights Assessment of Goldcorp's Marlin Mine*, Canada: On Common Ground Consultants Inc.

Rights and Democracy (2006), *Human Rights Impact Assessments for Foreign Investment Projects: Learning from Community Experiences in the Philippines, Tibet, the Democratic Republic of Congo, Argentina and Peru,* Montreal: Rights and Democracy.

Wielga, Mark, Kendyl Salcito, Gary Krieger and Elizabeth Wise (2009), *Human Rights Impact Assessment on the proposed Nuiguyo gold mine in Indonesia,* Denver: Nomogaia.

Introduction to Human Rights and Business

Castan Centre for Human Rights Law, International Business Leaders Forum, and Office of the United Nations High Commissioner for Human Rights (2008), *Human Rights Translated: A Business Reference Guide.*

Human Rights Indicators

United Nations Office of the High Commissioner for Human Rights (2012), *Human Rights Indicators: A Guide to Measurement and Implementation*, Geneva and New York: United Nations Office of the High Commissioner for Human Rights, HR/PUB/12/5.

Complicity

International Commission of Jurists (2008), *Corporate Complicity and Legal Accountability: Report of the ICJ Expert Legal Panel on Corporate Complicity in International Crimes,* Volumes 1-3, Geneva: International Commission of Jurists.

Leverage

Shift (2013), *Using Leverage in Business Relationships to Reduce Human Rights Risks,* New York: Shift.

Human Rights-Based Approach

United Nations Office of the High Commissioner for Human Rights (2006), *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation*, New York and Geneva: OHCHR, United Nations.

Nyamu-Musembi, Celestine and Andrea Cornwall (2004), *What is the rights-based approach all about? Perspectives from international development agencies*, Institute of Development Studies: Brighton.

Participatory Monitoring

International Finance Corporation (2010), *International Lessons of Experience and Best Practice in Participatory Monitoring in Extractive Industry Projects*, Washington: International Finance Corporation.

Office of the Compliance Advisor/Ombudsman (CAO) for the International Finance Corporation (IFC) Multilateral Investment Guarantee Agency (MIGA) and Members of the World Bank Group (2008), *Participatory Water Monitoring: A Guide for Preventing and Managing Conflict*, Washington: CAO.

Grievance Mechanisms and Resolution

Access facility: http://www.accessfacility.org/

Office of the Compliance Advisor/Ombudsman (2008), *A Guide to Designing and Implementing Grievance Mechanisms for Developments Projects*, CAO: Washington.

Rees, Caroline (2008), *Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and Their Stakeholders*, Corporate Social Responsibility Initiative Working Paper no. 41, John F. Kennedy School of Government, Harvard University: Cambridge MA.

SOMO Grievance Mechanisms micro site: http://grievancemechanisms.org/

Reporting and Communicating

Global Reporting Initiative, Realizing Right and the UN Global Compact (2009), *A Resource Guide to Human Rights Reporting*, Amsterdam: Global Reporting Initiative.

Stakeholder Engagement

International Finance Corporation (2007), *Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets,* International Finance Corporation.

Jacobsen, Anette Faye (2013), *The Right to Public Participation - A Human Rights Law Update*, Copenhagen: Danish Institute for Human Rights.

Myanmar Centre for Responsible Business (2014), *Ethical Guidelines developed for field researchers conducting Sector-Wide Impact Assessments in Myanmar*, Myanmar Centre for Responsible Business.

Organisation for Economic Co-operation and Development (2015), *Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractives Sector*, Paris: OECD.

Stakeholder engagement with specific rights-holder groups

Children

Business and Human Rights Resource Centre Business and Children Portal: http://business-humanrights.org/en/business-children

UN Committee on the Rights of the Child (2013), *General Comment No.16 on State obligations regarding the impact of the business sector on children's rights.*

UNICEF, Global Compact and Save the Children (2012), *Children's Rights and Business Principles.* [online] Accessed by http://www.unicef.org/csr/12.htm

UNICEF and Danish Institute for Human Rights (2013), *Children's Rights in Impact Assessment – a tool for companies,* Geneva: UNICEF and DIHR.

UNICEF (2014), *Engaging stakeholders on Children's Rights: A Tool for Companies*, First edition, Geneva: UNICEF.

Women and girls

International Labour Organisation Bureau for Gender Equality: http://www.ilo.org/gender/lang--en/index.htm

Rio Tinto (2010), *Why gender matters: A resource guide for integrating gender considerations into communities work at Rio Tinto*, Australia and United Kingdom: Rio Tinto.

UN Women: http://www.unwomen.org/en

UN Women and UN Global Compact (2010), *Women's Empowerment Principles: Equality means Business.*

Indigenous peoples

International Finance Corporation (2012), *IFC Performance Standards*, *Performance Standard 7: Indigenous Peoples,* Washington: International Finance Corporation.

International Council on Mining and Metals (ICMM) (2010), *Good Practice Guide: Indigenous Peoples and Mining,* London: ICMM.

International Working Group for Indigenous Affairs: http://www.iwgia.org/

UN Permanent Forum on Indigenous Issues: http://undesadspd.org/indigenouspeoples.aspx

UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples: http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/SRIPeoplesIndex.aspx

Workers

International Labour Organisation: http://www.ilo.org

Business and Human Rights Resource Centre on labour rights: http://business-humanrights.org/en/issues/labour

UN Special Rapporteur on the rights to freedom of peaceful assembly and of association: http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/SRFreedomAssemblyAssociationIndex.aspx

ENDNOTES

[1] United Nations Human Rights Council (2011), *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, A/HRC/17/31 (UN Guiding Principles).

[2] Nora Götzmann, Frank Vanclay and Frank Seier (2015), 'Social and human rights impact assessments: What can they learn from each other', *Journal of Impact Assessment and Project Appraisal*; Simon Walker (2009), *The Future of Human Rights Impact Assessments of Trade Agreements*, Antwerp: Intersentia, pp.39-49.

[3] Danish Institute for Human Rights and IPIECA (2013), *Integrating human rights into environmental, social and health impact assessments: A practical guide for the oil and gas industry,* IPIECA and DIHR.

[4] United Nations Office of the High Commissioner for Human Rights (2006), *Frequently asked questions on a human rights-based approach to development cooperation,* New York and Geneva: United Nations, pp.15-16.

[5] Ibid, p.12.

[6] UN Guiding Principles.

[7] UN Guiding Principle 15.

[8] UN Guiding Principle 12.

[9] United Nations Office of the High Commissioner for Human Rights (2006), *Frequently asked questions on a human rights-based approach to development cooperation,* New York and Geneva: United Nations, pp.15-16.

[10] UN Guiding Principle 18.

[11] United Nations Human Rights Council (2008), *Clarifying the concepts of "sphere of influence" and "complicity": report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie*, A/HRC/8/16.

[12] Drawing on: European Integration Office (2011), *Manual for Preparing Terms of Reference,* Belgrade: Republic of Serbia Government and European Integration Office, p.6.

[13] Ibid.

[14] Based on Gabrielle Watson, Irit Tamir and Brianna Kemp (2013), 'Human rights impact assessment in practice: Oxfam's application of a community-based approach', *Impact Assessment and Project Appraisal,* 31:2, pp.118-127.

[15] See e.g., Simon Walker (2009), *The Future of Human Rights Impact Assessments of Trade Agreements,* Antwerp: Intersentia, p.46.

[16] Eric André Andersen and Hans-Otto Sano (2006), *Human Rights Indicators at Programme and Project Level: Guidelines for Defining Indicators, Monitoring and Evaluation,* Copenhagen: Danish Institute for Human Rights; Frank Vanclay, Ana Maria Esteves, Ilse Aucamp and Daniel M. Franks (2015), *Social Impact Assessment: Guidance for assessing and managing the social impacts of projects*, Fargo ND: International Association for Impact Assessment, p.44.

[17] Waterlex and Danish Institute for Human Rights (2015), *Training Manual: National Human Rights Institutions' Roles in Achieving Human Rights-based Water Governance*, Geneva: Waterlex.

[18] United Nations Office of the High Commissioner for Human Rights (2012), *Human Rights Indicators: A Guide to Measurement and Implementation*, Geneva and New York: United Nations Office of the High Commissioner for Human Rights, HR/PUB/12/5, p.16.

[19] Eric André Andersen and Hans-Otto Sano (2006), *Human Rights Indicators at Programme and Project Level: Guidelines for Defining Indicators, Monitoring and Evaluation,* Copenhagen: Danish Institute for Human Rights.

[20] United Nations Office of the High Commissioner for Human Rights (2012), *Human Rights Indicators: A Guide to Measurement and Implementation*, Geneva and New York: United Nations Office of the High Commissioner for Human Rights, HR/PUB/12/5.

[21] UN Guiding Principles.

[22] United Nations Office of the High Commissioner for Human Rights (2012), *Human Rights Indicators: A Guide to Measurement and Implementation*, Geneva and New York: United Nations Office of the High Commissioner for Human Rights, HR/PUB/12/5, p.21.

[23] Office of the United Nations High Commissioner for Human Rights (2012), *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide,* New York and Geneva: United Nations.

[24] UN Guiding Principle 13.

[25] International Commission of Jurists (2008), Expert Legal Panel on Complicity, Reports 1-3.

[26] Office of the United Nations High Commissioner for Human Rights (2012), *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide,* New York and Geneva: United Nations.

[27] International Commission of Jurists (2008), *Corporate Complicity and Legal Accountability*, Expert Legal Panel on Complicity, Volume 1.

[28] This section is adapted from : Myanmar Centre for Responsible Business (MCRB), Institute for Human Rights and Business (IHRB) and Danish Institute for Human Rights (DIHR) (2015), *Tourism Sector-Wide Impact Assessment (SWIA),* Yangon: MCRB, IHRB and DIHR.

[29] Daniel Franks, David Brereton and Chris Moran (2011), 'Cumulative Social Impacts', in *New Directions in Social Impact Assessment: Conceptual and Methodological Advances,* F. Vanclay and A.M. Esteves (Eds), Cheltenham: Edward Elgar.

[30] International Finance Corporation (2013), *Good Practice Handbook on Cumulative Impact Assessment and Management,* Washington: International Finance Corporation.

[31] United Nations Global Compact, Human Rights and Business Dilemmas Forum, Cumulative impacts

[32] Daniel Franks, David Brereton and Chris Moran (2011), 'Cumulative Social Impacts', in *New Directions in Social Impact Assessment: Conceptual and Methodological Advances,* F. Vanclay and A.M. Esteves (Eds), Cheltenham: Edward Elgar.

[33] UN Guiding Principle 11 commentary.

[34] UN Guiding Principles 12 and 24 and commentaries; Office of the United Nations High Commissioner for Human Rights (2012), *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide,* New York and Geneva: United Nations.

[35] Danish Institute for Human Rights and IPIECA (2013), *Integrating human rights into environmental, social and health impact assessments: A practical guide for the oil and gas industry,* IPIECA and DIHR.

[36] UN Guiding Principle 19.

[37] UN Guiding Principles.

[38] Shift (2013), *Using Leverage in Business Relationships to Reduce Human Rights Risks,* New York: Shift, p.3.

[39] Ibid.

[40] International Finance Corporation (2010), *International Lessons of Experience and Best Practice in Participatory Monitoring in Extractive Industry Projects*, Washington: International Finance Corporation.

[41] Alejandro Gonzales (2014), *Evaluating the Human Rights Impacts of Investment Projects: Background, Best Practices, and Opportunities*, Mexico and New York: The Poder Project.

[42] UN Guiding Principle 21.

[43] Ibid.

[44] Organisation for Economic Co-operation and Development (2011), *OECD Guidelines for Multinational Enterprises*, Paris: OECD Publishing.

[45] Organisation for Economic Co-operation and Development (2011), *OECD Guidelines for Multinational Enterprises*, Paris: OECD Publishing, Section III, pp.27-30.

[46] UN Guiding Principle 21 commentary.

[47] World Bank and Nordic Trust Fund (2013), *Human Rights Impact Assessments: A Review of the Literature, Differences with other forms of Assessments and Relevance for Development,* Washington: World Bank and Nordic Trust Fund.

[48] Kuoni Travel Holding Ltd., TwentyFifty Ltd., and Tourism Concern (2012), *Assessing Human Rights Impacts: Kenya Pilot Project Report*, Zurich: Kuoni Travel Holding Ltd.; Kuoni Travel Holding Ltd. (2014), *Assessing Human Rights Impacts: India Project Report*, Zurich: Kuoni Travel Holding Ltd.

[49] On Common Ground Consultants Inc., commissioned on behalf of Goldcorp by the Steering Committee for the Human Rights Assessment of the Marlin Mine (2010), *Human Rights Assessment of Goldcorp's Marlin Mine*, Canada: On Common Ground Consultants Inc.

[50] Tulika Bansal and Yann Wyss (2013), *Taking the Human Rights Walk, Nestlé's Experience Assessing Human Rights Impacts in its Business Activities*, Copenhagen: Danish Institute for Human Rights and Nestlé, p.25

[51] Lloyd Lipsett and Zacharias Kunuk (2015), *Human Rights Impact Assessment of the Mary River Mine*, p. 13.

[52] Drawing on: Frank Vanclay, Ana Maria Esteves, Ilse Aucamp and Daniel M. Franks (2015), *Social Impact Assessment: Guidance for assessing and managing the social impacts of projects*, Fargo ND: International Association for Impact Assessment.

[53] Ibid.

[54] Ibid.

[55] UN Guiding Principle 18 commentary.

[56] World Bank and Nordic Trust Fund (2013), *Human Rights Impact Assessments: A Review of the Literature, Differences with other forms of Assessments and Relevance for Development,* Washington: World Bank and Nordic Trust Fund.

[57] Frank Vanclay, Ana Maria Esteves, Ilse Aucamp and Daniel M. Franks (2015), *Social Impact Assessment: Guidance for assessing and managing the social impacts of projects*, Fargo ND: International Association for Impact Assessment.

[58] Drawing on: Ibid.

[59] Desiree Abrahams, and Yann Wyss (2010), *Guide to Human Rights Impact Assessment and Management,* Washington: International Business Leaders Forum, International Finance Corporation and UN Global Compact, p.59.

[60] Drawing on: Frank Vanclay, Ana Maria Esteves, Ilse Aucamp and Daniel M. Franks (2015), *Social Impact Assessment: Guidance for assessing and managing the social impacts of projects*, Fargo ND: International Association for Impact Assessment.

[61] AccountAbility, United Nations Environment Programme and Stakeholder Research Associates Canada (2005), *The Stakeholder Engagement Manual. Volume 2: The Practitioner's Handbook on Stakeholder Engagement*, London: AccountAbility.

[62] Organisation for Economic Co-operation and Development (2015), *Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractives Sector,* Paris: OECD.

[63] Ibid.

[64] See in particular: The Committee on Economic, Social and Cultural Rights General Comments No. 4 and 7 on the right to housing; General Comment No. 14 on the right to health; and General Comment No.15 on the right to water.

[65] For more details, see Danish Institute for Human Rights (2013), *The Right to Public Participation: A Human Rights Law Update*, Issue Paper, Copenhagen: Danish Institute for Human Rights.

66 See e.g., Committee on the Elimination of Discrimination Against Women, General Recommendation 23.

[67] UN Guiding Principle 18 and commentary.

[68] Organisation for Economic Co-operation and Development (2011), *OECD Guidelines for Multinational Enterprises*, Paris: OECD Publishing, Part I, Chapter II General Policies, para A.14.

[69] International Finance Corporation (2012), *Performance Standards on Environmental and Social Sustainability,* Washington: International Finance Corporation, Performance Standard 1.

[70] Rights & Democracy (2011*), Getting it Right: Human Rights Impact Assessment Guide.* [online]. Available from: http://hria.equalit.ie/en/index.html

[71] Ibid.

[72] GIIRS Ratings and Analytics for impact investing*, GIIRS Emerging Market Assessment Resource Guide: Stakeholder Engagement*, p.3.

[73] Shift (2013), *Bringing a Human Rights Lens to Stakeholder Engagement,* Shift Workshop Report No.3, New York: Shift, p.6.

[74] Adapted from: Shift (2013), *Bringing a Human Rights Lens to Stakeholder Engagement,* Shift Workshop Report No.3, New York: Shift, p.6.

[75]Adapted from: Mindtools, *Stakeholder Analysis, Step 2 Prioritize your Stakeholders Figure 1*, accessed from https://www.mindtools.com/pages/article/newPPM_07.htm.

[76] Rights & Democracy (2011), *Getting it Right: Human Rights Impact Assessment Guide.* [online]. Available from: http://hria.equalit.ie/en/index.html

[77] Danish Institute for Human Rights and IPIECA (2013), *Integrating human rights into environmental, social and health impact assessments: A practical guide for the oil and gas industry*, IPIECA and DIHR.

[78] For more information about sector-wide impact assessments, see the Myanmar Centre for Responsible Business at: http://www.myanmar-responsiblebusiness.org/swia/

[79] European Investment Bank (2013), *Environmental and Social Handbook*, Volume I: EIB Environmental and Social Standards, Standard 7: Rights and Interests of Vulnerable Groups, Luxembourg: European Investment Bank.

[80] United Nations Educational, Scientific and Cultural Organization (UNESCO) (2010), *EFA Global Monitoring Report 2010: Reaching the marginalized:* Paris and Oxford*:* UNESCO and Oxford University Press, p.135.

[81] Ibid, p.136.

[82] Human Rights Committee (1989), CCPR General Comment 18 on Non-discrimination, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.1 (1994), para. 6.

[83] Adapted from The Global Compact Network Germany and TwentyFifty Ltd. (2014), *Stakeholder Engagement in Human Rights Due Diligence: A Business Guide*, The Global Compact Network Germany and TwentyFifty Ltd. pp. 36-38.

[84] For more information on stakeholder engagement for companies on children's rights, see: United Nations Children's Fund (UNICEF) (2014), *Engaging stakeholders on Children's Rights: A Tool for Companies*, Geneva: UNICEF.

[85] E.g., Christina Hill (2009), *Women, communities and mining: The gender impacts of mining and the role of gender impact assessment*, Melbourne: Oxfam Australia; Rio Tinto (2010), *Why gender matters: A resource guide for integrating gender considerations into communities work at Rio Tinto*, Australia and United Kingdom: Rio Tinto.

[86] John R. Owen and Deanna Kemp (2014), 'Free prior and informed consent', social complexity and the mining industry: Establishing a knowledge base', *Resources Policy*, 41, pp.91-100; International Council on Mining and Metals (ICMM) (2010), *Good Practice Guide: Indigenous Peoples and Mining,* London: ICMM.

[87] United National Development Programme (UNDP) (2010), *Marginalised Minorities in Development Programming: A UNDP Resource Guide and Toolkit*, New York: UNDP.

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS