

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

GUIDANCE ON
HUMAN RIGHTS
IMPACT
ASSESSMENT
OF DIGITAL
ACTIVITIES

INTRODUCTION



INTRODUCTION

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CONTENT

ABBREVIATIONS	5
1 INTRODUCTION	6
1.1 WHAT THIS GUIDANCE OFFERS	7
1.2 TARGET AUDIENCE FOR THE GUIDANCE	8
1.2.1 COMPANIES IN SCOPE	10
1.3 DIGITAL ACTIVITIES IN SCOPE	10
1.4 OVERVIEW OF THE GUIDANCE AND HRIA PHASES	13
2 HUMAN RIGHTS IMPACT ASSESSMENT	15
2.1 INTRODUCTION TO HUMAN RIGHTS IMPACT ASSESSMENTS	15
2.2 HOW DOES HRIA RELATE TO HUMAN RIGHTS DUE DILIGENCE AND THE UN GUIDING PRINCIPLES?	17
2.2.1 OPPORTUNITIES AND RISKS OF HRIA	19
2.3 WHY SHOULD COMPANIES CONSIDER CONDUCTING A HRIA?	20
2.4 WHEN SHOULD HRIAS BE UNDERTAKEN AND HOW LONG DOES IT TAKE?	20
2.4.1 REASSESSING HRIA FINDINGS AND FOLLOW-UP ACTIONS	25
2.5 WHAT ARE THE DIFFERENCES AND SIMILARITIES BETWEEN HRIA AND OTHER TYPES OF IMPACT AND RISK ASSESSMENT?	27
2.5.1 KEY CRITERIA FOR HRIA	27
2.5.2 OTHER FORMS OF IMPACT ASSESSMENTS RELATED TO DIGITAL ACTIVITIES COMPARED TO HRIA	38
2.5.3 SHOULD HRIA BE STAND-ALONE OR COMBINED WITH OTHER FORMS OF IMPACT ASSESSMENT?	45
2.5.4 SECTOR-WIDE IMPACT ASSESSMENT: AN ALTERNATIVE TO INDIVIDUAL ASSESSMENTS?	47
GLOSSARY	51
END NOTES	53

This document contains the Introduction section of the Guidance on Human Rights Impact Assessment of Digital Activities (the Guidance).

You can access the full version of the Guidance at:

<https://www.humanrights.dk/publications/human-rights-impact-assessment-digital-activities>

A NOTE ON THIS VERSION

This first version of the Guidance on Human Rights Impact Assessment (HRIA) of Digital Activities (the Guidance) is based on DIHR materials and experiences, input from expert reviewers and practitioners, 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 this Guidance included a workshop in Denmark in November 2019, during which 20 expert reviewers participated in a discussion on human rights impact assessment of digital activities—i.e. activities related to digital projects, products and services.

It is anticipated that in 2021, a Phase II of the project will focus on applying the Guidance in practice, the gathering and sharing of learning, and subsequently updating the Guidance.

As HRIA of digital activities is an emerging practice, this Guidance seeks to provide support to those working with HRIA of digital projects, products and services, but also to contribute to a platform for dialogue about HRIA practice and standards in the ‘digital’ business and human rights field. In this context, we welcome comments from stakeholders on the Guidance and on experiences with using it.

Please send comments, questions and suggestions to:

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ABBREVIATIONS

CHRB	Corporate Human Rights Benchmark
CSO	Civil Society Organisation
DIHR	Danish Institute for Human Rights
DPIA	Data Protection Impact Assessment
EIA	Environmental Impact Assessment
ESHIA	Environmental, Social and Health Impact Assessment
EtIA	Ethical Impact Assessment
HRDD	Human Rights Due Diligence
HRIA	Human Rights Impact Assessment
ICT	Information and Communications Technology
ILO	International Labour Organisation
IoT	Internet-of-Things
NGO	Non-Governmental Organisation
OHCHR	UN Office of the High Commissioner for Human Rights
SIA	Social Impact Assessment
TIA	Technology Impact Assessment
TOR	Terms of Reference
SDGs	Sustainable Development Goals
SWIA	Sector-Wide Impact Assessment
UNGPs	UN Guiding Principles on Business and Human Rights

INTRODUCTION

1 INTRODUCTION

There is a “critical need for clearer guidance about what should be expected on human rights from private companies as they develop and deploy digital technologies.”¹ UN High-Level

Panel on Digital Cooperation, 2019

More and more individuals have internet access, and the world is currently going through an unprecedented digital transition. With that, the potential and actual negative human rights impacts related to the design, development, application and use of digital services and products by private as well as public actors are increasing. While digital transformation can lead to increased opportunities and enjoyment of human rights it also comes with great risks.² The Human Rights Council clarified that **“the same rights that people have offline must also be protected online”³**, meaning that human rights considerations must be central in the current and future digital transformation.

Considering the significant scope of potential negative impacts and the constantly growing number of cases of severe actual impacts that digital products and services cause, contribute to or otherwise are directly linked to, the calls on businesses and other actors to assess and address their human rights impacts, and to conduct human rights impact assessments (HRIAs), have increased in recent years.⁴

The **UN High Commissioner for Human Rights restated the need to “address the human rights challenges raised by digital technology”** and that the human rights framework will be essential in ensuring adequate responses by technology companies to their negative impacts.⁵

The UN Guiding Principles on Business and Human Rights (UNGPs) generally outline the requirement on businesses to identify, assess and address their negative human rights impacts through the conduct of human rights due diligence. The **B-Tech Project at the UN Office of the High Commissioner for Human Rights**, is working to provide general guidance on the implementation of the UNGPs in the technology space, in relation to a number of strategic focus areas.⁶

With increased attention paid to the accountability of businesses for their human rights impacts related to digital projects, products and services, Human Rights Impact Assessment (HRIA) is gaining traction as one useful tool in the human rights due diligence toolbox that is available to the private sector.⁷ The Special Rapporteur on Freedom of Opinion and Expression has called on information and communications technology (ICT) companies to conduct HRIAs for product and policy development as well as conduct ongoing assessments during operations, including ensuring meaningful public and civil society consultation.⁸

However, existing guidance and methodologies for conducting HRIA⁹, have been largely focused on site-level projects and supply chains with clear ‘physical footprints’, partly because the HRIA methodology has been modelled on Environmental and Social Impact Assessments (ESIA) for such large-scale projects. As such, there has been a lack of guidance for assessing and addressing the particular kinds of impacts that digital projects, products and services can cause, contribute to or otherwise be linked to, whether by technology companies themselves or other entities developing digital projects, or using or applying digital products or services. HRIA of digital projects, products and services is however an emerging practice. Efforts are being undertaken to share experiences and lessons learnt of such HRIAs; however, this field would benefit from further dialogue amongst stakeholders and strengthening the HRIA approach, in order to ensure that a human rights-based approach is applied.

In light of the above, the Danish Institute for Human Rights (DIHR) initiated dialogue and convened key stakeholders to develop guidance on how companies and other stakeholders involved in the digital ecosystem can improve their efforts to assess and address negative human rights impacts related to digital projects, products and services. **The purpose of the Guidance** is to provide those who are involved in conducting, commissioning, reviewing or monitoring HRIAs of digital activities (i.e. projects, products or services of a digital nature) with guidance and practical examples, and to support in **ensuring that HRIAs apply a human rights-based approach and are consistent with the UNGPs.**

1.1 WHAT THIS GUIDANCE OFFERS

This Guidance sets out to do the following:

- **Offer a methodology that can be used by all kinds of companies that design, develop, sell, procure, deploy, apply or otherwise use digital projects, products and services, as well as state actors procuring such projects, products and services.**
- **Assist those individuals who are involved in HRIAs and enable the consolidation of a robust body of HRIA practice.** By providing guidance and practical examples.

- **Provide tailored guidance for the realities of the digital ecosystem.** It is, to the greatest extent possible, tailored to the realities of the digital ecosystem, in which a large variety of companies are involved from the design and development phases all the way to end-use. The Guidance therefore focuses strictly on impacts related to digital activities (see below) and leaves out other impacts. While the Guidance has been tailored as much as possible to the digital ecosystem, it also includes some general HRIA information that would apply to companies irrespective of sector.
- **Outline a process for stand-alone HRIA, i.e. an impact assessment that focuses exclusively on human rights.** However, stakeholders may also wish to draw on specific components of this Guidance when combining human rights with other types of assessment—e.g. Ethical Impact Assessments (EtIA), Data Protection Impact Assessments (DPIA), Technology Assessment and Privacy Impact Assessments.

The UNGPs recognise that the exact form of HRDD will vary depending on “the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations”. As such, it follows that HRIAs will need to be adapted and scaled to suit the particular business and digital activities in question. That the focus of this Guidance is exclusively on digital activities means that other potentially (highly) relevant human rights impacts from certain parts of the digital product and service value chain are not within the scope of the Guidance.

This Guidance **does not**:

- **Provide in-depth guidance on broader human rights due diligence.** See the B-Tech Project for authoritative guidance on the general implementation of the UN Guiding Principles on Business and Human Rights in the tech sector.¹⁰
- **Focus on impacts linked to labour rights in the hardware supply chain, impacts related to physical infrastructure, or cumulative environmental or labour rights related impacts.** This includes, for example, impacts on the climate related to data centres and impacts related to physical internet infrastructure, job loss caused by increased automation, human rights impacts in the mineral and hardware supply chain, or labour rights impacts in the gig economy.¹¹

1.2 TARGET AUDIENCE FOR THE GUIDANCE



The **primary target** audience for the Guidance is:

- **Human rights practitioners and consultants** conducting impact assessments of digital projects, products or services.
- **Companies**, in particular staff who are responsible for commissioning and overseeing impact assessments, whether those businesses are developing the digital projects, products or services themselves or are buying them.
- **Public entities that are procuring and using digital products and services**—in relation to e.g. e-governance initiatives, digital health services, automated decision-making in court systems, and other forms of public service delivery. While references throughout the Guidance will in most cases refer to what businesses should consider in relation to HRIAs, the same recommendations apply to public entities and actors that acts as project, product or service owners.

The Guidance will be **particularly relevant for companies that have already conducted some form of company-wide human rights risk assessment** and that thereby have been able to identify where a deeper dive into the potential and actual human rights impacts is needed.



The **secondary target audience** is:

- Other individuals or organisations who are interested in the topic of HRIA of digital projects, products or services, or who are involved in such assessments. For example:
 - a) **Financial institutions, including development finance institutions, institutional investors, private equity funds**, providing financial support towards the development of digital projects, products and services.
 - b) **National human rights institutions** exercising their mandate to promote and protect human rights could use the Guidance when advising the government and other stakeholders on impact assessment laws (e.g. in relation to mandated privacy impacts assessments, data protection impact assessments, algorithmic impact assessments etc.), policies and practice, to ensure that the adoption of a human rights-based approach and international human rights standards are reflected.
 - c) **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 in relation to digital projects, products or services, could draw on the Guidance for information on how human rights might be better reflected in such guidance and standards.
 - d) **Non-governmental and civil society organisations** that support and/or represent individuals and communities that are adversely impacted by digital projects, products or services could use the Guidance to advocate

for a company to undertake a HRIA or for increased community involvement in business-commissioned HRIAs, or to review and monitor HRIAs that have been undertaken.

1.2.1 COMPANIES IN SCOPE

The **kinds of businesses** that this Guidance is particularly relevant for, includes:

- **Developers** of digital projects, products and/or services (e.g. software or app developers, who write, debug and execute the source code of the software or application), who want to:
 - a) Better understand how human rights are relevant to the design, development, sale and end-use of digital products and services.
 - b) Be better at anticipating potential human rights impacts and thereby changing the design of the digital product or service.
 - c) Better understand their involvement with negative human rights impacts related to the application and end-use of digital products and services.
- **Companies buying** digital projects, products and/or services (whether off-the-shelf or specifically tailored to the needs of the company in question), who want to:
 - a) Better understand how human rights are relevant to the procurement, deployment and use of digital products and services.
 - b) Better anticipate and change the design or potential use-cases of the product or service to address actual or potential human rights impacts.
 - c) Better evaluate, monitor and communicate how human rights impacts of the digital service or product are being managed.

1.3 DIGITAL ACTIVITIES IN SCOPE

The methodology outlined in the guidance focuses on **digital projects, products and services**, which include:

- Digital platforms, search engines, social media platforms, geo-location tools, voice recognition artificial intelligence (AI), cloud computing, internet security services, facial recognition systems, autonomous vehicles, enterprise software solutions, ‘wearables’, Internet-of-Things (IoT) devices, as well as digital telecommunications and network infrastructure.¹²

More specifically the methodology is focused on the impacts related to the **‘digital activities’ of these projects, products and services**. These include:

- Data collection, data processing, data use and data erasure; automated decision-making, artificial intelligence, algorithms and machine learning; management and moderation of user-generated content; content hosting; and provision of digital and Internet infrastructure.

While conducting human rights due diligence is a requirement according to the UN Guiding Principles on Business and Human Rights (UNGPs), the same framework does not include a requirement to conduct HRIAs as such. Such assessments may however be an important tool when, for example, heightened human rights risks have been identified (see chapter 2.3). In order to be efficient and practically possible to conduct, HRIAs also require a well delineated/defined scope, in terms of geography, product or service, and product life cycle.

BOX 1: EXAMPLES OF SCENARIOS WHERE A HRIA MAY BE NECESSARY OR RELEVANT

Below is a **non-exhaustive list** of types of companies and scenarios that this Guidance is relevant for:

- A **social media platform that enters a new market** or is operating in country where human rights defenders and opposition leaders are increasingly persecuted.
- A **telecommunication company that enters a newly liberalised market or operates in a country** where the government in the past has shut down the internet on many occasions, or where internet shutdowns are rapidly increasing.
- A car manufacturer that decides to enter a new market with a **carsharing programme, which requires substantial data gathering** and other forms of data processing linked to customer behaviour and geolocation data.
- A **developer of a commercial software suite for video editing** that develops a powerful algorithm that can assist in smoothing out cuts in videos, which will allow edits in video sequences that most viewers will not detect ('deepfakes').
- A developer of a digital service that creates **synthetic speech** based on limited amounts of recording of real individuals' speech.
- A **supermarket chain that purchases and installs 'smart cameras'** in its stores that use facial recognition technology to assess user engagement with its products, so that it can improve product placement.
- A bank or insurance company that decides to use an **algorithm to assess credit risk**, by combining its own customer data with data from commercial data providers.

- A digital communication or social media platform that is **deploying an algorithm to help with flagging 'high risk' content** that should be taken off the platform.
- A **recruitment company that engages a data engineering company** to develop a vocal analytics algorithm that can assist companies in recruitment processes by analysing potential recruits' speech.
- A **warehouse that is considering using biometric trackers** and artificial intelligence to help improve worker productivity and efficiency.
- A **smartphone game developer** that has developed a highly popular game for children and adolescents, that is potentially addictive.
- A **state entity that decides to commission the development of an algorithm** that will help assess who the vulnerable groups in society are in order to improve social security programmes.
- A **tech company that is offering a virtual classroom**, which is used by primary school children.
- A private hospital developing **telemedicine initiatives** and storing sensitive health data in electronic medical records, hosted by a third party.
- A **cosmetic company using facial recognition** to provide tailored skincare routines and makeup suggestions.
- A legal tech or **law firm relying on artificial intelligence (AI)-powered chatbots** to provide initial legal advice to prospective customers.
- An **insurance company using in-vehicle sensors** to monitor actual driving habits and using data to set up personalized premiums based on risk.



1.4 OVERVIEW OF THE GUIDANCE AND HRIA PHASES

The Guidance includes the following three principal sections:

- **Introduction and HRIA:** This section introduces the background, scope and content of this Guidance. Further, it provides a brief explanation of the relationship between the UN Guiding Principles on Business and Human rights, Human Rights Due Diligence and HRIA. It also provides more details around what HRIA is, when it should be performed, and how it relates to other forms of impact assessments and other forms of HRDD activities. Finally, 10 key criteria for a human rights-based approach to HRIA are outlined.
- **Conducting a HRIA:** This section of the guidance is divided into the five phases of a HRIA and also includes a section on stakeholder engagement as the key cross-cutting component throughout the phases of HRIA. The five HRIA phases are: 1) planning and scoping; 2) data collection and context analysis; 3) analysing impacts; 4) impact prevention, mitigation, remediation;

and 5) reporting and evaluation. Explanatory guidance, practical examples and case studies relevant to digital activities are provided throughout the five phases. The cross-cutting section on stakeholder engagement includes an introduction to consulting with rightsholders and other relevant parties, as well as information on relevant stakeholders to engage with. The stakeholder engagement section applies to all stages of the assessment.

2 HUMAN RIGHTS IMPACT ASSESSMENT

2.1 INTRODUCTION TO HUMAN RIGHTS IMPACT ASSESSMENTS

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 business activities on the human rights enjoyment of impacted rightsholders.

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

1. Planning and scoping
2. Data collection and context analysis
3. Analysing impacts
4. Impact prevention, mitigation and remediation, and
5. Reporting and evaluation.

While 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.

Engagement with rightsholders and other stakeholders is essential in HRIA. A thorough assessment of human rights impacts is unlikely to be possible or effective if conducted purely as a desktop research exercise. Instead, it is an **involved process, requiring background research and direct data collection**—through in-person or/and virtual engagement (further discussed in Stakeholder Engagement section)—and that is **heavily based on the participation of rightsholders** and other stakeholders. Local approaches must be used to take local contexts and stakeholder perspectives fully into account and local knowledge is a key feature of a good impact assessment. Stakeholder engagement has therefore been situated as the core cross-cutting component in the Guidance.

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 on Business and Human Rights (UNGPs), as well as current guidance and literature on HRIA, a number of aspects can be identified as essential key criteria for HRIA of all kinds of business projects and activities:



- **International human rights as benchmarks:** International human rights standards and principles must constitute the basis and benchmarks for the assessment. **At minimum, HRIA should refer to the International Bill of Human Rights and the ILO Core Labour Conventions**, as well as other human rights instruments (such as issue specific and regional human rights instruments) as relevant in the particular HRIA context. It is important that all human rights are considered and that the scope is not limited to e.g. right to privacy or non-discrimination from the outset, since there might otherwise be a risk of blind spots.
- **Human rights-based process:** The assessment process itself needs to respect human rights by paying particular attention to human rights principles such as non-discrimination, privacy, participation, empowerment and transparency.
- **Focus on accountability:** The assessment process and content need to be structured in a way so that the company remains accountable to the various stakeholders. This includes recognising the rights that individuals potentially impacted by the activities ('rightsholders') have, and the responsibility that the company itself and other companies and states ('duty-bearers') have, to respect those same rights.

These essential elements of HRIA, as well as guiding questions for implementing them in practice, are elaborated further in 10 Key Criteria for HRIA (see Table B in chapter 2.5.1).

2.2 HOW DOES HRIA RELATE TO HUMAN RIGHTS DUE DILIGENCE AND THE UN GUIDING PRINCIPLES?

The UNGPs articulate the expectation that businesses should respect human rights by performing HRDD. HRDD is a process for identifying and assessing¹³, preventing and mitigating¹⁴, tracking¹⁵, and accounting for (communicating and reporting)¹⁶ the adverse potential or actual human rights impacts with which a business is involved.¹⁷

BOX 2: THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

The UN Guiding Principles (UNGPs) 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 Action Plan on Human Rights and Democracy 2015-2019.

It is important to note that the UN Office of the High Commissioner of Human Rights (OHCHR) launched the **B-Tech Project** in 2019. The project will “**seek to provide authoritative guidance and resources to enhance the quality of implementation of the UNGPs**” in relation to technology.¹⁸

The UNGPs state that when a business is assessing its human rights impacts (or otherwise conducts human rights due diligence), it should:¹⁹

- Draw on internal and/or independent human rights expertise
- Undertake meaningful consultation with potentially affected rightsholders and other relevant parties
- Be gender-sensitive and pay particular attention to any human rights impacts on individuals and 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—e.g. before entering into a new activity, prior to significant decisions about changes in activities, and periodically throughout the project cycle.

The UNGPs apply to all companies, regardless of sector. As such, for companies developing or using digital products or services, the UNGPs can be said to offer “a roadmap for operationalising respect for human rights as part of how they do business, no matter the focus, size or complexity” of the company.²⁰ Conducting HRDD includes that they “anticipate and address issues that might occur related to the use” of those products and services.²¹

HRIA is considered to be “one tool within a wider due diligence toolkit”²² that can be used to assess and address impacts at the project, product or service level. As an example, a HRIA can be conducted in relation to e.g. a market entry with a particular digital product in a specific country. **The HRIA itself will touch upon all steps of the HRDD process, but remains a discrete activity with a clearly defined scope.** HRDD, on the other hand, is constantly ongoing and should concern all business operations.

Digital projects, products and services can be fast-changing and often operate at large scale.²³ Considering specifically the potential scale of operations, HRIA can be a **key HRDD tool in contexts where people, and therefore also businesses, face severe risks and impacts** in connection to businesses’ digital projects, products or services. It is important that if a HRIA is conducted, it is seen as a part of a company’s general responsibility to conduct HRDD, rather than as an isolated event. This includes ensuring that HRIAs provide learnings for the ongoing and company-wide due diligence processes.

When a HRIA has been conducted it **will provide a snapshot of impacts** as well as specific recommendations for preventive and mitigation measures—it may for example suggest changes in the design of a product or service. The insights gained from a HRIA should be used to increase awareness of potential human rights risks and inform decision-making and other aspects of ongoing Human Rights Due Diligence (HRDD)²⁴.

2.2.1 OPPORTUNITIES AND RISKS OF HRIA

There are several ways in which **HRIAs can strengthen the wider HRDD process** in a company²⁵, including by:

- Serving as mechanisms to help focus business leaders on specific actual and potential human rights impacts related to specific digital projects, products and services, and related business decisions.
- Building capacity on human rights for those involved in the process of undertaking the HIRA.
- Generating granular and disaggregated information on impacts on rightsholders.
- Leading to specific outputs in the form of public reports, which can assist staff with human rights responsibilities in their capacity-building efforts with others in the business and provide learnings for other stakeholders.
- Guiding decision-making around how to address human rights risks identified in HRIAs that are also relevant for other projects, products, services and activities.
- Building confidence and competence within companies as they start developing or continue to develop their HRDD processes.
- Building trusted relationships with partners who can continue to inform the company's HRDD activities generally.

There are, however, also some **pitfalls that those looking to conduct HRIA should be wary of**, in order to avoid them.²⁶ These include:

- Considering that the human rights work is 'done' once the HRIA report is finished. Rather, the focus should be on integrating the findings and implementing the recommendations.
- Treating HRIA as the primary mechanism through which a company aims to perform its HRDD, rather than as one tool that businesses have at their disposal.
- HRIAs, if not adequately used to inform internal HRDD processes, such as decision-making and capacity building, can lead to reduced ownership of human rights risks within companies. It is therefore important that e.g. the HRIA team works closely with company representatives and that action plans—with clear roles and responsibilities for implementing the actions—are developed by the company in question after a HRIA report has been finalised.
- The push for HRIAs, without proper use of a human rights-based approach, can send the message internally that respecting human rights is a 'box ticking exercise' focused only on identifying risks to the company and meeting disclosure requirements. To avoid this, it is essential to include key internal

stakeholders in the HRIA process to increase their understanding of human rights and their capacity to take action to address identified impacts.

- Finally, treating HRIAs as something entirely different from ongoing HRDD might lead to companies stopping at identifying and communicating the results of the HRIA at the expense of investing resources to address specific human rights risks and being transparent about the impact of those efforts. Rather, as mentioned above, companies should develop action plans on the back of conducted HRIAs, and those action plans should include how the company will follow-up on its preventive and mitigation measures.

2.3 WHY SHOULD COMPANIES CONSIDER CONDUCTING A HRIA?

HRIA can be a key element of HRDD, and provide process for businesses to understand and address their impacts in relation to specific digital projects, products or services, and the contexts where they will be used or applied. HRIA of digital projects, products and services can provide a structured approach to:

- Identify adverse human rights impacts, including understanding these from the perspectives of impacted rightsholders, in general, and vulnerable rightsholder groups, in particular.
- Determine measures to address any adverse human rights impacts identified—through prevention, mitigation and remediation.
- Facilitate dialogue between businesses, rightsholders and other relevant parties, in particular human rights actors (for more information on the different stakeholders to engage in HRIA see cross-cutting Stakeholder Engagement section).
- Facilitate capacity-building and learning for company stakeholders, rightsholders and others involved in the impact assessment, including through raising awareness of respective rights and responsibilities.
- Enhance the accountability of businesses through documenting the impacts that have been identified and the actions taken to address them.
- Build partnerships between businesses and other stakeholders to address human rights impacts, including through developing joint actions to address cumulative impacts and/or systemic issues.
- Identify learnings that inform and improve HRDD practices with regards to other digital projects, products or services.

2.4 WHEN SHOULD HRIAS BE UNDERTAKEN AND HOW LONG DOES IT TAKE?

Human rights due diligence is an iterative process meant to be implemented throughout business activities. Identifying if, when and how a HRIA is warranted is specific to the business, and companies' **HRDD activities should inform when**

and if a HRIA is the appropriate tool to use. Large multinational corporations are often present across many countries and operating contexts. Therefore, businesses should carefully consider which projects, products or services in which countries should be subject to a HRIA, as well as under what circumstances it is relevant to trigger the HRIA process.

Developing an internal **typology of circumstances for when a HRIA should be undertaken, could be undertaken or should be considered** (e.g. in the form of an internal ‘comply or explain’ structure), can be an effective method to enable staff in companies to identify relevant digital projects, products or services for HRIA.

Severity of actual or potential human rights impacts should always guide decision-making on which projects warrant a HRIA. Digital activities with the highest severity of impacts (e.g. threats to health and lives) should receive the highest priority. For more information on severity, see Phase 3: Analysing Impacts. How many assessments should take place within a given timeframe cannot be quantified and will depend on the identified risks, their severity, the company’s resources and involvement in the potential or actual impacts, and a range of other factors.²⁷

When the assessment of severity and other circumstances highlight a need for a HRIA, **the HRIA should be conducted early in the project cycle or development phase** of the product or service. The observations and assumptions from the HRIA should be re-evaluated at regular intervals and critical moments, as well as be consistently monitored.

TABLE A: EXAMPLES OF WHEN HRIAS OF DIGITAL ACTIVITIES MAY BE WARRANTED	
Below is a non-exhaustive list of scenarios where HRIAs should or could be undertaken ²⁸ , or where further human rights due diligence may be necessary to identify whether a HRIA is warranted.	Examples
When introducing a digital product or service to a new market , particularly where human rights, in general, and freedom of expression and right to privacy, in particular, are not well protected by the authorities, including in conflict sensitive contexts	When introducing a digital service that requires a lot of data collection and processing in a country with very limited data protection legislation

When a digital product or service will be **launched in a country where there are legacy issues with regard to human rights, systemic human rights abuses** or significant **negative human rights developments**.

When **withdrawing a digital product or service from a market**, particularly where human rights, in general, and freedom of expression and right to privacy, in particular, are not well protected, including in conflict sensitive contexts.

When **designing, developing, introducing, deploying or using new and untested** digital projects, products and services.

When designing, selling and/or using digital projects, products and services that **HRDD processes have identified may potentially cause or contribute to severe negative human right impacts**.

When making a **major product shift**.

When **planning for or adopting a new business model**, or when stakeholders have raised **concerns about the business model**.

When the **political context changes significantly and human rights protections are decreased** in a country where the projects are taking place or where digital products and services have been introduced.

Where a government have increasingly been pressuring companies to share user data linked to political opponents ahead of an election cycle.

When considering whether to allow a social media platform to be used in a particular country.

When developing a facial recognition technology for commercial purposes in shopping malls, to assess shopper behaviour.

Selling a text-to-speech service that can be used to spread 'deep fakes', or making available a targeted advertising model that assists third-parties in discriminating protected groups²⁹

Introducing end-to-end encryption on messaging service.

Moving to a targeted advertising business model from a subscription model³⁰

If a new cyber terrorism law in a country provides law enforcement with far-reaching powers to request user data from companies without the need of a warrant, which might

<p>When internal or external analysis or reports finds that use-cases of a digital product or service are different from what was initially understood, and that it might lead to severe adverse human rights impacts.</p>	<p>lead to revised procedures for responding to government demands.</p>
<p>When business decisions of large scale pertaining to the digital products or services are about to be made</p>	<p>It has been found that a powerful video editing software aimed at the production of commercials has been largely used by political groups to distort the messaging from opposing political parties.</p>
<p>When acquiring other companies or forming operational partnerships with companies or state actors that are involved in any of the other scenarios mentioned in this list.</p>	<p>A company-wide decision about where data should be stored.</p>
	<p>See above.</p>

Sources: Global Network Initiative (2017), “Global Network Initiative Implementation Guidelines” : <https://globalnetworkinitiative.org/implementation-guidelines/> [Accessed July 29, 2020]; Verizon (2020), “Human Rights Impact Assessments”: <https://www.verizonmedia.com/brand-trust/business-and-human-rights/human-rights-impact-assessments> [Accessed July 29, 2020]; Shift (2016), “Doing business with respect for human rights: a guidance tool for companies”; CDC (2016), “Practical guidance and Terms of Reference (ToRs) templates for enhanced assessment of human rights risks and impacts”: [https://view.officeapps.live.com/op/view.aspx?src=http%3A%2F%2Ftoolkit.cdcgroup.com%2Fwp-content%2Fuploads%2F2018%2F10%2FCDC Guidance and ToRs for Human Rights Due Diligence - 160623.docx](https://view.officeapps.live.com/op/view.aspx?src=http%3A%2F%2Ftoolkit.cdcgroup.com%2Fwp-content%2Fuploads%2F2018%2F10%2FCDC%20Guidance%20and%20ToRs%20for%20Human%20Rights%20Due%20Diligence%20-%20160623.docx) [Accessed July 29, 2020] ; Ranking Digital Rights (2018), “RDR Corporate Accountability Index: Draft indicators”; McGregor (2018), “The Universal Declaration of Human Rights at 70: Putting human rights at the heart of the design, development and deployment of artificial intelligence”, Human Rights, Big Data and Technology Project (HRBDT): [https://48ba3m4eh2bf2sksp43rq8kk-wpengine.netdna-ssl.com/wp-content/uploads/2018/12/UDHR70 AI.pdf](https://48ba3m4eh2bf2sksp43rq8kk-wpengine.netdna-ssl.com/wp-content/uploads/2018/12/UDHR70_AI.pdf) [Accessed July 29, 2020]; Latonero (2018), “Governing Artificial Intelligence: Upholding human rights and dignity”, Data & Society : <https://datasociety.net/library/governing-artificial-intelligence/> [Accessed July 29, 2020]; Ranking Digital Rights (2020), “2020 Ranking Digital Rights Corporate Accountability Index Research Indicators” : <https://rankingdigitalrights.org/wp-content/uploads/2020/06/2020RDRIndicators.pdf> [Accessed July 29, 2020]

The decision on when to conduct a HRIA and the scope of the assessment will require professional judgment and while **formal structures and procedures can help inform such decisions** they should always leave room for those with human rights expertise to make their analysis.

In planning and undertaking a HRIA, it is important to recognise that even when a decision to conduct a HRIA has been taken, **the complexity of the assessment must be appropriately scaled to the particular context** (e.g. the local context, whether it is an ex-ante or ex-post assessment, whether there are pre-existing human rights issues etc.) **and to the nature of the digital project, products or services** (e.g. the size of the operation, the stage of the project, product or service, whether a similar project, activity or product has been on the market before, what the intended use-cases are and who the intended users are, etc.). The complexity and nature of the project, product or service will be essential to considerations of how much time will be needed for the assessment. See Box 3, below, for examples of HRIA reports of digital activities made public.

BOX 3: EXAMPLES OF HRIAS RELATED TO DIGITAL PRODUCTS AND SERVICES

Facebook Sri Lanka

A HRIA of Facebook's activities in Sri Lanka was conducted in 2018 and the executive summary was published in 2020. According to the summary the assessment included six phases: initial in-country engagement; desk review; stakeholder mapping; second in-country engagement; internal and international expert engagement; analysis and report writing. According to the report, the assessment included a focus on engagement with rightsholders, or their legitimate representatives, and also direct engagement with Sri Lankan civil society organizations (CSOs) and Facebook users. The total amount of in-country engagement was approximately two weeks and included interviews with around thirty CSOs and other experts. It also included focus groups with Facebook users that were led by the company while the HRIA team accompanied the process.

The assessment was commissioned to assess Facebook's platform and its involvement in adverse human rights impacts in Sri Lanka, a country identified by the HRIA consultant as "one of the most critical countries when it comes to potential human rights infringements on the platform".

Telia Eurasia

Telia commissioned several HRIAs between October 2015 and May 2016 in relation to its subsidiaries in Eurasia (namely in Azerbaijan, Georgia, Kazakhstan, Moldova, Tajikistan and Uzbekistan). The assessments were made after Telia's announcement in September 2015 that it intended to sell its subsidiaries in the mentioned countries and generally divest from the region. The third-party HRIA consultant identified human rights impacts and risks in relation to each subsidiary and made recommendations for impact mitigation and management. The assessments were focused on Telia's involvement in human rights impacts related to its divestments from the

Eurasia region, and each HRIA was reported to having taken place over the course of two months. Approximately 50 interviews were conducted with rightsholders and other stakeholders, including civil society organisations, human rights defenders, and others.

Google Celebrity Recognition API Human Rights

In 2019, Google published an executive summary of a human rights assessment it had recently conducted. According to the executive summary, Google had commissioned a HRIA of its facial recognition technology in the Media and Entertainment (M&E) industry in order to “inform the development of [its] celebrity recognition application program interface (API)”. The API would enable Google’s business customers in the M&E industry to “identify celebrities in their content at a frame-by-frame or scene-by-scene level using a database of celebrity images licensed by Google and available for use as part of its Cloud AI product portfolio.” The assessment reportedly included engagement with potentially affected stakeholders, as well as consultation with independent expert resources. It is mentioned in the executive summary that the assessment was structured to focus on those “at heightened risk of vulnerability or marginalization.”

***Note:** By featuring these examples in the guidance, DIHR is not endorsing the quality of the impact assessments conducted by these companies. The cases are included only for illustrative purposes, providing examples of public reports of assessments of human rights for other companies who have not yet conducted or published their HRIAs.*

Sources: Facebook (2020), “An Update on Facebook’s Human Rights Work in Asia and Around the World” : <https://about.fb.com/news/2020/05/human-rights-work-in-asia/> [Accessed July 29, 2020]; BSR (2016), “Human Rights Impact Assessments and Responsible Divestment Plan for Business Region Eurasia: Summary project report for Telia Company” : <https://www.teliacompany.com/globalassets/telia-company/documents/about-telia-company/bsr-telia-company-hria-summary.pdf> [Accessed July 29, 2020]; Telia Company (July 11, 2017), “Human Rights Impact Assessments”: <https://www.teliacompany.com/en/news/news-articles/2017/human-rights-impact-assessments/>; BSR (2019), “Google Celebrity Recognition API Human Rights Assessment” : <https://www.bsr.org/reports/BSR-Google-CR-API-HRIA-Executive-Summary.pdf> [Accessed July 29,2020].

2.4.1 REASSESSING HRIA FINDINGS AND FOLLOW-UP ACTIONS

Human rights risks and impacts should be reassessed whenever the scale, scope, use or application of the digital project, product or service changes, such as during introduction of the same product to a new (high-risk) market, significant changes to terms of service, or a decision to withdraw the product from a particular market.³¹ Another reason to reassess the findings of an initial

HRIA is when there are **material changes to laws, regulations or markets**.³² Re-evaluation of HRIA findings may also be appropriate when there are **significant changes in the social and political context** and when the **company enters into new business relationships** that may pose risks to human rights.

It is important to stress that **reassessment of the observations and conclusions in a HRIA** and the actions taken as a result **should be part of ongoing HRDD** processes. Reassessment does not necessarily need to amount to a follow-up HRIA if the due diligence process suggests, for example, that the preventative and mitigation measures worked well and there are no major changes to the project, product or service, and the political environment is stable. It **may also be relevant to reassess the conclusions of various HRIAs in conjunction**, in order to better track performance, to learn across assessments and to better allocate resources.

2.5 WHAT ARE THE DIFFERENCES AND SIMILARITIES BETWEEN HRIA AND OTHER TYPES OF IMPACT AND RISK ASSESSMENT?

2.5.1 KEY CRITERIA FOR HRIA

In order to be able to compare HRIA with other forms of impact assessments we need to clarify what defines HRIA. Despite the diversity 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. These criteria also emphasise 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 10 key criteria listed below were initially developed for DIHR’s [Human rights impact assessment guidance and toolbox](#), which is primarily focused on large-scale business projects conducted at the project or site level. While the key criteria remain general, they have here been adapted to the realities of digital activities, as necessary. Table B, below, 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	1. Participation	Meaningful participation of affected or potentially affected rightsholders is integrated during all stages of the impact assessment process,	<ul style="list-style-type: none"> • Have a broad range of rightsholders been engaged in the impact assessment, including vulnerable groups (in person or virtually; directly, or through representatives or proxies)? • Have the rights and involvement of rightsholders throughout the digital ecosystem been considered (e.g. individual end-users, those potentially impacted by the design and other individuals that are not users but that nonetheless may be negatively

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Key criteria for the process and content of HRIA	Example guiding questions for HRIA practitioners
<p>including: planning and scoping; data collection and context analysis; impact analysis; impact prevention, mitigation and remediation; and reporting and evaluation.</p>	<p>impacted, such as those who may be subject to offline violence after their personal information is shared online)?</p> <ul style="list-style-type: none"> • Have rightsholders, or their proxies, 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 rightsholders, duty-bearers and other relevant parties been involved in designing measures to address impacts (e.g. through prevention, mitigation and remediation) and follow-up to evaluate the effectiveness of these measures? • Have rightsholder representatives or representative organisations, or rightsholder proxies, been included in consultation and engagement, including consideration of the legitimacy of their claim to represent the relevant individuals and/or groups? • Is engagement and participation in the impact assessment guided by the local context, including through using the impacted individuals’ preferred mechanisms (e.g. modes of communication) where possible? • Is the assessment process being undertaken at particular times to ensure participation (e.g. when women are not at work and young people are not at school)?

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
	2. 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.	<ul style="list-style-type: none"> • Does the impact assessment provide for ongoing dialogue between rightsholders, duty-bearers and other relevant parties (e.g. through collaborative problem analysis and design of mitigation measures)? • To the extent digital and virtual means of engagement are utilised (e.g. online consultations and surveys) have accessibility issues been assessed, particularly with regard to the most vulnerable rightsholders? E.g. if the most vulnerable do not have physical access to internet or if internet data is prohibitively expensive, they will not be able to participate. • Has impact assessment consultation and engagement involved both women and men, including through gender-sensitive engagement methods as necessary (e.g. through holding women-only meetings with female HRIA team members)? • Have steps been taken to ensure that the modes of engagement and participation address any barriers that may be faced by vulnerable and marginalised individuals (e.g. by offering transport or holding meetings in culturally appropriate locations, and considering ‘technology barriers’ for older persons or persons with disabilities)? • Have the vulnerable or marginalised individuals and groups in the given context been identified and considered, (e.g. by considering discrimination, resilience, poverty factors etc.)?

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
	3. Empowerment	Capacity building of individuals and groups at risk of vulnerability or marginalisation is undertaken to ensure their meaningful participation.	<ul style="list-style-type: none"> • Have the needs of vulnerable and marginalised individuals been identified in stakeholder mapping and engagement planning? • Does the assessment process include sufficient time for capacity building to allow individuals and groups to be meaningfully involved (e.g. to first present the digital products or services in a way that the audience understands, and to follow-up later with the same groups when they have had time to discuss and organise, in order to receive feedback and potential concerns)? • Do rightsholders have access to independent and competent legal, technical and 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 rightsholders to know their rights (e.g. by thoroughly explaining the right to privacy before explaining how the digital product or service will be developed to ensure respect for the same right), as well as of duty-bearers to meet their human rights duties? • Does the impact assessment provide particular attention to vulnerable or marginalised individuals and groups in engagement and participation activities (e.g. by allowing sufficient time and resources to facilitate the inclusion of these individuals)?

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
4. Transparency	The impact assessment process is as transparent as possible in order to adequately engage affected or potentially affected rightsholders, without causing any risk to security and well-being of rightsholders or other participants (such as NGOs and human rights defenders). Impact assessment findings are appropriately publicly communicated.	<ul style="list-style-type: none"> • Does the impact assessment process provide for information sharing between stakeholders at relevant and regular intervals? • Is the information about the digital project, product or service available to participating stakeholders adequate for giving a comprehensive understanding of potential implications and human rights impacts (e.g. information on intended use-cases, potential mis-use and measures to address it, application and functioning of a service)? • Are HRIA findings and impact management plans (action plans) publicly communicated to the greatest extent possible (e.g. published, with any reservations based on risk to rightsholders or other participants clearly justified)? Is there a firm top-level management commitment in place with regard to transparency before the start of the HRIA process? • Are the phases of the impact assessment, including timeframes, communicated to relevant stakeholders in a clear and timely manner? • Does communication and reporting take into account and respond to the local context? For example, is information made available in relevant languages and formats, in non-technical summaries and in physical and/or web-based formats that are accessible to 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
5. Accountability	The impact assessment team is supported by human rights expertise, and the roles and responsibilities for impact assessment, prevention, mitigation and management are assigned and adequately resourced. The impact assessment identifies the entitlements of rightsholders and the duties and responsibilities of relevant duty-bearers (e.g. developers, companies buying digital products or services, those using or applying digital products and	<ul style="list-style-type: none"> • Is responsibility for the implementation, monitoring and follow-up of mitigation measures assigned to particular individuals or functions within the company (e.g. data engineers are tasked with changing the design to limit potential mis-use)? • Are sufficient resources dedicated to undertaking the HRIA, as well as implementing the impact management plan (i.e. adequate time, as well as financial and human resources)? • Are relevant duty-bearers meaningfully and appropriately engaged in the impact assessment process, including in impact prevention, mitigation and remediation (e.g. data protection authorities are engaged since some systemic impacts can best be dealt with through data protection policies and regulation)? • Does the HRIA draw on the knowledge and expertise of other relevant parties, in particular human rights actors (e.g. digital rights groups working on right to privacy, fair machine learning etc.)? • Does the HRIA team have the relevant inter-disciplinary skills and expertise (including human rights, technical, legal, language and local knowledge) to undertake the HRIA in the given context and with regard to the specific product or service (e.g. data engineers and software developers might need to be involved)? • Have efforts been made to include local individuals, 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	6. Benchmark	<p>services, and government authorities).</p> <p>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.</p>	<ul style="list-style-type: none"> • Are international human rights standards and principles used as the benchmark for the assessment? • Is the impact assessment addressing the full scope of relevant human rights? If certain human rights are excluded from the assessment, is the basis for this reasonable, as well as explicitly noted and explained in the impact assessment? • Is the scoping, data collection, analysis of actual and potential impacts, and design of mitigation measures guided by the substantive content of human rights?
	7. Scope of impacts	<p>The assessment identifies actual and potential impacts the business caused or contributed to. The assessment also considers impacts</p>	<ul style="list-style-type: none"> • Does the assessment include actual and potential impacts related to the digital project, products or services? Are these impacts categorized by: caused, contributed to, and directly linked? • Does the assessment assess human rights the business is directly linked to through operations, products or services and/or business relationships (e.g. developers that have been contracted to develop the product, business partners marketing 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
	<p>directly linked to the business through operations, products or services and/or business relationships (contractual and non-contractual). The assessment analyses cumulative impacts and legacy issues.</p>	<p>selling the product, business customers, and government agencies ordering and using a digital product)?</p> <ul style="list-style-type: none"> • Does the assessment consider any cumulative impacts, i.e. impacts that arise due to the aggregative or cumulative effect of multiple business activities (e.g. several actors sharing limited amounts of data to one source leading to a negative impact on the right to privacy at a later stage when more data points about the same individual has been collected; or several actors taking down user-generated content, which leads to a significant negative impact on freedom of speech)? • Does the assessment identify and address any legacy impacts associated with the digital project, product or service (e.g. previous companies have been reckless with the handling of data causing wide ranging impacts on the right to privacy and many other rights; or where a previous digital health service discriminated a minority group, which is now reluctant to access any new similar services)?
8. Assessing impact severity	<p>Impacts are addressed according to the severity of their human rights consequences. This includes considering the scope, scale and irremediability of</p>	<ul style="list-style-type: none"> • Is the assessment of impact severity guided by relevant considerations, including the scope, scale, irremediability and interrelatedness of impacts? • Is the assessment of severity determined with respect to the consequences for the individuals affected (as opposed to risk to the business)? • Are the relevant rightsholders and/or their legitimate representatives or proxies involved in the assessment of impact severity? Does the assessment of severity

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
	<p>particular impacts, taking into account the views of rightsholders and/or their legitimate representatives.</p>	<p>reflect the views of the relevant rightsholders? If it does not, has that been appropriately explained?</p> <ul style="list-style-type: none"> • Has the analysis of impacts taken into account the interrelatedness of human rights, as well as the interrelatedness of social and human rights factors? (e.g. if a digital product discriminates an individual applying for and being declined a loan, this may have a corresponding impact on the rights of that individual’s children to care; or if a business has insufficient safeguards in place in relation to data privacy, this may have an impact on the right to privacy but also on e.g. employees’ right to freedom of association since they may not want their superiors know their political affiliation.)
9. Impact mitigation measures	<p>All human rights impacts are addressed. Where it is necessary to prioritise actions to address impacts, severity of human rights impacts is the core criterion. Addressing identified impacts follows the mitigation hierarchy of</p>	<ul style="list-style-type: none"> • 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? • 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 synonymous with impact mitigation and remediation? • Does the impact assessment identify ways of exercising leverage to address any impacts the business contributes or is directly linked to (e.g. through business

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
10. Access to remedy	<p>‘avoid-reduce-restore-remediate’.</p> <p>Impacted rightsholders have avenues whereby they can raise grievances regarding the digital project, products or services, as well as the impact assessment process and outcomes. Impact assessment and management ensure that the business provides for or cooperates in access to remedy for impacted rightsholders.</p>	<p>relationships)? Where leverage does not exist, does impact mitigation include building leverage to address such impacts?</p> <ul style="list-style-type: none"> • 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 rightsholders involved)? Does the business co-operate in legal proceedings? • Is there an operational-level grievance mechanism in place that contributes to ongoing impact management, as well as the identification of unanticipated use-cases and 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 rightsholders access to all relevant judicial processes? • Are the access to remedy channels responsive to the context and preferences of the rightsholders in question?

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

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. See Danish Institute for Human Rights, “*Human rights impact assessment guidance and toolbox*”: <https://www.humanrights.dk/business/tools/human-rights-impact-assessment-guidance-toolbox>

2.5.2 OTHER FORMS OF IMPACT ASSESSMENTS RELATED TO DIGITAL ACTIVITIES COMPARED TO HRIA

When looking at digital projects, products and services, there are a few impact assessment methodologies that can be considered in conjunction with HRIA. These include Data Protection Impact Assessment (DPIA), Ethical Impact Assessments (EtIA), Technology Impact Assessment (TIA) of particular health related digital products and services as well as Algorithmic Impact Assessment (AIA)³³. Below you can find an outline of some of these assessments and how they compare to HRIA.

BOX 4: DATA PROTECTION IMPACT ASSESSMENT AND COMPARISON TO HRIA

Many states require businesses to carry out privacy impact assessments and DPIAs by law. Under the EU General Data Protection Regulation (GDPR), DPIAs are required for all data controllers within the EU and those outside the EU that offer products and services or monitor the behaviour of individuals in the EU. Article 25 of GDPR states that,

Where a type of processing in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.³⁴

DPIAs, as envisioned under the GDPR, require the data controller at a minimum to:

1. describe the envisioned processing operations
2. assess the necessity and proportionality of the processing operation in relations to its intended purpose
3. assess the risks to the rights and freedoms of data subjects
4. explain the measures envisioned to address the risks

While the GDPR and the Article 29 Working Party³⁵ provide guidance on the minimum requirements of a DPIA, sufficient **flexibility is left to the data controller to determine the methodology** and where DPIA fit within organisational structures. A **DPIA is also scalable**; meaning that a data controller can design and implement a DPIA that is suitable and proportionate

for their processing operation. Failure to comply with the DPIA requirements of the GDPR can lead to fines.

There are many substantive and procedural similarities between DPIA and HRIA. However, they do not completely converge. The **incorporation of elements of HRIA into DPIA and vice versa could strengthen the nature of both impact assessments** and their ability to effectively protect human rights. However, there are **also risks that elements of HRIA may be lost** if businesses attempt to merge them or incorporate HRIA into DPIA.

Some key features of DPIAs include:

Scope of human rights covered: DPIA focuses on ‘the rights and freedoms of natural persons’ which refer to the rights contained within the Charter on Fundamental Rights of the European Union (EU Charter) which does not cover all of the rights set out in international human rights instruments.

Coverage of business (in)activity: DPIA only covers one dimension of a business’ activities: data processing.

Threshold for requiring a DPIA: DPIAs are only required for activities ‘result[ing] in high risk’ determined by a range of criteria of activities that could result in such a risk.³⁶ DPIA must be of an iterative nature as part of a continuous cycle and require a new assessment of risk to the individual if a change in nature, scope, context, purpose, and sources of the risk occurs.

Planning and scoping: The GDPR does not contain an explicit reference to a planning and scoping phase as envisaged in HRIA and does not specify who should be involved in conducting the DPIA beyond a data protection officer.

Data collection and baseline development: DPIA does not require a consideration of context or stakeholder engagement, and does not require a particular methodology.

Identifying and assessing risks: For a DPIA, the necessity and proportionality of the data processing has to first be assessed. This ensures that consideration is given to compliance with key principles of data protection, such as data minimisation. An assessment of the specific risks to individuals must then be conducted. The assessment of risk is independent of the preliminary assessment of severity of risk required to trigger the carrying out of a DPIA in the first place but is rather a full risk assessment.

Impact prevention and mitigation: DPIA requires data controllers to set out how they will mitigate the risks they identify. While flexibility is given to the data controller to identify effective measures to reduce the risk to an acceptable level, if the data controller is not able to find such a measure, consultation with the supervisory authority is required. The mitigation

measures in HRIA, including ‘prevention, mitigation and remediation’, are not found in DPIA.

Reporting: Under the GDPR, there is no obligation to publish a DPIA and its findings. It is up to the data controller to publish it if they wish. Generally, lack of transparent reporting requirements has been identified as a major issue in DPIA.³⁷

Oversight: The GDPR requires states to establish or designate a supervisory authority as part of a system of monitoring and oversight.

Continuous review: Data controllers are required to consider whether they need to renew their DPIA if a change is likely to present a high risk to data subjects. Changes in the data processing operation or technology can trigger the requirement to carry out a DPIA, as can changes in organisational or societal context.

Consultation: The consultation required for DPIAs is much narrower and specific than in HRIA. Consultations in relation to DPIA are referred to in two ways: consultation with supervisory authorities (as already discussed above) and consultation with ‘interested parties’. Article 35(9) of the GDPR states that, ‘[w]here appropriate, the controller shall seek the views of data subjects or their representatives on the intended processing, without prejudice to the protection of commercial or public interests or the security of processing operations.’³⁸

Sources: McGregor and Rau, *“Identification of Synergies and Divergences between HRIA and DPIA: Assessing Entry Points for Human Rights Integration”*, Human Rights Big Data and Technology Project (forthcoming)

There are **numerous ways in which the methodologies used to conduct HRIA could strengthen DPIA practices:**

- Adopting a HRIA approach to public reporting could contribute to addressing shortcomings of DPIA in relation to the lack of transparency and information that exists on the experiences of data controllers in carrying out DPIAs and the challenges they face in practice.
- Through adopting all internationally recognised human rights and principles as a benchmark, companies conducting DPIAs may gain a further understanding of the conception of risk and what may constitute a trigger to a new or renewed assessment.
- It can improve the general understanding of cumulative impacts and impacts on specific groups.
- An explicit planning and scoping phase could be introduced into DPIAs, including consideration of the human rights context and a mapping of

relevant stakeholders in order to take into account the full human rights impact of the project or activity.

- It could provide a means for engaging with and empowering stakeholders, including impacted rightsholders, to provide input through transparent engagement and reporting as well as gain more consolidated consultation approaches as is established by a human rights-based approach.
- Guidance to viable alternatives to consultation with affected rightsholders would also be added to replace dismissing the need for consultation on the basis of not being feasible, as is made possible under the GDPR.
- It would further entrench the need for ongoing review to ‘know and show’ how a business operation or relationship may affect rightsholders.

Incorporating a HRIA methodology to DPIA would however leave **open several questions that require further consideration**, such as:

- Would the human rights expertise of the data protection officer have to be developed or could a dedicated human rights officer be appointed as part of the core team?
- While the existence of national supervisory authorities under the GDPR could strengthen monitoring and compliance with the UNGPs as there is not an equivalent oversight body required by the UNGPs, would the human rights expertise of data protection authorities need to be strengthened or should the mandates of NHRIs be extended, with resource, to carry out such oversight or to provide expert advice to Data Protection Authorities?

BOX 5: ETHICAL IMPACT ASSESSMENT AND COMPARISON TO HRIA

A further methodology that has been developed to address negative impacts related to certain new and emerging digital technologies is Ethical Impact Assessment (EtIA). EtIA is a process during which “an organization, together with stakeholders, considers the ethical issues or impacts posed by a new project, technology, service, program [...], or other initiative, to identify risks and solutions”³⁹. During the assessment, dialogues with stakeholders such as industry actors, policy-makers, regulators, civil society, academics and media is considered essential in order to achieve a comprehensive study.

An EtIA strives to identify, understand, assess and address potential harms caused by the difference between the intent of a project and its effective contribution to a ‘common good’ in society. However, right and wrong, good and bad, and other similar concepts are not clearly defined, which can allow different traditions and cultures to choose different outcomes suited to their own needs and sensitivities. Unlike ethical decision making that involves

identified phases, EtIA is characterized by its large set of different approaches that can be used by businesses. Though **EtIA methodologies differ and are inherently flexible**, the process **generally involves the following six steps**:

- 1. Conducting an ethical impact threshold analysis**
- 2. Preparing an EtIA plan**
- 3. Identifying ethical impacts** using foresight and ethical impact identification methods
- 4. Evaluating ethical impacts** by identifying value conflicts, proposing solutions, discussing impact analysis and conducting an evaluation with stakeholders
- 5. Formulating and implementing remedial actions**
- 6. Reviewing and auditing the EtIA outcomes**

The model methodology outlined is comparable to other types of impact assessments, including HRIA, but the absence of clear standards can lead to a business taking a less extensive approach or choosing the approach that is most beneficial for the project in financial terms.

There are, as such, some important differences between HRIA and EtIA:

- Stakeholder engagement is a key feature of the EtIA framework, **but the degree of stakeholder engagement can vary** and the minimalist version of EtIA is characterized by the involvement of only project managers and internal discussions around their actions. HRIA, on the other hand, requires engagement with rightsholders or their proxies, with a focus on the experiences of the most vulnerable groups and individuals.
- Unlike HRIA, **EtIAs are not based on clear references to international standards but use various ethical standards and frameworks as benchmarks**. Similar to HRIAs, however, EtIAs have contributed to the implementation of the 'do no harm' doctrine in the ICT sector. The lack of benchmarks means that there is a risk that EtIAs contribute to 'ethics washing' instead of ensuring that negative impacts are effectively prevented and/or mitigated.
- The lack of clear international standards and benchmarks may also lead to **allocation of insufficient resources allocated to tackle identified negative ethical impacts**. As such, EtIAs could benefit from the integration of human rights as a standard, and EtIA methodologies can adopt HRIA methodologies in order to enhance the potential of EtIAs to identify and address negative human rights impacts. This may also help widen the scope of potential impacts to be addressed throughout the EtIA process.
- While a large variety of EtIA approaches can be identified, there is **limited insight into how EtIAs are conducted in practice** since EtIAs are generally

not made public. This holds **true even as many tech companies have made public their own ethical principles and standards**, which are the standards that ought to be used in EtIAs. While there are also limited HRIA reports in the public domain, the benchmarks and standards make the expectations on such processes clearer.

In sum, the EtIA approach is more flexible and less rigorous than the HRIA methodology and can therefore benefit from adopting internally recognised human rights as a reference when e.g. the ‘common good’ is concerned. However, seeing as ethics-based approaches are common in relation to assessment of new and emerging technologies, such approaches can be useful as entry points for discussions of wider human rights topics and, thus, ensure that a given company in practice lives up to its responsibility to respect human rights.

Source: Wright (2014), “Ethical Impact Assessment”; Markkula Center for Applied Ethics & Guerrero (2018) “Areas of Ethical Impact”; SATORI (2016) “A Common Framework for Ethical Impact Assessment”: https://satoriproject.eu/media/D4.1_Annex_1_EIA_Proposal.pdf [Accessed July 29, 2020]; Vallor, Green & Raicu (2018) “Ethics in Technology Practice” p.2 : <https://www.scu.edu/ethics/> [Accessed July 29, 2020]; Hao (2019), “In 2020, let’s stop AI ethics-washing and actually do something” :<https://www.technologyreview.com/2019/12/27/57/ai-ethics-washing-time-to-act/> [Accessed July 29, 2020]; BSR and the World Economic Forum (2019), “White paper: Responsible Use of Technology”: <https://www.weforum.org/whitepapers/responsible-use-of-technology> [Accessed September 15, 2020].

BOX 6: TECHNOLOGY ASSESSMENT (TA) AND COMPARISON TO HRIA

Technology assessment is a broad field defined as “a scientific, interactive and communicative process, which aims to contribute to the formation of public and political opinion on societal aspects of science and technology.”⁴⁰

Technology Assessment (TA) is an operational-oriented and case-based tool focusing on various technologies (e.g. virtual reality, facial recognition etc.)

The assessment focuses on a specific technology and not activities broadly speaking, assessing one product at the time. Often incorporated in development processes, TAs aim to explore all impacts and aspects of a technology and are not limited to adverse impacts. Legal and ethical considerations are important components of the assessments, but TAs are not restricted to them. Three dimensions make up TA: the cognitive dimension, which creates an overview on knowledge relevant to policy-making; the normative dimension, which establishes dialogue in order to support opinion making; and the pragmatic dimension, which establishes processes that help decisions to be made.

Some **differences and commonalities between TA and HRIA** are as such:

- TA explores all impacts, positive and negative, of a given technology, whereas HRIA focuses on identifying and addressing the negative human rights impacts.
- TA places significant emphasis on ongoing process of assessment rather than snapshot evaluations, in that sense it is more similar to general HRDD. HRIA, however, is one tool in the HRDD toolbox which provides a snapshot of context and impacts at a certain point in time.
- TA is conducted by a variety of actors, businesses but also governments and regional bodies, which differs slightly from the HRIA methodology presented here and which is generally thought of as a process related to business activities (compare, however, SWIA methodology discussed in chapter 1.5.3).
- A notable difference between HRIA and TA lies in the standards applied as benchmark for the assessment. Except in the health sector, TA is not regulated with reference to internationally recognized standards, which allows a flexibility for businesses but also less accountability for stakeholders.
- The core principles used by businesses resembles those from Ethical Impact Assessment (see Box 5, above). Therefore, TAs may integrate human rights—and activities such as training developers and managers on human rights—which may increase the respect for human rights with increased efficiency and at a limited cost. However, such integration is not necessarily expected.

Source: European Parliamentary Technology Assessment, TAMI project, "Technology Assessment - Methods and Impacts": <https://eptanetwork.org/about/what-is-ta> [Accessed July 29, 2020]; Benta (2009) "What is technology assessment?": <https://www.cambridge.org/core/journals/international-journal-of-technology-assessment-in-health-care/article/what-is-technology-assessment/F2CE6903EE02296499AC0AC24192454E> [Accessed July 29, 2020]

While the different kinds of assessments presented above all have their upsides, it is important to point out that **“part of the value of the human rights framework stems from the fact that these norms already exist under international human rights law.”**⁴¹ The standards in international human rights have been negotiated and agreed to internationally and are therefore highly appropriate for a globalised context, such as the context of digital products and services. As such, the human rights framework has much to offer also to other forms of impact assessment.

2.5.3 SHOULD HRIA BE STAND-ALONE OR COMBINED WITH OTHER FORMS OF IMPACT ASSESSMENT?

One key question for HRIA practice is whether it is best to assess human rights by using a ‘stand-alone’ approach (i.e. an assessment that focuses exclusively on human rights) or a ‘combined approach (i.e. combining human rights impact assessment methodology with other forms of impact assessment, such as those presented above). In short, the **answer should depend on the particular context**.

Based on the comparisons to DPIA, EtIA and TA, there are **a number of potential benefits to combined approaches** that can be identified, such as:

- Building on and utilising existing impact and risk management structures
- Avoiding consultation fatigue of external stakeholders and assessment fatigue of internal stakeholders
- Facilitating analysis of the interrelatedness of e.g. data protection, privacy, ethical principles and broader human rights impacts, and
- Building on the respective strengths of the different disciplines involved.

On the other hand, there are also **a number of 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 C: STRENGTHS AND WEAKNESSES OF DIFFERENT APPROACHES TO ASSESSING HUMAN RIGHTS IMPACTS

	Combined approach (with EtIA, DPIA or TIA)	Dedicated (stand-alone) approach
Strengths	<ul style="list-style-type: none"> • Benefits from established internal and external company structures that assign accountabilities. • Avoids duplication of work and stakeholder consultation fatigue by focusing on the synergies between e.g. potential data protection and privacy 	<ul style="list-style-type: none"> • Draws on human rights expertise, enabling specific focus and deep analysis of human rights. • Specifically prioritises individuals and communities who may experience human rights impacts, in particular by facilitating participation of vulnerable and marginalised

TABLE C: STRENGTHS AND WEAKNESSES OF DIFFERENT APPROACHES TO ASSESSING HUMAN RIGHTS IMPACTS

	Combined approach (with EtIA, DPIA or TIA)	Dedicated (stand-alone) approach
	<p>impacts, and human rights impacts.</p> <ul style="list-style-type: none"> • Can ensure that companies’ ethical commitments or data privacy impacts, as well as human rights impacts are assessed simultaneously and thereby improve efficiency. • 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. A combined approach has the benefit of addressing human rights while using a framework and language with which project teams are familiar (e.g. ethics, privacy, data protection, diversity etc.). • Can allow companies to assess human rights without explicitly framing it as such, which can be important in certain country contexts. 	<p>individuals or groups, or their proxies.</p> <ul style="list-style-type: none"> • Provides the freedom for companies to identify and assess human rights impacts, irrespective of government adherence to international human rights standards.
Weaknesses	<ul style="list-style-type: none"> • The process, especially if it is dictated by prescriptive regulatory requirements or by standard setting bodies, 	<ul style="list-style-type: none"> • Mitigation and management plans drawn from a dedicated assessment may not be easily incorporated into existing

TABLE C: STRENGTHS AND WEAKNESSES OF DIFFERENT APPROACHES TO ASSESSING HUMAN RIGHTS IMPACTS

	Combined approach (with EtIA, DPIA or TIA)	Dedicated (stand-alone) approach
	<p>may not allow for a specific focus on human rights.</p> <ul style="list-style-type: none"> • Those conducting the assessment 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. • Mandated assessments, such as DPIAs, are often not required to be made public and there is a risk that combining approaches therefore leads to less transparency. 	<p>company management systems and may suffer from lack of both ‘buy-in’ and accountability for implementation.</p> <ul style="list-style-type: none"> • Adds additional cost and resource management requirements to the company and/or project; cost sensitivities may also arise with business partners or 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.

2.5.4 SECTOR-WIDE IMPACT ASSESSMENT: AN ALTERNATIVE TO INDIVIDUAL ASSESSMENTS?

In some cases, HRDD processes and/or external stakeholders may identify or point out that individual assessments and individual action will not be either:

- A) sufficient to address largely systemic issues which require coordination, or
- B) the most efficient way of identifying and addressing human rights impacts that will largely be similar for most actors in a given context (e.g. when a country with human rights legacy issues opens up its markets to foreign investment).

In such circumstances, it can be more efficient to take a wider look at potential and actual human rights impacts. One such approach and methodology is Sector Wide Impact Assessment (SWIA). Box 7, below, provides an example of a SWIA related to the digital activities.

BOX 7: SECTOR WIDE IMPACT ASSESSMENT OF ICT SECTOR IN MYANMAR

Contribution by Margaret Wachenfeld.

The Myanmar Centre for Responsible Business (MCRB) together with the Institute for Human Rights and Business (IHRB) and DIHR conducted a “sector wide human rights impact assessment” (SWIA) on the Information and Communications Technology (ICT) sector in Myanmar in the period 2014-2015. A SWIA uses an impact assessment approach but looks across human rights impacts in the whole sector, rather than impacts of only a particular product, project or company. As a SWIA takes the UNGPs as a normative framework, it also looks across all three pillars of the UNGPs—at the government’s role under Pillars I and III and the corporate role in human rights under Pillars II and III.

The ICT SWIA was conducted at a point in time when Myanmar was undergoing a profound transformation, emerging from authoritarian rule and economic isolation. Mobile phone penetration was experiencing a dramatic rise at the time of the SWIA (from 7% to 33% between 2012 and 2014), the first mobile licenses were being issued to international operators and Myanmar residents had access to the Internet for the first time. All of this development took place amid an absence of adequate policy and legal frameworks.

The SWIA contained a detailed analysis of the ICT policies and laws in place and the gaps from a human rights perspective. The gaps in the policy and legal frameworks were and still are compounded by people’s basic lack of experience of using ICTs, resulting in the potential for misuse and negative impacts on a range of human rights, particularly the rights to privacy and freedom of expression.

The SWIA also included a mapping of the ICT business ecosystem in the early days of Myanmar’s ICT transformation. Developing a mapping was useful to understand where different businesses fit in the value chain, and it was also in itself helpful as an engagement tactic with companies and others as no other actors had put that information together. It thus became something useful that could be offered in return for participating in consultations. As few companies had even heard of human rights or other concepts such as responsible business conduct at the time, questions had to be framed to ask about particular issues in plain language, focusing on asking companies about what they were doing and why, and using that as a basis to draw conclusions, rather than asking companies about human rights directly.

With regard to access to remedy (Pillar III), there was limited options for raising grievances with state-based mechanisms and few companies had even thought about user or consumer grievances.

A SWIA puts stakeholder engagement at the core of the process of identifying and assessing human rights impacts. As a SWIA is about a whole sector rather than a particular company, the process started with mapping out the sector—government agencies, the ICT businesses ecosystem and the limited CSO actors in the space—which had not been done before.

Four groups of stakeholders were identified and interviewed (i) communities potentially affected by ICT operations, covering issues including: ICT use; consultation; children; gender; security; indigenous peoples/different ethnic groups; (ii) managers of ICT companies, covering issues including: customer/user privacy and security (including lawful interception and surveillance); freedom of expression (including censorship and hate speech); community impacts; (iii) employees and workers of ICT companies and (iv) external stakeholders, covering issues including: the impacts of ICT operations for local or national authorities, NGOs and CSOs, international organisations, journalists, political parties, schools and monasteries.

As the project was looking at the whole sector across the country, the team selected field research locations where ICT operations were underway and that were representative of a range of ICT contexts in Myanmar: urban and rural ICT usage; Internet cafes and phone and SIM shops in urban and rural settings.

The field researchers conducted interviews one-to-one and in small groups, as well as focus group discussions. Open questions were used as much as possible, in order to allow respondents to answer using their own thoughts and words, and raise the issues they considered important. Because the sector was so new for many of the stakeholders, approaching them to ask about either the technical dimension or the human rights dimension often also required reframing to ask questions from which human rights concerns or impacts could be inferred.

To many users, the Internet and Facebook were synonymous. The researchers therefore provided some basic explanations and “translated” concepts like freedom of expression into terms that stakeholders could understand. For stakeholder groups such as the few specialized CSOs at the time or user groups, with expert knowledge on the subject, it was possible to have more detailed discussions, such as around gaps in the policy and legal framework.

MCRB built on those early discussions to bring together a coalition of interested organizations who host the Myanmar Digital Rights Forum every year to continue discussions on topics raised in the SWIA and on digital rights more generally.

One dimension that was different from the typical digital HRIA is that the SWIA covered both “online” and “offline” issues—such as labour rights impacts from tower or fibre line construction. The consultation process therefore also included discussions with day laborers digging fibre cable trenches and constructing mobile network towers.

Sources: MCRB, IHRB, DIHR (2015), “Sector-Wide Impact Assessment of Myanmar’s ICT Sector” : <https://www.myanmar-responsiblebusiness.org/sectors/ict.html> [Accessed July 29, 2020]; Wachenfeld, Wrzoncki & de Angulo (2019), “Sector-wide impact assessment: A ‘big picture’ approach to addressing human rights impacts”, in Gotzmann (2019), “Handbook on Human Rights Impact Assessment” ; MCRB (2019), “Third Myanmar Digital Rights Forum Ends With Call for Better Regulated, Freer, Safer Online Space, Emphasises Need for Consultation” : <https://www.myanmar-responsiblebusiness.org/news/digital-rights-forum-2019-report.html> [Accessed July 29, 2020].

GLOSSARY

Allow-list: practice of allowing some identified entities (e.g. customers) access to a particular privilege (e.g. possibility to purchase a specific product or service). Sometimes also called 'whitelist'. Opposite of block-list.

Block-list: practice of not allowing identified entities (e.g. customers) access to a particular privilege (e.g. possibility to purchase a specific product or service). Sometimes also called 'blacklist'. Opposite of allow-list.

Borderline online content: content that comes close to—but doesn't quite cross the line of—violating e.g. company guidelines or human rights.

Chatbot: software that simulates human-like conversations with users via text messages on chat.

Data lifecycle: phases that data goes through during its lifetime, including data collection, data processing, data use, data cleaning, data erasure.

Deep learning: subset of machine learning, a branch of artificial intelligence that configures computers to perform tasks through experience.

Duty-bearer: those that have duties and responsibilities to uphold and respect these human rights. Includes both states and businesses.

Ex-ante assessment: assessment that occurs before the business project or activities commence.

Ex-post assessment: assessment that occurs once the business project or activities are already well underway.

First-order impacts: The most 'immediate' impacts of an activity, which may lead to other impacts. E.g. a first-order impact on the right to a fair trial, can lead to second- and third-order impacts on the right to family life, to education and to health.

Freemium: business model that involves offering customers both complementary and extra-cost services.

Gating: process to limit e.g. the sale, use or application of a particular product or service.

Human in the loop: process when the machine or computer system is unable to offer an answer to a problem, needing a human intervention. Human-in-the-loop allows the user to change the outcome of an event or process.

Know Your Customer (KYC): process of identifying and verifying the identity of a client or customer when engaging initially (e.g. when applying to enter an 'allow list') and periodically over time.

Off-the-shelf: product or service that is available immediately and does not need to be specially made to suit a particular purpose, e.g. off-the-shelf software.

Rightsholders: individuals that have entitlements to have their rights protected, respected and fulfilled.

Second- and third-order impacts: see 'first-order impacts'.

Sentiment analysis: uses natural language processing and machine learning to interpret and classify emotions in subjective data.

Tech giants: refers to technology companies that have a dominant position in markets for internet-based platforms and services.

Use-cases: a specific situation in which a product or service could potentially be used.

Zero-rating: refers to the practice of not charging users for data used to access certain online services or platforms.

END NOTES

- ¹ High-level Panel on Digital Cooperation (2019), *“The age of digital interdependence”*, p. 17, <https://digitalcooperation.org/wp-content/uploads/2019/06/DigitalCooperation-report-for-web.pdf> [Accessed July 29, 2020]
- ² Ibid.
- ³ HRC (2012), *“The promotion, protection and enjoyment of human rights on the Internet”*, A/HRC/20/L.13: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G12/153/25/PDF/G1215325.pdf?OpenElement> [Accessed July 29, 2020]
- ⁴ See e.g. Council of Europe (2020), *“Recommendation CM/Rec(2020)1 of the Committee of Ministers to member States on the human rights impacts of algorithmic systems”*: https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016809e1154#globalcontainer [Accessed July 29, 2020]; Independent High-level Expert Group on Artificial intelligence (2019), *“Ethics Guidelines for Trustworthy AI”*, European Commission: <https://ec.europa.eu/digital-single-market/en/news/ethics-guidelines-trustworthy-ai> [Accessed July 29, 2020]; Australian Human Rights Commission (2019), *“Human Rights and Technology: Discussion Paper”*: https://tech.humanrights.gov.au/sites/default/files/2019-12/TechRights_2019_DiscussionPaper.pdf [Accessed July 29, 2020]; and Latonero (2018), *“Governing Artificial Intelligence: Upholding Human Rights & Dignity”*, Data & Society: <https://datasociety.net/library/governing-artificial-intelligence/> [Accessed July 29, 2020].
- ⁵ 41st session of the Human Rights Council, *“Opening statement by the UN High Commissioner for Human Rights Michelle Bachelet”*: <https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=24724>
- ⁶ For more information see Office of the High Commissioner on Human Rights, *“B-Tech Project”*: <https://www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx>
- ⁷ See e.g. Human Rights Council (2018), *“Report of the Special Rapporteur on the promotion and the protection of the right to freedom of opinion and expression: Note by the Secretary-General”*, A/73/348, para. 53: <https://undocs.org/A/73/348> [Accessed July 29, 2020]; HRC (2020), *“Question of the realization in all countries of economic, social and cultural rights - Report of the Secretary-General”*, A/HRC/43/29 para. 52: <https://undocs.org/en/A/HRC/43/29> [Accessed July 29, 2020]; Australian Human Rights Commission (2019), *“Human Rights and Technology: Discussion Paper”*: <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/human-rights-and-technology-issues-paper-2018> [Accessed July 29, 2020]; HRC (2019), *“Surveillance and human rights - Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression”*, A/HRC/41/35 para. 60: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/148/76/PDF/G1914876.pdf?OpenElement> [Accessed July 29, 2020]; Ranking Digital Rights (2020), *“Ranking Digital Rights Corporate Accountability Index Draft Indicators”*: <https://rankingdigitalrights.org/wp-content/uploads/2020/04/2020-draft->

[methodology-redline-version.pdf](#) [Accessed July 29, 2020]; Investor Alliance for Human Rights (2020), “Investor Toolkit on Human Rights”:
<https://investorsforhumanrights.org/sites/default/files/attachments/2020-05/Full%20Report%20-%20Investor%20Toolkit%20on%20Human%20Rights%20-%20May%202020b.pdf> [Accessed July 29, 2020].

⁸ See e.g. Human Rights Council (2018), “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression”, A/HRC/38/35:
<https://undocs.org/A/HRC/38/35>

⁹ Danish Institute for Human Rights, “Human rights impact assessment guidance and toolbox”,
<https://www.humanrights.dk/business/tools/human-rights-impact-assessment-guidance-toolbox>
[Accessed Nov 17, 2020].

¹⁰ Office of the High Commissioner for Human Rights, “B-Tech Project”:
<https://www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx> [Accessed Oct 22, 2020].

¹¹ It is important to note that it remains an expectation that companies assess all of their impacts, and users of this guidance are still expected to assess these impacts. While we are not including workers in the gig economy in the scope of this Guidance, they may be severely impacted by business models of digital platforms facilitating such work and should thus also be considered by companies as they assess their human rights impacts. For more on the gig economy, see e.g. Business & Human Rights Resource Centre (March 2019), “The Future of Work: Litigating Labour Relationships in the Gig Economy”, Corporate Legal Accountability Annual Briefing:
https://media.business-humanrights.org/media/documents/files/documents/CLA_Annual_Briefing-FINAL.pdf [Accessed Nov 23, 2020]; International Labour Organisation, “Crowdwork and the gig economy”:
<https://www.ilo.org/global/topics/non-standard-employment/crowd-work/lang-en/index.htm>
[Accessed Nov 23, 2020]; International Trade Union Confederation (Oct 2019), “ITUC Policy Brief Organising and Collective Bargaining in Non-Standard Forms of Work”:
<https://www.ituc-csi.org/Organising-CollectiveBargaining-in-NonStandard-Work> [Accessed Nov 23, 2020].

¹² For more information B-Tech Foundational Paper (forthcoming), “Key Characteristics of Business Respect for Human Rights”, Office of the High Commissioner for Human Rights:
<https://www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx> [Accessed July 29, 2020].

¹³ UN Guiding Principle 18.

¹⁴ UN Guiding Principle 19.

¹⁵ UN Guiding Principle 20.

¹⁶ UN Guiding Principle 21.

¹⁷ B-Tech Project (2020), “A B-Tech Foundational Paper: The UN Guiding Principles in the Age of Technology”, OHCHR: <https://www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx> [Accessed July 29, 2020].

¹⁸ Office of the High Commissioner for Human Rights, “B-Tech Project” <https://www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx> [Accessed Sept 14, 2020].

¹⁹ United Nations (2011), “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework”, A/HRC/17/31 [Hereinafter: UN Guiding Principles].

²⁰ B-Tech Project (2020), “A B-Tech Foundational Paper: The UN Guiding Principles in the Age of Technology”, OHCHR: <https://www.ohchr.org/Documents/Issues/Business/B-Tech/introduction-ungp-age-technology.pdf>

²¹ Ibid.

²² B-Tech Project (2020), “A B-Tech Foundational Paper: Key Characteristics of Business Respect for Human Rights”: <https://www.ohchr.org/Documents/Issues/Business/B-Tech/key-characteristics-business-respect.pdf>

²³ See e.g. Global Network Initiative (GNI) (2020), “The GNI Principles at Work: Public Report on the Third Cycle of Independent Assessments of GNI Company Members 2018/2019”, p. 103: <https://globalnetworkinitiative.org/wp-content/uploads/2020/04/2018-2019-PAR.pdf>

²⁴ B-Tech Project (2020), “A B-Tech Foundational Paper: Key Characteristics of Business Respect for Human Rights”: <https://www.ohchr.org/Documents/Issues/Business/B-Tech/key-characteristics-business-respect.pdf>

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ranking Digital Rights (2020), “2020 Ranking Digital Rights Corporate Accountability Index Research Indicators”: <https://rankingdigitalrights.org/2020-indicators/> [Accessed July 29, 2020]. Indicators related to Section G4 suggest that risks ought to be identified and further assessment should be conducted whenever specific concerns have been identified.

²⁸ There are times when a robust HRIA as outlined in this Guidance may not be feasible. This may e.g. include M&A processes or early-stage development with unclear use-cases, in relation to which there are inherent obstacles to external stakeholder engagement. In such circumstances HRDD processes of course remain essential. That a HRIA may not be feasible at a certain point in time should never imply that companies do not assess and address human rights impacts.

²⁹ See e.g. Ranking Digital Rights (2019), “Consultation Draft – Human Rights Risk Scenarios: Targeted Advertising”: <https://rankingdigitalrights.org/wp-content/uploads/2019/02/Human-Rights-Risk-Scenarios-targeted-advertising.pdf> [Accessed July 29, 2020].

³⁰ Ibid.

³¹ Global Network Initiative (2017), “The GNI principles”: <https://globalnetworkinitiative.org/wp-content/uploads/2018/04/GNI-Principles-on-Freedom-of-Expression-and-Privacy.pdf> [Accessed July 29, 2020].

³² Ibid.

³³ See e.g. Reisman et.al. (2018), “Algorithmic Impact Assessments: A Practical Framework for Public Agency Accountability”: <https://ainowinstitute.org/aiareport2018.pdf>; and, Ada Lovelace Institute & DataKid UK (2020), “Examining the Black Box: Tools for Assessing Algorithmic Systems”: <https://www.adalovelaceinstitute.org/examining-the-black-box-tools-for-assessing-algorithmic-systems/>

³⁴ EU General Data Protection Regulation [hereinafter: GDPR] Art. 35(1).

³⁵ Article 29 Working party was replaced by the European Data Protection Board when GDPR came into force on 25 May 2018.

³⁶ GDPR Art. 35(1).

³⁷ Wright & de Hert (2012), “Privacy Impact Assessment”, Law, Governance and Technology Series, Vol. 6., p. 27; “Comments of the Electronic Privacy Information Center on Consultation on Data Protection Impact Assessments (DPIAs) Guidance”, July 3, 2018: <https://epic.org/algorithmic-transparency/EPIC-Irish-DPC-Comment-DPIA.pdf>, p. 10 [Accessed July 30, 2020].

³⁸ GDPR Art. 35(9).

³⁹ SATORI (2016) “A Common Framework for Ethical Impact Assessment”, p. 7: https://satoriproject.eu/media/D4.1_Annex_1_EIA_Proposal.pdf [Accessed July 29, 2020].

⁴⁰ European Parliamentary Technology Assessment, “Technology Assessment - Methods and Impacts”, TAMI project: <https://eptanetwork.org/about/what-is-ta> [Accessed July 29, 2020].

⁴¹ Donahoe (2018), open remarks to the conference “Human Centered AI: Building Trust, Democracy and Human Rights by Design”: <https://medium.com/stanfords-gdpi/human-centered-ai-building-trust-democracy-and-human-rights-by-design-2fc14a0b48af> [Accessed June 26, 2020].

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