THE DANISH INSTITUTE FOR HUMAN RIGHTS

WELCOME AND INTRODUCTION

HUMAN RIGHTS IMPACT ASSESSMENT GUIDANCE AND TOOLBOX

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In this document you will find the Welcome and Introduction section of the Human Rights Impact Assessment Guidance and Toolbox.

You can find the full version of the Human Rights Impact Assessment Guidance and Toolbox here: www.humanrights.dk/hria-toolbox/

A.1 INTRODUCTION

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

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

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

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

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

The process outlined is modelled on HRIA undertaken for large-scale business projects conducted at the project or site level (e.g., a factory, mine site, oil & gas plant), including the supply chain and ancillary infrastructure as relevant. As such, it may need to be adapted and scaled to suit the particular business project or activities in question. While the Guidance and Toolbox in its entirety outlines a process for stand-alone HRIA (i.e., an impact assessment that focuses specifically on human rights), stakeholders may also wish to draw on various components of

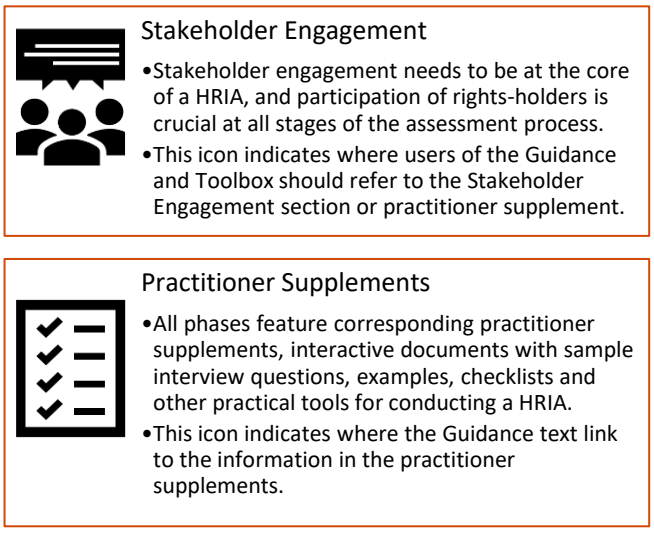
this Guidance and Toolbox when integrating human rights into other types of assessment (e.g., environmental, social and health impact assessments). Notably, the development of HRIA methodology is to some degree inspired by environmental, social and health impact assessment practice.

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

This Guidance and Toolbox is primarily designed for large-scale business projects and sites. However, many of the concepts and materials elaborated may also be adapted to other types of business projects and activities. The Guidance and Toolbox includes the following sections:

- **Welcome Section:** This section provides an overview of the Guidance and Toolbox, an introduction to HRIA and 10 key criteria to guide the process and content of HRIA.
- **HRIA Phases:** The Guidance and Toolbox is divided into five phases: (1) planning and scoping; (2) data collection and baseline development; (3) analysing impacts; (4) impact mitigation and management; and (5) reporting and evaluation. Stakeholder engagement is a cross-cutting component for every phase. For each HRIA phase, explanatory guidance is provided, as well as corresponding practitioner supplements that include templates, checklists and other practical tools for conducting HRIA. The explanatory guidance seeks to provide an overview of the impact assessment phase, detailing what it would include and why, as well as discussion on key points. These sections are suitable for a broad audience wishing to familiarise themselves with HRIA. The accompanying practitioner supplements are intended for those who are involved in conducting, commissioning, reviewing or monitoring HRIAs.

Figure 1: Navigating the Guidance and Toolbox



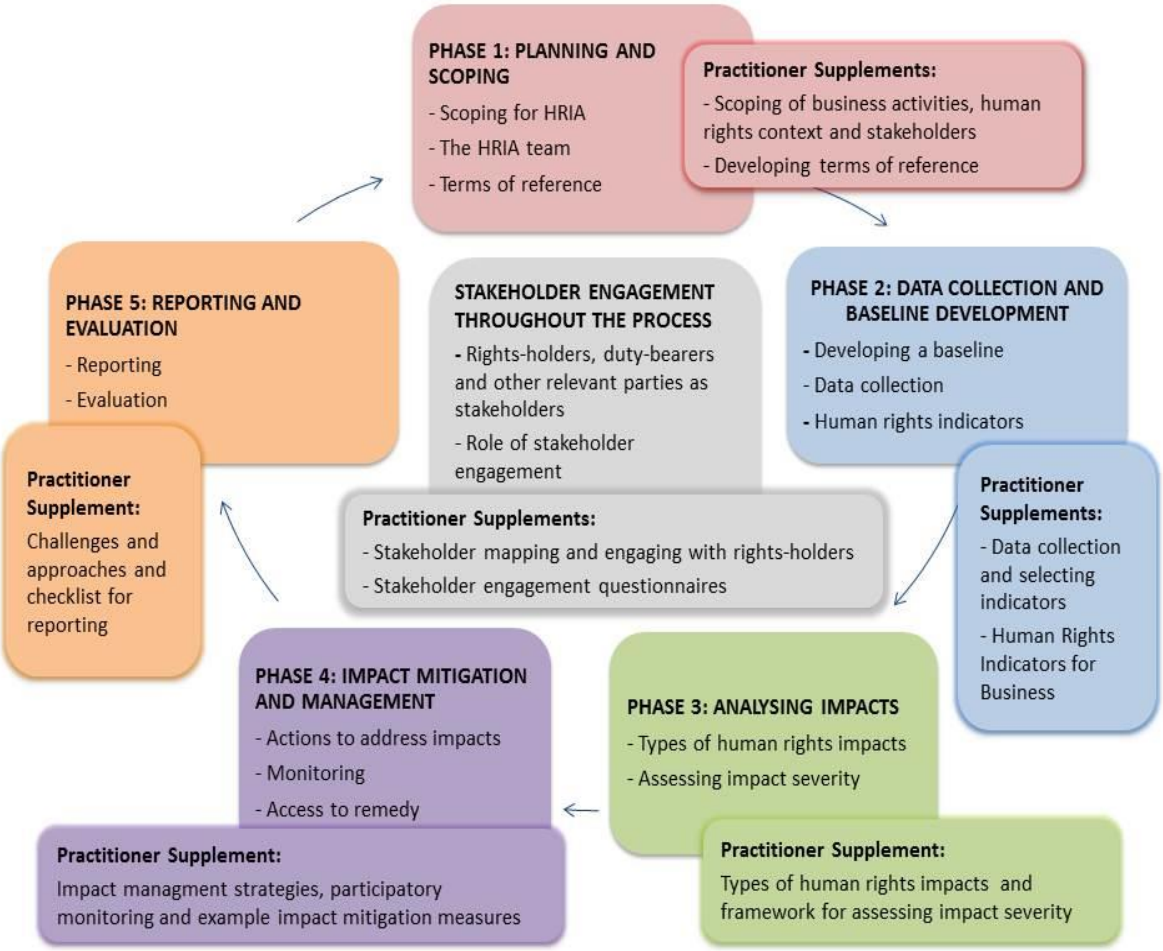
- **Stakeholder Engagement:** Stakeholder engagement is a cross-cutting component of every phase in the HRIA process. The Stakeholder Engagement section includes an introduction to engaging rights-holders and other

relevant parties, as well as information on relevant stakeholders to engage with. This section and its corresponding practitioner supplement should regularly be consulted throughout the assessment.

This document contains the Welcome and Introduction section of the Human Rights Impact Assessment Guidance and Toolbox. You can access the full version of the Guidance and Toolbox, including the Practitioner Supplements, at: https://www.humanrights.dk/tools/human-rights-impact-assessment-guidance-toolbox/stakeholder-engagement.

You can find further details about the content of the Guidance and the practitioner supplements for the different HRIA phases in Figure 2, below.

Figure 2: Overview of the content of the Guidance and Toolbox



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

The primary target audience for this Guidance and Toolbox is:

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

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

- **National human rights institutions** exercising their mandate to promote and protect human rights could use the Guidance and Toolbox when advising the government and other stakeholders on impact assessment law, policy and practice to ensure that the adoption of a human rights-based approach and international human rights standards are reflected.
- **Government departments and state institutions** that are responsible for providing guidance to businesses on respecting human rights or setting standards for due diligence and impact assessment could draw on the Guidance and Toolbox for information on how human rights might be better reflected in such guidance and standards.
- **Non-governmental and civil society organisations** that support and/or represent workers, individuals and communities that are adversely affected by business projects or activities could use the Guidance and Toolbox to advocate for a company to undertake a HRIA or for increased community involvement in business-commissioned HRIAs, or to review and monitor HRIAs that have been undertaken. (For a methodology designed specifically for community-based HRIA, see the Getting it Right Tool developed by Rights & Democracy.[1])
- Other stakeholders with an interest in impact assessment and/or business and human rights can find relevant information in the Guidance and Toolbox.

A.4 INTRODUCTION TO HUMAN RIGHTS IMPACT ASSESSMENT

A.4.1 WHAT IS HRIA?

In the business context, HRIA can be defined as a process for identifying, understanding, assessing and addressing the adverse effects of a business

project or business activities on the human rights enjoyment of impacted rights-holders such as workers and community members.

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

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

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

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 the process.

Engagement with rights-holders 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 fieldwork, as well as heavily based on the participation of rights-holders other stakeholders. Stakeholder engagement has therefore been situated as the core cross-cutting component in the Guidance and Toolbox.

To ensure that human rights are addressed comprehensively, it is important that the content, process and outcomes of the assessment apply and are compatible with international human rights standards and principles. Drawing on the UN Guiding Principles, as well as current guidance and literature on HRIA, a number of aspects can be identified as essential for HRIA of business projects or 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 International Labour Organization (ILO) Core Labour Conventions, as well as other human rights instruments as relevant in the particular HRIA context.

- **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, participation, empowerment and transparency.
- **Focus on accountability:** The assessment process and content need to emphasise accountability, including by recognising the entitlements of rights-holders to have their rights respected and the corresponding duties and responsibilities of duty-bearers to uphold and respect these rights.

These essential content and process elements of HRIA, as well as guiding questions for implementing them in practice, are elaborated further in 10 Key Criteria for HRIA (section A.5).

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

Within emerging HRIA practice, several different approaches have developed, including:

- Impact assessments of business projects and activities (e.g., this Guidance and Toolbox)
- HRIA in the field of development
- Assessments on health and human rights
- Children's rights impact assessments
- HRIA of international trade and investment agreements
- Impact assessments conducted for public authorities
- Community-based HRIA processes; and
- Sector-wide impact assessments.

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

Sources: Nora Götzmann (Ed) (2019), *Handbook on Human Rights Impact Assessment,* Cheltenham: Edward Elgar; James Harrison and Mary-Ann Stephenson (2010), *Human Rights Impact Assessment: Review of Practice and Guidance for Future Assessments,* Edinburgh: Scottish Human Rights Commission; Simon Walker (2009), *The Future of Human Rights Impact Assessments of Trade Agreements,* Antwerp: Intersentia.

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

It is evident that business projects and activities can have a wide range of impacts on human rights. With the endorsement of the UN Guiding Principles by the Human Rights Council in 2011, it has been firmly established that businesses have a responsibility to respect human rights, including by identifying, avoiding, mitigating and remediating the human rights impacts with which they are involved (see Box A.2, below).

The UN Guiding Principles have introduced the global standard that businesses are expected to exercise human rights due diligence. This includes the expectation that businesses assess and address their impacts, both those arising from operations and business relationships. HRIAs can be a key element of human rights due diligence and provide a process for businesses to understand and address their impacts in a specific project, activity or country context. HRIA of business projects and activities can provide a structured approach to:

- Identify adverse human rights impacts, including understanding these from the perspectives of impacted rights-holders such as workers and community members
- Determine measures to address any adverse human rights impacts identified (through prevention, mitigation and remediation)
- Facilitate dialogue between a business, rights-holders and other relevant parties, in particular human rights actors (for more information on the different stakeholders to engage in HRIA, see Stakeholder Engagement)
- Facilitate capacity building and learning for company stakeholders, rights-holders 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 or legacy issues; and
- Identify learning that might inform human rights due diligence practices with regard to other projects or activities.

A.4.3 HOW DOES HRIA RELATE TO HUMAN RIGHTS DUE DILIGENCE AND THE UN GUIDING PRINCIPLES?

The UN Guiding Principles (see Box A.2, below) articulate the expectation that businesses should respect human rights by using a process of 'human rights due

diligence'. Human rights due diligence is a process for identifying, preventing, mitigating and accounting for the adverse human rights impacts with which a business is involved. The assessment of human rights impacts is a critical step in this process and HRIA is a methodology to assess and address impacts at the project or activity level. Importantly, businesses need to tailor human rights due diligence processes to their characteristics and to ensure that risks and impacts are assessed and addressed throughout the business. HRIAs are extensive processes of key value in particular in contexts where businesses face severe risks and impacts in connection to their activities and projects.

Notably, the UN Guiding Principles do not necessarily require that businesses conduct 'human rights impact assessments' but indicate that a range of approaches may be appropriate for assessing human rights impacts. Examples of approaches that have been developed include 'stand-alone' HRIA (i.e., assessments that focus exclusively on human rights) and 'integrated' assessments (e.g., approaches that integrate human rights into environmental, social and health impact assessments). (For more information on stand-alone and integrated assessments, see section A.4.8, below)

Box A.2: The United Nations Guiding Principles on Business and Human Rights

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

They rest on three inter-related pillars:

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

The UN Guiding Principles were unanimously endorsed by the Human Rights Council in 2011. Since then, they have been integrated into numerous key business and human rights frameworks and standards, for example, the OECD Guidelines for Multinational Enterprises, the Performance Standards of the

Box A.2: The United Nations Guiding Principles on Business and Human Rights
International Finance Corporation and the European Union's Corporate Social Responsibility Policy.
Source: United Nations Human Rights Council (2011), *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, A/HRC/17/31 (UN Guiding Principles).

The UN Guiding Principles state that when a business is assessing its human rights impacts, it should:[2]

- Draw on internal and/or independent human rights expertise
- Undertake meaningful consultation with potentially affected rights-holders and other relevant parties
- Be gender-sensitive and pay particular attention to any human rights impacts on individuals 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).

Combining these points with aspects highlighted in HRIA guidance and literature, a number of key criteria for the assessment of human rights impacts can be identified. These are outlined in 10 Key Criteria for HRIA, section A.5, below.

A.4.4 HOW DOES HRIA RELATE TO OTHER HUMAN RIGHTS STANDARDS AND INITIATIVES?

HRIA assesses the rights enshrined in human rights instruments such as the ILO Core Conventions, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. (For more information on human rights standards and principles, see section A.6, below.) However, HRIA also relates to a number of other standards and initiatives.

The OECD Guidelines for Multinational Enterprises, which are binding on all OECD member states, reaffirm the state duty to protect human rights, including from third parties such as businesses. According to the OECD Guidelines, businesses should: respect human rights, including by addressing human rights impacts with which they are involved; avoid causing or contributing to adverse

human rights impacts; seek ways to prevent or mitigate impacts linked to the enterprise through a business relationship; have a policy commitment to respect human rights; carry out human rights due diligence; and provide for or cooperate in remediation of adverse human rights impacts.[3]

In support of the OECD Guidelines, the OECD Due Diligence Guidance for Responsible Business Conduct features six elements:[4]

- Embed responsible business conduct into policies and management systems
- Identify and assess actual and potential adverse impacts associated with the enterprise's operations, products or services
- Cease, prevent and mitigate adverse impacts
- Track implementation and results
- Communicate how impacts are addressed; and
- Provide for or cooperate in remediation when appropriate.

Many of these elements are embedded in this Guidance and Toolbox, and the OECD recognises HRIA as one method for identifying actual and potential human rights impacts. The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas further elaborates on due diligence related to human rights impacts in the supply chain.[5]

The Sustainable Development Goals (SDGs) aim at 'unlocking the transformative potential of the private sector, and incentivizing changes in financing as well as consumption and production patterns to support sustainable development.'[6]

Box A.3: The Sustainable Development Goals and HRIA

Impact assessments, including HRIAs, are one means for monitoring implementation of the SDGs. HRIA captures data relevant to several of the SDGs, including information on:

- Poverty (SDG 1)
- Hunger (SDG 2)
- Health (SDG 3)
- Education (SDG 4)
- Gender equality (SDG 5)
- Water and sanitation (SDG 6)
- Working conditions (SDG 8)
- Industry and infrastructure (SDG 9)
- Inequality (SDG 10)
- Responsible consumption and production (SDG 12)
- Life below water (SDG 14); and
- Life on land (SDG 15).

Source: United Nations (2015), *Transforming our World: The 2030 Agenda for Sustainable Development*, New York and Geneva: United Nations.

As part of the 2030 Agenda for Sustainable Development, the SDGs were adopted by all UN member states in 2015. The SDGs feature 17 goals, 169 targets and 230 indicators related to ending poverty, improving health and education, reducing inequality and spurring economic growth. The SDGs aim to 'realize the human rights of all'; accordingly, the 2030 Agenda is grounded in international human rights instruments. More than 90 percent of SDG targets are linked to specific provisions of international human rights instruments and labour standards.[7]

Each individual country must define its national targets based on the content of the SDGs, as well as its international human rights commitments, and monitor progress toward achieving them.[8] States may find sector-wide HRIA most useful for monitoring the SDGs within a given country context; however, project- and site-level HRIA (the approach taken in this Guidance and Toolbox) can also uncover relevant information on realisation of the SDGs, especially in communities near business projects or activities (see Box A.3, above).

SDG 17, partnerships for the goals, recognizes the role of businesses and other stakeholders in realising the SDGs. The 2030 Agenda states: 'Private business activity, investment and innovation are major drivers of productivity, inclusive economic growth and job creation. […] We call upon all businesses to apply their creativity and innovation to solving sustainable development challenges.'[9] As a result, business enterprises should consider how their projects and activities can help meet SDG targets, or at the very least, avoid impeding progress. As part of this partnership, many of the SDG targets would require businesses to conduct due diligence, which can be achieved through HRIA.[10]

HRIAs can provide meaningful findings to inform such transformation of the private sector. Respecting human rights in business activities is furthermore inherent to many SDGs, in particular Goal 8 on decent work and economic growth, Goal 12 on responsible consumption and production, Goal 16 on peace, justice and strong institutions, and Goal 17 on partnerships for the goals.

Impact assessments such as HRIAs can also give practical, tangible meaning to the broad SDG framework. Impact assessment practitioners can translate SDG targets into specific criteria appropriate for the local context. For example, during the scoping process of one environmental assessment, stakeholders identified the SDGs most relevant to planned water catchments in Rwanda. Specific objectives and strategies were then formulated to apply these SDGs to the assessment and planning process.[11]

A.4.5 WHEN SHOULD HRIA BE UNDERTAKEN AND WHAT FACTORS CAN TRIGGER A HRIA?

Human rights due diligence is an iterative process meant to be implemented throughout business activities. Identifying if, when and how a stand-alone HRIA is merited is specific to the business. Large multinational corporations maintain a wide range of presences across many countries and operating contexts. As a result, it is likely not possible to conduct stand-alone HRIAs for every single project or operating site. In these conditions, businesses should carefully consider which projects should undergo a stand-alone HRIA, as well as under what circumstances it is relevant to trigger the HRIA process.

Companies may decide to undertake HRIA for a wide range of reasons based on their industry and associated risks, their human rights commitments, regulatory requirements and/or their legacy around human rights issues. Some countries have begun to pass laws requiring large companies to conduct due diligence in order prevent serious human rights abuses in their supply chains.[12] Additionally, certain networks and organisations (such as the International Council on Mining & Metals) require or encourage members to conduct human rights due diligence, either as a stand-alone HRIA or as part of other risk management processes.[13]

Businesses and organisations may commit to commissioning a certain number of HRIAs as part of an overall human rights commitment. For example, a large multinational corporation may decide to undertake two HRIAs as part of a learning process, then use their findings to inform operations across several sites with similar characteristics or contexts.

Developing 'triggers' for HRIA can be a good method to enable staff in business and financial institutions to identify projects or activities where HRIA would be a helpful approach. Decision-making processes will vary based on the specific circumstances, operating context, company procedures and corporate commitments. However, certain triggers can signal that a HRIA is appropriate or necessary. For instance, companies may decide to commission or undertake HRIA:

- When a financer or investor requires human rights due diligence as part of the contract
- When business partners (e.g., joint-venture partners) have been involved in human rights abuse
- When entering a new country context with known human rights issues (e.g., forced labour, restrictions on freedom of expression or violent behaviour from security forces)

- When an NGO, CSO, human rights group or other whistle-blower raises concerns about human rights impacts arising from the business project or activities
- When beginning a high-impact, high-risk project (e.g., a new mine, dam or large construction project)
- When the project or activities are or will be located on protected land or areas occupied by vulnerable populations (e.g., areas near indigenous communities, protected rainforests or refugee camps)
- When internal risk-identification mechanisms flag a site or project for further review and investigation
- When at risk of complicity in human rights abuses (see Phase 3: Analysing Impacts)
- When the project or business activities will affect common property resources used by an entire community (e.g., groundwater, grazing land or fishing waters); and
- When entering a new market or industry that may place consumers at risk (e.g., infant formula).

In addition to companies, other parties may require or undertake HRIA in certain instances, including the circumstances listed above. International financial institutions, banks and other investors may require partners or recipients to conduct human rights due diligence as part of the contract. Depending on the particular business context, financers may set their own list of characteristics or circumstances which trigger a HRIA or additional consideration of human rights impacts.

Severity of actual or potential human rights impacts should always guide decision-making on which projects warrant a stand-alone HRIA. Projects or business activities with the highest severity of impacts (e.g., threats to lives and livelihoods) should receive the highest priority. For more information on severity, see Phase 3: Analysing Impacts.

A.4.6 HOW LONG DOES HRIA TAKE?

For HRIA of projects and sites, the assessment should be conducted as early as possible in the project cycle or when business activities commence and should be repeated and re-evaluated at regular intervals and critical project gateways. For example, in the case of environmental and social impact assessment, review every three to five years is considered good practice. Human rights impacts should also be reassessed whenever the scale, scope or nature of the project or business activities changes, such as during project expansion or preparation for decommissioning and closure. Re-evaluation of HRIA results may also be

appropriate when there are significant changes in social and political circumstances.

Timelines vary significantly based on the particular needs, resources, risks and context associated with the business project or activities. In planning and undertaking HRIA, it is important to recognise that the complexity of the assessment should be appropriately scaled to the particular context (e.g., the community context, whether it is ex-ante or ex-post, whether there are pre-existing conflicts) and to the nature of the business project or activities (e.g., the size of the operation, the stage of operations, the specific location). This also applies to consideration of how much time will be needed for the assessment. See Box A.4, below, for some example time allocations for HRIA.

Box A.4: Examples of time allocation for HRIA

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

Below, an estimation of the time allocation has been described. This example should not be seen as standard practice applicable to all HRIAs; as noted above, the amount of time necessary will depend on the particular context. Additionally, in practice, the various phases of a HRIA are much more fluid, which often creates overlap among the different phases (e.g., planning and scoping often overlaps with, and feeds into, data collection and baseline development).

- Approximately **two to three months are allocated for the planning and scoping phase**. This phase includes kick-off sessions involving the HRIA team and the subsidiary to explain the HRIA process. During this stage, the HRIA team conducts country risk research; scopes the business project or activities; identifies which locations, suppliers and commodities to include in the assessment; develops assessment questionnaires; and makes logistical preparations.
- Approximately **six weeks are allocated for data collection and baseline development**, which includes more or less three weeks of desktop data collection and two to three weeks of in-country assessment.
- During the in-country assessment, typically 70-80 interviews are conducted during the **two to three weeks on the ground**. These consultations include: interviews with management at the subsidiary head office; focus group

Box A.4: Examples of time allocation for HRIA

discussions and individual interviews with workers and community members; interviews with suppliers and contractors (both management and workers); and interviews with other relevant parties, such as UN agencies, NGOs and CSOs and academic experts.

- After every in-country assessment, the HRIA team evaluates the overall assessment process (e.g., what went well and what could be improved for the next round of assessments). **This evaluation takes place on location and takes a few hours.**
- Upon return from the in-country assessment, the HRIA team spends approximately **four to five weeks drafting the HRIA report**, which includes time to analyse the human rights impacts found during the in-country assessment, as well as time to draft the final HRIA report. This phase may take longer depending on how much further research is needed. As part of the HRIA report, the team also develops an impact management plan, which includes recommendations to mitigate the impacts found during the assessment.
- Once the HRIA report and impact management plan have been shared with the subsidiary, **the subsidiary needs approximately one month to review the recommendations**, determine timelines and identify relevant persons who will be responsible for the different mitigation actions.
- **Monitoring the HRIA impact management plan takes place on a quarterly basis**, through calls between the HRIA assessors and Nestlé (HQ representative and subsidiary focal point) to discuss and evaluate progress of the implementation of mitigation measures. The HRIA assessors offer support with any challenges that the company may encounter in implementing the recommendations.

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

Bisha Mine HRIA in Eritrea

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

- **June - July 2013:** Nevsun commissioned the first HRIA of its Bisha Mine, beginning the HRIA process. This stage included meetings with the HRIA team and the preparation of a detailed assessment plan (i.e., the terms of reference).

Box A.4: Examples of time allocation for HRIA

- **August - October 2013:** Scoping took place, including: background research; document review; analysis of the legal framework of Eritrea; and survey of the relevant international human rights standards and context.
- **October 2013:** The first of two field missions to Eritrea took place. Assessors conducted fieldwork research, interviews and focus groups with stakeholders. Additionally, the HRIA team made observations of the Bisha Mine and nearby communities, as well as their interactions with Eritrean subcontractors.
- **January 2014:** A second mission to Eritrea took place for further data collection.
- **February 2014:** Interactive dialogues on Eritrea's Universal Periodic Review were held at the UN Human Rights Council.
- **February - March 2014:** Further research and human rights analysis were undertaken by the HRIA team.
- **April 2014:** The initial HRIA report was released.

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

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

Goldcorp's Marlin Mine Human Rights Assessment

Goldcorp's Marlin Mine Human Rights Assessment in Guatemala began in October 2008 and was conducted over an 18-month period. A steering committee was created, which consisted of a member of Guatemalan civil society, a shareholder group representative and a Goldcorp representative. The committee was charged with overseeing and managing the process, including developing the scope and timeline of the assessment, as well as

Box A.4: Examples of time allocation for HRIA

selecting the consultant(s) to conduct the assessment. On Common Ground Consultants was chosen by the committee to conduct the assessment.

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

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

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

A.4.7 WHAT ARE THE DIFFERENCES AND SIMILARITIES BETWEEN HRIA AND OTHER TYPES OF IMPACT AND RISK ASSESSMENT?

HRIA draws on impact assessment practices such as environmental, social and health impact assessment (EIA, SIA and ESHIA when combined). However, while HRIA has a number of things in common with these more established practices, there are also some notable differences. HRIA features several original, essential elements that create added value (see Box A.5, below).

When comparing HRIA and SIA, for instance, it can be noted that both place significant emphasis on:[14]

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

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

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

It has also been noted that while there are significant parallels between ESHIA and HRIA, there are some areas of human rights impacts which are not, in practice, always included in a standard ESHIA scope. Even if included, these human rights issue areas might warrant further attention in practice, which could be facilitated by taking a human rights focus. Examples include:[15]

- Labour issues with contractors and within the goods and services supply chain
- Post-conflict or conflict-sensitive areas
- Security activities related to business operations and/or activities
- Gender analysis and an assessment of the gender impacts associated with a business project or activities
- The rights of indigenous peoples and an adequate focus on vulnerable individuals and groups
- Community impacts related to business relationships or activities (e.g., business partners, government actors or joint-venture operations)
- Legacy human rights impacts associated with the activities of previous business operators
- Cumulative impacts involving human rights impacts of other businesses operating in the same area; and
- In-migration associated with the development of the business project, which may result in overloading infrastructure and social services.

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

Box A.5: The 'original' or 'essential' elements of HRIA

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

- **Based on internationally recognised human rights standards and principles**, i.e., using these as the benchmark for the impact assessment. International human rights standards provide a universal and comprehensive basis for impact assessment, whereas other types of impact assessment tend to use a diverse array of standards as benchmarks and may not cover civil and political and/or economic, social and cultural rights comprehensively. Use of international human rights standards also includes drawing on a developed jurisprudence in the analysis of impacts, as well as recognising the interdependence and interrelatedness of impacts. Other types of impact assessment may be narrower in their focus.
- **Focus on participation of rights-holders, duty-bearers and other human rights stakeholders** in the impact assessment process. In HRIA, meaningful participation in the impact assessment process is as important as the outcomes, and rights-holders are considered active agents in the impact assessment process. While public participation is a standard component of impact assessment processes such as EIA and SIA, taking a human rights-based approach creates further emphasis on: participation in terms of questioning; broadening the points in time at which participation occurs; the level of information sharing involved in participation and consultation activities; and empowerment and capacity building of individuals to participate in the impact assessment process. HRIA also engages with human rights stakeholders such as human rights institutions, networks and experts during the impact assessment, as well as during the implementation of recommendations and mitigation measures.
- **Attention to equality and non-discrimination**. International human rights place significant emphasis on equality and non-discrimination. These terms are arguably more clearly defined than notions such as equity, which may be applied by other types of impact assessment. The principles of equality and non-discrimination inform the systematic analysis of impacts experienced by different individuals and groups (e.g., women and indigenous communities), including those that may be vulnerable or marginalised in a given context. By disaggregating data on human rights impacts, HRIA teams can systematically analyse the differential distribution of impacts between groups. In short, use of the human rights framework can broaden and deepen the analysis in terms of equality and non-discrimination.

Box A.5: The 'original' or 'essential' elements of HRIA

- **Focus on accountability, including transparency, access to information and access to remedy**. Transparency is imperative both throughout the impact assessment process and with regard to the results. Considering transparency from the perspective of the right to access to information includes a full range of parameters, such as the type of information being disclosed, the points in time information is provided, language and other accessibility factors. The human rights framework recognises that rights-holders have rights and entitlements, and that duty-bearers must uphold their duties and responsibilities to respect, protect and fulfil these entitlements. This attention to accountability arguably provides greater imperatives for the implementation of mitigation measures (including access to remedy) than other impact assessment frameworks that are not based on legal standards. Relatedly, the emphasis of the human rights framework on access to remedy, both as a right in and of itself and as a component of accountability, leads to a stronger focus on remedy in HRIA than in other types of impact assessment.

The 10 Key Criteria for HRIA (A.5, below) provide more detail on how such 'original' or 'essential' elements might be implemented in HRIA of business projects or activities.

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

A.4.8 SHOULD HRIA BE STAND-ALONE OR INTEGRATED?

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

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

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

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

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

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

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

	Integrated approach	**Dedicated (stand-alone) approach**
Strengths	• Benefits from established internal and external company mechanisms that assign accountabilities. • Avoids duplication of work and stakeholder consultation fatigue by focusing on the synergies between potential social and human rights impacts. • Can enable more efficient use of project time and resources. • The term 'human rights' resonates differently amongst people. This can lead to confusion, concern and sensitivities. An integrated ESHIA has the benefit of addressing human rights while using a framework and language with which project teams are familiar.	• 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 individuals or groups. • Can be performed outside the regulatory requirements of an ESHIA process, which may allow for sensitive human rights issues and impacts to be assessed without triggering risks during the permitting process or from public release of the report. • Provides the freedom for companies to identify and

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

	Integrated approach	Dedicated (stand-alone) approach
		assess human rights impacts, irrespective of government adherence to international human rights standards.
Weaknesses	• The process, especially if it is dictated by prescriptive host country regulatory requirements, may not allow for a specific focus on human rights. • ESHIA practitioners may not have sufficient human rights expertise. • Human rights considerations may not be explicitly referenced, and it may be less clear how human rights impacts have been identified and will be addressed by the project. • In operating contexts where human rights may be more sensitive, affected communities and individuals may be at risk if specific information from the ESHIA report enters the public domain. Separate reporting (if any) of such information may therefore be necessary.	• Mitigation and management plans drawn from a dedicated assessment may not be easily incorporated into existing company management systems and may suffer from lack of both 'buy-in' and accountability for implementation. • Adds additional cost and resource management requirements to the project; cost sensitivities may also arise with business partners or host country governments. • May exacerbate or give rise to potential political sensitivities from external stakeholders, or may raise or create stakeholder expectations in situations where human rights are not promoted and protected.

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

A.5 10 KEY CRITERIA FOR HRIA

Despite the diversity, and at times divergence, in current HRIA approaches, there are a number of elements that recur in HRIA literature, guidance and practice as critical aspects to consider. These 'key criteria' relate to both the process and content of HRIA, and reflect what is unique about HRIA. 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 following Table A.B, provides an overview of these 10 key criteria, including example guiding questions for HRIA practitioners.

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

Table A.B: 10 key criteria for human rights impact assessment			
Key criteria for the process and content of HRIA			**Example guiding questions for HRIA practitioners**
			consideration of the legitimacy of their claim to represent workers or community members? • Is engagement and participation in the impact assessment guided by the local context, including through using the community's preferred mechanisms (e.g., modes of communication) where possible? • Is the assessment process being undertaken at particular times to ensure participation (for example, when women are not in the fields, young people are not at school and families are not involved in the harvest)? • Does the impact assessment provide for ongoing dialogue between rights-holders, duty-bearers and other relevant parties (e.g., through collaborative problem analysis and design of mitigation measures)?
	Non-discrimination	Engagement and consultation processes are inclusive, gender-responsive and take into account the needs of individuals and groups at risk of	• Has impact assessment consultation and engagement involved both women and men, including through gender-responsive engagement methods as necessary (e.g., through holding women-only meetings or going house-to-house for individual consultation)? • 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)?

Table A.B: 10 key criteria for human rights impact assessment			
Key criteria for the process and content of HRIA			**Example guiding questions for HRIA practitioners**
		vulnerability or marginalisation.	• Have the vulnerable or marginalised individuals and groups in the given context been identified and considered (by considering discrimination, resilience, poverty factors, etc.)? • Have the needs of vulnerable and marginalised individuals been identified in stakeholder mapping and engagement planning?
	Empowerment	Capacity building of individuals and groups at risk of vulnerability or marginalisation is undertaken to ensure their meaningful participation.	• Do rights-holders 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 rights-holders to know and claim their rights, as well as of duty-bearers to meet their human rights duties? • Does the assessment process allow sufficient time for capacity building to allow communities to be meaningfully involved? • 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)?
	Transparency	The impact assessment process is as transparent as possible in order to	• Does the impact assessment process provide for information sharing between participants at relevant intervals? • Is the information about the business project or activities available to participating stakeholders adequate for giving a comprehensive

Table A.B: 10 key criteria for human rights impact assessment			
Key criteria for the process and content of HRIA			**Example guiding questions for HRIA practitioners**
		adequately engage affected or potentially affected rights-holders, without causing any risk to security and well-being of rights-holders or other participants (such as NGOs and human rights defenders). Impact assessment findings are appropriately publicly communicated.	understanding of potential implications and human rights impacts associated with the business project or activities (e.g., information on ancillary infrastructure such as the construction of a port, railway, etc.)? • Are HRIA findings and impact management plans publicly communicated to the greatest extent possible (e.g., published, with any reservations based on risk to rights-holders or other participants clearly justified)? • Are the phases of the impact assessment, including timeframes, communicated to all 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?
	Accountability	The impact assessment team is supported by human rights expertise, and the roles and responsibilities for	• Is responsibility for the implementation, monitoring and follow-up of mitigation measures assigned to particular individuals/groups? • Are sufficient resources dedicated to undertaking the HRIA, as well as implementing the impact management plan (i.e., adequate time, as well as financial and human resources)?

Table A.B: 10 key criteria for human rights impact assessment			
Key criteria for the process and content of HRIA			**Example guiding questions for HRIA practitioners**
		impact assessment, mitigation and management are assigned and adequately resourced. The impact assessment identifies the entitlements of rights-holders and the duties and responsibilities of relevant duty-bearers (e.g., the company, contractors and suppliers and local government authorities).	• Are relevant duty-bearers meaningfully and appropriately engaged in the impact assessment process, including impact mitigation and management? • Does the HRIA draw on the knowledge and expertise of other relevant parties, in particular human rights actors? • Does the HRIA team have the relevant interdisciplinary skills and expertise (including human rights, legal, language and local knowledge) to undertake the HRIA in the given context? • Have efforts been made to include local people, including women, in the impact assessment team, if appropriate?
Content	Benchmark	Human rights standards constitute the benchmark for the impact	• Have international human rights standards and principles been used as the benchmark for the assessment? • Has the impact assessment addressed the full scope of relevant human rights? If certain human rights have been excluded from the

Table A.B: 10 key criteria for human rights impact assessment			
Key criteria for the process and content of HRIA			**Example guiding questions for HRIA practitioners**
		assessment. Impact analysis, assessment of impact severity and design of mitigation measures are guided by international human rights standards and principles.	assessment, is the basis for this reasonable, as well as explicitly noted and explained in the impact assessment? • Is the scoping, baseline data collection, analysis of actual and potential impacts, and design of mitigation measures guided by the substantive content of human rights?
	Scope of impacts	The assessment identifies actual and potential impacts the business caused or contributed to. The assessment also considers impacts directly linked to the business through operations, products or services and/or business relationships	• Does the assessment include all relevant types of actual and potential impacts, i.e. those that are caused, contributed to, and directly linked? • Does the assessment assess human rights impacts the business is directly linked to through operations, products or services and/or business relationships (e.g., with suppliers, contractors, joint-venture partners, customers and state agencies)? • Does the assessment consider cumulative impacts, i.e., impacts that arise due to the aggregative or cumulative effect of multiple business operations and activities in the same area? • Does the assessment identify and address legacy impacts associated with the business project or activities (e.g., poorly conducted government resettlement of communities prior to the company acquiring the land)?

Table A.B: 10 key criteria for human rights impact assessment			
Key criteria for the process and content of HRIA			**Example guiding questions for HRIA practitioners**
		(contractual and non-contractual). The assessment analyses cumulative impacts and legacy issues.	
	Assessing impact severity	Impacts are addressed according to the severity of their human rights consequences. This includes considering the scope, scale and irremediability of particular impacts, taking into account the views of rights-holders and/or their legitimate representatives.	• Is the assessment of impact severity guided by 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? • Are the relevant rights-holders and/or their legitimate representatives involved in the assessment of impact severity? Does the assessment of severity reflect the views of the relevant rights-holders? • Has the analysis of impacts taken into account the interrelatedness of human rights, as well as the interrelatedness of environmental, social and human rights factors? (For example, if a business project or activity impacts on the right to adequate rest and leisure by requiring excessive overtime, this may have a corresponding impact on the rights of children to care. Or if a business uses a significant amount of water resources, for instance through irrigation of an agricultural plantation, this will have an impact not only on the environment but may also impact on people's right to adequate water for drinking and

Table A.B: 10 key criteria for human rights impact assessment			
Key criteria for the process and content of HRIA			**Example guiding questions for HRIA practitioners**
			sanitation, or the right to an adequate standard of living if families can no longer grow their food.)
	Impact mitigation measures	All human rights impacts are addressed. Where it is necessary to prioritise actions to address impacts, severity of human rights consequences is the core criterion. Addressing identified impacts follows the mitigation hierarchy of 'avoid-reduce-restore-remediate'.	• 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 relationships)? Where leverage does not exist, does impact mitigation include building leverage to address such impacts?
	Access to remedy	Impacted rights-holders have avenues whereby they can raise grievances regarding the	• 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

Table A.B: 10 key criteria for human rights impact assessment			
Key criteria for the process and content of HRIA			**Example guiding questions for HRIA practitioners**
		business project or activities, 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 rights-holders.	consent of the rights-holders involved)? Does the business co-operate in any legal proceedings? • Is there an operational-level grievance mechanism in place that contributes to ongoing impact management, as well as the identification of unanticipated impacts? If not, does the impact management plan include the establishment of such a mechanism? Does the operational-level grievance mechanism meet the eight effectiveness criteria for non-judicial grievance mechanisms that are outlined in UN Guiding Principle 31? • Is it ensured that the operational-level grievance mechanism does not deny rights-holders access to all relevant judicial processes? • Are the access to remedy channels responsive to the context and preferences of the rights-holders in question?

Sources: These criteria are based on a literature review including sources on human rights impact assessment, stakeholder engagement, social impact assessment and the human rights-based approach, including the following key sources: Desiree Abrahams and Yann Wyss (2010), *Guide to Human Rights Impact Assessment and Management*, Washington: International Business Leaders Forum, International Finance Corporation and UN Global Compact; James Harrison (2013), 'Establishing a meaningful human rights due diligence process for corporations: learning from experience of human rights impact assessment', *Impact Assessment and Project Appraisal*, 31:2, pp.107-117; James Harrison (2010), *Measuring human rights: Reflections on the practice of human rights impact assessment and lessons for the future,* Legal Studies Research Paper No. 2010-26, University of Warwick School of Law; James Harrison and Mary-Ann Stephenson (2010), *Human Rights Impact Assessment: Review of Practice and Guidance for Future Assessments,* Edinburgh: Scottish Human Rights Commission; Christina Hill (2009), *Women, Communities and Mining: The Gender Impacts of Mining and the Role of Gender Impact Assessment*, Melbourne: Oxfam Australia; Gillian MacNaughton and Paul Hunt (2011), 'A human rights-based approach to social impact assessment', in F. Vanclay and A. M. Esteves (Eds), *New Directions in Social Impact Assessment: Conceptual and Methodological Advances*, Cheltenham: Edward Elgar, pp.355-368; Norwegian Agency for Development Cooperation (2001), *Handbook in Human Rights Assessment: State Obligations,*

Table A.B: 10 key criteria for human rights impact assessment	
Key criteria for the process and content of HRIA	**Example guiding questions for HRIA practitioners**
Awareness and Empowerment, Oslo: NORAD; Office of the United Nations High Commissioner for Human Rights (2012), *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide,* New York and Geneva: United Nations; Office of the United Nations High Commissioner for Human Rights (2006), *Frequently asked questions on a human rights-based approach to development cooperation,* New York and Geneva: United Nations; Rights & Democracy (2011), *Getting it Right: Human Rights Impact Assessment Guide*. [online]. Available from: http://hria.equalit.ie/en/index.html; United Nations Human Rights Council (2011), *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, A/HRC/17/31; Frank Vanclay, Ana Maria Esteves, Ilse Aucamp and Daniel M. Franks (2015), *Social Impact Assessment: Guidance for Assessing and Managing the Social Impacts of Projects*, Fargo ND: International Association for Impact Assessment; Simon Walker (2009), *The Future of Human Rights Impact Assessments of Trade Agreements*, Antwerp: Intersentia; World Bank and Nordic Trust Fund (2013), *Human Rights Impact Assessments: A Review of the Literature, Differences with other forms of Assessments and Relevance for Development,* Washington: World Bank and Nordic Trust Fund.	

A.6 APPLYING INTERNATIONAL HUMAN RIGHTS STANDARDS AND PRINCIPLES

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

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

A.6.1 WHAT ARE HUMAN RIGHTS

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

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

A.6.2 HOW ARE INTERNATIONAL HUMAN RIGHTS IMPLEMENTED?

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

Human rights are sometimes divided into civil and political rights (e.g., the right to freedom from torture, the right to partake in public affairs and the right to property) and economic, social and cultural rights (e.g., the right to an adequate standard of living, the right to education and the right to the highest attainable standard of physical and mental health). Although human rights are considered interdependent and indivisible, one important difference between these two categories of rights is the concept of 'progressive realisation' with regard to economic, social and cultural rights.

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

In particular, irrespective of their available resources, states must take immediate action towards the full realisation of economic, social and cultural rights in five areas:[16]

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

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

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

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

For example, with regard to the right to work, a state would be obliged to: respect the right (e.g., by not using forced labour or denying political opponents work opportunities); protect this right (e.g., by ensuring that employers pay the minimum wage and provide adequate working conditions); and fulfil the right (e.g., by undertaking educational and informational programmes to facilitate public awareness of the right to work).[17]

Currently, businesses are not considered to have direct legal obligations under international human rights law. Instead, according to the UN Guiding Principles, businesses have a 'responsibility to respect' human rights, including to 'do no harm'.[18] However, it is important to note that the responsibility to respect is not strictly a 'negative' obligation of non-interference, as businesses are required to take active steps to avoid adversely impacting on human rights through a process of human rights due diligence.[19] The responsibility to respect is considered an international norm of expected conduct, rather than a legal duty under international human rights law. However, this does not mean that the corporate responsibility to respect is unrelated to legal duties. For example, companies have a legal duty to respect human rights where these have been integrated into domestic laws (i.e., following ratification of international instruments and adoption of implementing legislation). Increasingly, there are also developments towards legislation for mandatory human rights due diligence. Companies may also be subject to duties under international humanitarian and international criminal law in certain circumstances.

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

Businesses can impact virtually all human rights; as such, all internationally recognised human rights are envisaged by the corporate responsibility to respect. According to the UN Guiding Principles, when exercising human rights due diligence, businesses are required to consider, at minimum, the rights captured in the International Bill of Human Rights (comprising the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights) and the International Labour Organization's eight core conventions outlined in the Declaration of Fundamental Principles and Rights at Work (addressing non-discrimination, bonded and forced labour, child labour, and freedom of

association).[20] Additional human rights standards should be considered as relevant in the particular context (e.g., the rights of indigenous peoples if the business project or activities occur near indigenous lands or international humanitarian law in conflict-affected areas).

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

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

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

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

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

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

- **Substantive content of human rights**: The substantive content of the right in question should constitute the benchmark against which the impact is evaluated. This has been elaborated in sources such as those listed above, which should be carefully considered in the HRIA analysis.
- **Any particular status and rights of the rights-holders who are impacted**: Human rights apply to everyone. However, in addition to this principle of

universality, a number of rights-holder groups enjoy additional or particular protections. For example, children enjoy specific protection under the Convention on the Rights of the Child with regard to both rights and process, such as the right to play and the right to be consulted. Indigenous peoples, for example, have particularly rights under ILO Convention No.169 and the Declaration on the Rights of Indigenous Peoples, recognising the particular attachment of indigenous peoples to their lands, territories and natural resources, as well as the principle of free, prior and informed consent.

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

such principles have been respected therefore needs to be a component of HRIA analysis. For an introduction to the human rights-based approach, see Box A.6, below. For how the human rights-based approach can be applied in HRIA see 10 Key Criteria for HRIA (section A.5).

Box A.6: A human rights-based approach

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

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

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

Box A.6: A human rights-based approach

on to development activities; instead, it is an integral part of shaping such activities.

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

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

Sources: Drawing on: Office of the United Nations High Commissioner for Human Rights (2006), *Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation*, New York and Geneva: United Nations; UN Guiding Principle 18.

Box A.7: Availability, accessibility, acceptability and quality (AAAQ)

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

- **Availability** refers to facilities, goods and services that must be available in sufficient quantities and continuous supply within the country. It is considered an objective criterion which can be measured through quantitative data.

Box A.7: Availability, accessibility, acceptability and quality (AAAQ)

- **Accessibility** details that services must be accessible to everyone without discrimination. It is further divided into four sub-criteria: physical accessibility; economic accessibility; non-discrimination; and information accessibility. This criterion is considered highly complex, and will therefore require both qualitative and quantitative data, as well as a high level of participation of rights-holders to identify relevant indicators for each of the sub-criteria.
- **Acceptability** concerns both user acceptability and cultural acceptability. Both are subjective assessments of rights-holders' perceptions. The former is concerned with characteristics (i.e., odour, taste and colour of water) and procedural considerations (i.e., the behaviour of water suppliers), while the latter is concerned with perceptions based on the culture of the rights-holders.
- **Quality** refers to the standards that services and products must adhere to. This is based on objective, scientific terms that are closely related to international and national quality standards.

AAAQ can be a useful tool in a HRIA in that it elaborates on the content of economic, social and cultural rights. For example, in considering whether an adverse impact on water has occurred, the availability, accessibility, acceptability and quality of water should constitute the parameters for baseline data collection, as well as the indicators for measuring against the benchmark. (For more information on data collection and indicators, see Phase 2.)

Source: Danish Institute for Human Rights (2014), *The AAAQ Framework and the Right to Water: International Indicators for Availability, Accessibility, Acceptability and Quality,* Copenhagen: DIHR.

ENDNOTES

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[17] Ibid, p.12

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[19] UN Guiding Principle 15.

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