# THE DANISH INSTITUTE FOR HUMAN RIGHTS

# PHASE 1: PLANNING AND SCOPING

# GUIDANCE ON HRIA OF DIGITAL ACTIVITIES

# PHASE 1: PLANNING AND SCOPING

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# CONTENT

This document contains the Phase 1: Planning and Scoping 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. digital projects, products and services.

It is anticipated that in 2020-2021, 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 based on experiences from practice.

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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# PHASE 1

## PLANNING AND SCOPING

**WHAT HAPPENS IN PHASE 1?**

Good planning and scoping is essential to ensure that a HRIA is effectively conducted and that it achieves the desired results.

The purpose of scoping is to define the parameters for the assessment by considering: (i) the type of digital project, product, or service; (ii) the human rights context; (iii) who the relevant stakeholders are; and (iv) the kind of decisions the assessment needs to inform.

This information is used to inform the development of the terms of reference (TOR), a written document that presents the scope and purpose of the HRIA.

The company and practitioners will also during this phase make decisions on the composition of the HRIA team and involvement of stakeholders during data collection phase. A HRIA team that is independent from the company will ensure legitimacy to the observations and recommendations for preventive and/or mitigating actions, and can provide further leverage internally for company staff responsible for human rights related issues.

Scoping and TOR should always provide some flexibility to allow increased time and attention to topics and issues that are found most relevant, as well as allow for inclusion of human rights impacts that were not anticipated during the planning and scoping phase. While in the scoping phase most information is collected through desktop research, a set of scoping interviews with external or internal stakeholders with important context knowledge can be extremely beneficial.

**?**

**KEY QUESTIONS ADDRESSED IN THIS SECTION:**

- **What kind of information is necessary for scoping of the assessment?**

- **Who should be on the assessment team for a HRIA?**

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

## 1.1   1   SCOPING FOR HRIA

The purpose of scoping is to define the parameters for the HRIA through gathering preliminary information on the impacts of the digital business project, product or service. <u>**HRIA scoping should include consideration of the**</u>:

- Digital project, product or service
- Human rights context; and
- Relevant stakeholders for the HRIA.

**Most of the information gathered as part of the scoping will be found through desktop research.** However, depending on the context of the planned activities, it may be desirable to conduct preliminary external interviews with key stakeholders as part of the scoping.

This information is then used to inform the development of the terms of reference (TOR) for the assessment, context analysis (in the field of impact assessment this is often referred to as 'baseline') and subsequent impact analysis. **Scoping and TOR should always provide some flexibility to allow for increased time and attention to topics and issues that are found most relevant, as well as allow for inclusion of human rights impacts that were not anticipated during planning.** This may e.g. be the case if increased surveillance through facial recognition in certain areas of a city seems to lead to a significant increase in violence in other areas where no such surveillance is being done—potentially contributing to further marginalisation of vulnerable parts of the population.

**Sufficient time should be allotted after scoping to allow the HRIA team to make best use of the information gathered** and plan strategies for subsequent in-person data collection (e.g. face-to-face interviews or focus groups with rightsholder groups) and other forms of data collection (e.g. virtual online consultations, integrating human rights related topics in user testing etc.).

Table A, below, provides an overview of the areas for consideration for the scoping process. See also the cross-cutting Stakeholder Engagement section of the Guidance, where further information is provided on the relevant stakeholders to include in HRIA.

| TABLE A: AREAS FOR CONSIDERATION DURING SCOPING | | |
|---|---|---|
| **Area under consideration** | **Information needed for scoping of the HRIA** | **Examples** |
| **The digital business project, product or service** | The type of project, product or service that is subject of the HRIA. | A digital platform, automated decision-making product, facial recognition technology, synthetic speech technology. |
| | • The business model of the relevant company, as well as sector or industry. | Ad-based model; subscription; 'freemium'; business-to-business or business-to-consumer; off-the-shelf software or fully customised business applications. |
| | • The location of where the (planned) product or service will be/is introduced, and where end-users and/or other relevant actors are located. | A digital platform might be developed for users in one country, and users of a neighbouring country where the same language is used may also access it, and the HQ of the company might be elsewhere. |
| | • Reflection on the industry in question, including through comparative analysis of similar digital projects. | Industries can include: e-government services and digital public service delivery; telecommunications; search engines; insurance; banking; human resources; judicial systems.<br><br>Industry-specific standards and frameworks (e.g. ethical standards for facial recognition technologies[1], national content moderation or cybersecurity laws etc.) should be included in the scoping analysis. |

| TABLE A: AREAS FOR CONSIDERATION DURING SCOPING | | |
|---|---|---|
| **Area under consideration** | **Information needed for scoping of the HRIA** | **Examples** |
| | • The phase of the project, product or service. | Design, development, sales, use and application; expansion into new countries or regions; readjustment of business model. |
| | • The policies, controls and procedures in place to address human rights issues (or related topics such as e.g. ethical or privacy standards). | Internal ethical principles, industry standards, other forms of impact assessment, such as technology assessment or data protection impact assessment. |
| | • Use-cases (i.e. the various ways the product or service can be used) | Synthetic speech technology that is developed to be used for persons with speaking impairments, but that can also be used by e.g. advertising agencies; facial recognition technology that works with high-end smartphones and that can therefore have many use-cases for many customers; social media platform developed for a particular community, but that might be accessed and used by others |
| | • Potential first-order impact areas (i.e. the most 'immediate' impacts) | Security (e.g. cyber security and data security), privacy, non-discrimination, freedom of expression, etc. |
| **The country and local** | The types of legal protections that exist for | Data protection and data privacy laws, laws outlining freedom of expression, |

| TABLE A: AREAS FOR CONSIDERATION DURING SCOPING | | |
|---|---|---|
| **Area under consideration** | **Information needed for scoping of the HRIA** | **Examples** |
| **human rights context** | human rights in the national and local context. | regulation on intermediary liability, cybersecurity laws, procedural rights, consumer protection laws, ethical AI standards, anti-discrimination laws, protection for children's safety online etc. |
| | • The level of actual human rights enjoyment in the country or area where the project takes place, or where the product or service is (envisioned to be) launched, including history of human rights violations in the area. | **Civil and political rights**: the level of data protection; whether data protection laws are enforced; occurrences of internet shutdowns; persecution of political opposition; digital surveillance by the state; data on enjoyment of freedoms generally; corruption levels; history of electoral or sectarian violence.<br><br>**Economic, social and cultural rights**: human development profile of the country and region; mobile connectivity index; data on the human conditions covering economy, poverty, education (e.g. digital literacy).<br><br>**Discrimination**: information about systemic discrimination against particular groups; data on the human conditions covering inequality |
| | • Whether people have access to remedy for remediation of adverse | Strong rule of law that is able to address 'emerging issues'; access to courts in case of |

| TABLE A: AREAS FOR CONSIDERATION DURING SCOPING | | |
|---|---|---|
| **Area under consideration** | **Information needed for scoping of the HRIA** | **Examples** |
| | human rights impacts related to digital activities. | discrimination related to automated decision-making; intermediary liability legislation allows for access to remedy; mandatory human rights due diligence requirements. |
| **Preliminary identification of relevant stakeholders** | Rightsholders, <br><br>• Including users, content creators and potential non-user rightsholders, who are/or may be adversely affected by the project, product or service. <br><br>• Consumers as rightsholders (depending on the business model) <br><br>The vulnerable individuals and groups in the given context. | An individual belonging to an ethnic minority that is discriminated by a bank's algorithmic decision-making with regard to a credit risk assessment; children at risk of excessive data collection without their parents' consent; women, who are more likely to be harassed via social media platforms; human rights defenders, who may be at heightened risks of digital surveillance. |
| | • The relevant government and state actors. | Ministries for Communication and/or ICTs; offices focused on technology within other ministries (e.g. technology and innovation bureau in Ministry of Economy); public procurement authorities; regulatory bodies whose mandates include internet and digital technology. |
| | • Other duty-bearers. | Companies commissioning the development of a digital |

| TABLE A: AREAS FOR CONSIDERATION DURING SCOPING | | |
|---|---|---|
| **Area under consideration** | **Information needed for scoping of the HRIA** | **Examples** |
| | | product, which they will later use or apply; companies developing a digital product that the company in question is buying; |
| | • Other relevant parties to consider and engage in the HRIA. | Digital rights organisations, Internet freedom groups, online activists, tech sector industry bodies, tech companies operating in or based in the country, national human rights institution, human rights NGOs, media freedom organisations, media. |
| | • | |

## 1.1.1   1   SCOPING OF THE BUSINESS PROJECT, PRODUCT OR SERVICE

In the scoping phase, some **initial considerations and characteristics are identified which the HRIA team will investigate and verify throughout the HRIA process**. The UN Guiding Principles establish corporate responsibility for human rights impacts based on "the company's web of activities and relationships"[2], which means that **the full digital ecosystem must be considered** in the assessment of potential company involvement in negative impacts. This means that it is not enough to only look at an initial impact, but also second- and third-order impacts.

**As an example**, there are likely to be such second- and third-order impacts related to a decision to remove content published by a journalist who many individuals depend on for essential information. There is a potential first-order impact on the freedom of expression, but there might be second- and third-order impact on e.g. the right to public participation or the right to health, if the information removed was essential for public health reasons.

Scoping of the digital business project, product or service will primarily focus on impacts that the **activities cause, contribute to or are directly linked to**. The UN Guiding Principles state that companies should assess both actual and potential impacts. More information on categorizing impacts is provided in Phase 3 of the Guidance.

Identifying the social factors relevant for the digital project, product or service is essential to the scoping process. This is highly relevant, since the application and use, and thereby **the impacts, of a digital product or service can vary greatly depending on the local context**.

> If, **for example**, a company is developing a digital product which could be used for large-scale surveillance, including by authoritarian regimes, potential severe impacts associated with the product will not necessarily be identifiable at the company's headquarters, but will rather require local context knowledge.
>
> **Another example** is an automotive company that is buying data analysis tools for its smart mobility services. In this example, the risks related to the data that can be collected will differ depending on the regulatory environment in the national context.

### BOX 1: THE NEED OF LOCAL CONTEXT KNOWLEDGE: HATE SPEECH ON SOCIAL MEDIA IN GUATEMALA

Contribution by Molly Land, University of Connecticut School of Law

In 2019, the Human Rights and International Law Clinic at the University of Connecticut School of Law researched online hate speech against human rights defenders in Guatemala. The clinic conducted interviews with 15 human rights defenders, monitored certain Guatemalan social media accounts, and used artificial intelligence tools to analyse the data collected from these accounts. The Clinic found that incitement and hate speech directed at defenders in Guatemala used "coded language" that often did not trigger the content moderation policies of Facebook and Twitter. For example, referring to defenders as "criminals" or "terrorists" did not violate Facebook's Community Standards. But, in the context of Guatemalan history, the term "terrorist" evokes the government's genocidal targeting of indigenous peoples during an anti-communist campaign in the 1980s. Thus, labelling an indigenous defender as a "terrorist" is an implicit attack based on ethnicity and contributed to a climate in which violence against defenders is tolerated.

Facebook did not, however, remove posts containing such attacks because they were cloaked in coded language and did not explicitly invoke ethnicity.

Based on its research, the Clinic recommended:

- Reforming social media moderation policies by adopting a more nuanced understanding of hate speech.

- Assessing speech with reference to the geographic and cultural context in which it originated.

- Heightened scrutiny of speech in countries with a history of inter-group violence based on race, religion, ethnicity, or political polarization.

- The use of localized guidelines and personnel and collaboration with civil society groups to allow context-specific identification and evaluation of harmful speech, since understanding the local context was essential in evaluating the risk of particular speech.

Although the project did not involve a formal HRIA, it illustrates the importance of local context knowledge when identifying human rights risks and impacts when scoping and planning for a HRIA.

Source: Abbas, et. al. (2019), *"Invisible Threats: Online Hate Speech Against Human Rights Defenders in Guatemala"*: https://ssrn.com/abstract=3483258 [Accessed June 29, 2020]

### 112   2   ANALYSING THE HUMAN RIGHTS CONTEXT

The **purpose** of analysing the human rights context is **to understand the level of protection and enjoyment of human rights in the given context**. This includes, in particular, analysing the implementation of international human rights in national legislation, policies, regulation and adjudication, as well as considering their implementation and effectiveness in practice, i.e. whether the standards, to the extent they exist, are enforced.

In other words, analysing the human rights context should include **not only a legal analysis, but also more practical information** that provides insight into actual human rights enjoyment in the country.

**For example**, the analysis should include looking at the ability and capacity of human rights defenders, NGOs and CSOs to engage in human rights work and to provide their input on the adverse impacts of digital business projects, products or services. This can be done by analysing the space for engagement, the safety of these actors (including journalists[3]) and the ability of civil society members to participate without fear of reprisals from e.g. an authoritarian government.

**It is important to consider the diversity of statistics within a country,** and it can be very important to be more granular than just looking at national-level statistics of e.g. internet connectivity, since that might suggest connectivity is generally high, whereas certain areas or regions are completely underserved.

**For example**, in 2019, urban Delhi had 171 internet subscribers per 100 people (many individuals have multiple subscriptions), whereas there were only 17 internet subscribers per 100 people in rural Jammu and Kashmir[4].

When analysing the human rights context there are some basic factors to take into consideration and a vast variety of sources at the disposal of the HRIA team. Below are some of the most important ones.

| FACTORS | SOURCES |
|---|---|
| • Status of ratification and implementation of international human rights law at the national level.<br><br>• Level of implementation of national laws and regulations resulting in human rights enjoyment in practice (e.g. strong data protection legislation).<br><br>• Whether laws applicable to digital projects, products and services enable or constrain respect for human rights (e.g. cybercrime laws being enforced in ways that suppress freedom of expression online).<br><br>• Effectiveness of judicial remedies and other grievance mechanisms.<br><br>• Barriers to access to justice (e.g. costs, discrimination, bureaucracy). | • International and regional legal frameworks, national laws, policies, regulation and jurisprudence.<br><br>• Reports by local and international NGOs and CSOs (e.g. digital rights organisations, CSOs working on the right to privacy and freedom of expression, or CSOs working with particularly vulnerable and marginalised groups).<br><br>• Reports by national human rights institutions.<br><br>• UN treaty bodies' concluding observations.<br><br>• Recommendations and reports by UN special procedures (e.g. special rapporteurs or representatives)<br><br>• Recommendations by regional human rights bodies. |

During the scoping process, it is important to identify and conduct a mapping of the relevant stakeholders in the given context. This should include **analysis of the following factors**:

- what type of stakeholders there are

- their level of influence, and

- if and/or how they may be impacted by the digital project, product or service, or

- how they might be involved in impacts related to the relevant product or service.

Stakeholder mapping should pay **particular attention to rightsholders and include gender analysis and consideration of vulnerability factors** in the given context. In this process, it is also important to **identify legitimate representatives and rightsholder proxies.** This last point may be particularly relevant in the design and development phase of a digital project, product or service, when there are no impacted individuals yet and the potential scope and scale of impacts is significant.

The table below provides a non-exhaustive overview of the different types of stakeholders to consider in the initial stakeholder mapping. **See cross-cutting Stakeholder Engagement section**, where you can find additional information about the different types of stakeholders to include in the HRIA.

| STAKEHOLDER CATEGORY | SPECIFIC STAKEHOLDERS FOR DIGITAL ACTIVITIES |
|---|---|
| Duty bearers, such as:<br><br>- Government actors; Business partner companies | - Ministries for Communication and/or ICTs; offices focused on technology within other ministries (e.g. technology and innovation bureau in Ministry of Economy); public procurement authorities; regulatory bodies whose mandates include internet and digital technology.<br><br>- Companies developing the project, product or service; delivering digital services; procuring digital products or services, and later applying them. |

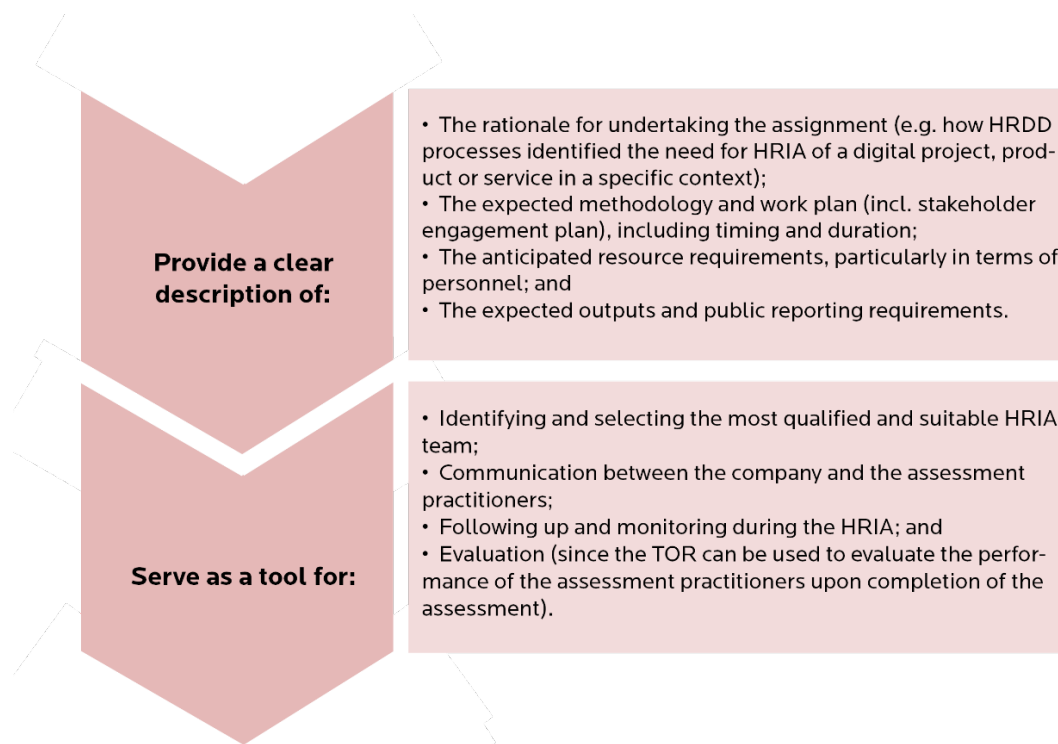| | |
|---|---|
| Rightsholders | • Individual users of the product or service; non-users that are impacted by the product or service; potentially impacted vulnerable individuals, such as women, children, migrant workers, ethnic minorities, LGBT+ individuals etc; human rights defenders; individual consumers. |
| Other relevant parties | • Intergovernmental organisations, such as: International Telecommunication Union (ITU), UN Commission on Science and Technology for Development, UNICEF, Office of the High Commissioner for Human Rights, Council of Europe<br><br>• Local and international NGOs and CSOs<br><br>• UN and regional human rights mechanisms<br><br>• National human rights institutions, data protection authorities and national equality bodies.<br><br>• Subject matter experts and academia specialising in internet and digital technologies.<br><br>• Rightsholder representatives or representative organisations: those representing rightsholder that might be particularly marginalised, e.g. women and girls, LGBTI persons, ethnic and religious minorities etc; organisations focusing on privacy, freedom of expression and digital rights; media freedom organisations; consumer organisations.<br><br>• Tech sector industry bodies<br><br>• Labour unions and other workers' representative associations: national and industry level labour unions that work on the issue of employee data collecting, suppression of workers' voices by |

| | monitoring social media, non-discrimination etc. |
| --- | --- |

## 12  2    TERMS OF REFERENCE FOR  HRIA

The TOR is **a written document that presents the scope and purpose of the HRIA** of a digital business project, product or service. A well-constructed TOR can be critical for ensuring that the subsequent assessment is conducted according to the expected standards and principles—i.e. that it follows the 10 key criteria for HRIA (see Responsible Business Conduct and HRIA section, chapter 1.6).

**Both the company interested in undertaking the assessment and impact assessment practitioners have a role to play**: the company in drafting a TOR that clearly requires the application of international human rights standards and principles, and impact assessment practitioners in proposing a responsive methodology and an assessment team that is tailored to the particular context, taking account of specifics such as the geographic location, type of digital project, product or service, industry, intended users and use-cases, and envisaged timeframe for the HRIA.

<u>**A TOR should achieve the following**</u>:

| **Provide a clear description of:** | • The rationale for undertaking the assignment (e.g. how HRDD processes identified the need for HRIA of a digital project, product or service in a specific context);<br>• The expected methodology and work plan (incl. stakeholder engagement plan), including timing and duration;<br>• The anticipated resource requirements, particularly in terms of personnel; and<br>• The expected outputs and public reporting requirements. |
| --- | --- |
| **Serve as a tool for:** | • Identifying and selecting the most qualified and suitable HRIA team;<br>• Communication between the company and the assessment practitioners;<br>• Following up and monitoring during the HRIA; and<br>• Evaluation (since the TOR can be used to evaluate the performance of the assessment practitioners upon completion of the assessment). |

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

- **A TOR may cover both the pre-assessment scoping and the actual assessment phases** of HRIA. Depending on the scale of the digital project, or the spread of the digital product and service, it **may, however, at times be desirable to separate these two stages** so that the scoping is conducted before the development of the TOR for the remainder of the HRIA phases. This allows the information and analysis gained during the scoping to feed into the TOR for the remainder of the assessment. It also provides opportunities to include the views of rightsholders in the drafting of the TOR for the HRIA, and it is likely to allow for a better estimation of the necessary budget to conduct the HRIA. Lastly, it allows the company to assess whether the planned HRIA should be undertaken at this point in time or whether resources should be used differently.

- **The development of a concrete impact management plan ought to be included in the TOR**, though it should be noted that it may be difficult to anticipate exactly what time and resources will be required for the implementation of mitigation measures. This avoids the HRIA process ending with a report that includes recommendations without a concrete follow-up plan for their implementation.

- It is **desirable to involve rightsholders, and their representatives or proxies, in the development of the TOR** for the assessment, as relevant. For example, the TOR may emphasise consultation and engagement with rightsholders or key representatives to verify key information and priorities.

- The TOR should **include a plan for follow-up between the company representatives and the HRIA team** where they can discuss progress, obstacles, and other general updates related to the observations and recommendations of the HRIA report as well as the impact management plan. The follow-up can take different forms, from update calls to a follow-up assessment at a later stage (e.g. 1-2 years later) to assess effectiveness.

- The TOR can be used for integration of human rights into other types of impact assessments, such as data protection impact assessment (see Introduction section).

Table B, below, provides a **checklist of content for a TOR** for HRIA.

| TABLE B: CHECKLIST FOR THE CONTENT OF A HRIA TERMS OF REFERENCE | |
|---|---|
| **TOR element** | **Example questions** |
| Background information | • Is the digital project, product or service to be assessed clearly described, including information such as phase of development and rollout, type of application, intended use and application, location, sector, scale, etc.? <br> • Is the rationale for the HRIA explained, i.e. internal and external drivers for the HRIA? |
| Description of the assignment | • Is the purpose of the HRIA and its intended outcomes clearly articulated? Are any limitations noted (e.g. difficulties engaging with specific rightsholders due to early stage of development, what company data the HRIA team did not have available)? <br> • Does the description of the assignment include relevant background information that should be considered in the HRIA, e.g. findings from other human rights due diligence activities, Data Privacy Impact Assessments (DPIAs), Ethical Impact Assessments (EtIAs) or any other types of assessments? <br> • Is the scope of the HRIA clearly defined and does it provide for a comprehensive coverage of human rights impacts to be assessed (i.e. actual and potential impacts that the digital project, product or service causes or contributes to, impacts that are directly linked to the digital project, product or service, cumulative impacts etc.)? <br> • Does the scope of impacts to be considered clearly distinguish between negative and positive impacts, prioritising the identification of negative impacts for the purposes of the HRIA? |
| Methodology | • Are international human rights standards clearly specified as the benchmark for the assessment? Are any necessary specific human rights standards included, such as rights of specific rightsholders (e.g. children's rights)? <br> • Are any national laws and standards, company standards and requirements of finance institutions to be considered clearly referenced (e.g. company-specific ethical principles |

| | |
|---|---|
| | related to the development, use or sale of the relevant digital project, product or service)? |
| | • Is the application of a human rights-based approach clearly specified as essential for the working methodology of the HRIA, i.e. the application of the principles of participation, non-discrimination, empowerment, transparency and accountability? |
| | • Are the parameters of scale, scope and irremediability clearly included as parameters for the assessment of impact severity? |
| | • Do the methodology requirements outline that the mitigation hierarchy to be applied must be compatible with international human rights standards and principles? |
| | • Does the methodology clearly envisage comprehensive stakeholder engagement? I.e. are the rightsholders, duty-bearers and other relevant parties who will participate in the HRIA generally identified and described; are independent human rights experts and other human rights stakeholders included in the description as relevant stakeholders for the purposes of the HRIA? |
| | • Is the methodology comprehensive? I.e. involving scoping, data collection and context analysis, impact analysis and assessment, development of mitigation measures and steps for monitoring, and reporting? |
| | • Does the methodology clearly require both desktop research and direct data-collection (including engagement with rightsholders and their representatives, duty-bearers and other relevant parties) to complete the HRIA? |
| | • Are any limitations that are known from the outset clearly specified? Where limitations impede on any of the factors specified above, are such limitations justified? |
| **Expertise required** | • Is detailed information provided regarding the skills and experience of the HRIA team? I.e. including human rights and other necessary expertise, technical knowledge, gender-sensitivity, language skills, local knowledge, etc.? |
| | • Are provisions made for the involvement of interpreters and local interlocutors, as necessary? |
| **Governance and reporting** | • Is the governance structure for the HRIA clearly outlined? I.e. the role and independence of the HRIA team, the role |

| | |
|---|---|
| | of the company contact(s) and counter-part(s), the role of any advisory panel or peer review mechanism, etc.?<br>• Are the requirements for reporting clearly stipulated, including publication of the HRIA report (fully or partly), but also other modes of reporting back to rightsholders and other stakeholders regarding the impact assessment findings?<br>• Is the role of senior management/executives and internal ownership of the HRIA and related follow-up activities clearly outlined? I.e. how results will be reported back (by the HRIA team or others) and how information from the HRIA will be disseminated in the company, and who is responsible for e.g. implementation of recommendations? |
| Workplan, timetable and budget | • Is the workplan for the HRIA clearly outlined, including any interim and final deliverables?<br>• Is the budget for the HRIA clear and sufficient for undertaking the assessment specified? In particular, does the budget allow for the data collection necessary to provide a meaningful assessment of human rights impacts?<br>• Is the timeframe for the HRIA specified and does it allow sufficient time for the research and stakeholder engagement that is necessary to complete the assessment? |

## 13   3   THE HRIA TEAM

People on the HRIA team should have the required skills and expertise to **ensure that the process is professional, effective and built on a human rights-based approach**.

In order to ensure the independence and legitimacy of the process, **the HRIA should always be conducted by an assessment team that is independent from the company**. A company representative could be joining the HRIA team during certain parts of the HRIA process, but engagement with rightsholders and certain other stakeholders, as well as the analysis of the findings, writing the HRIA report and the recommendations should always be done by the independent assessment team.

Sometimes, businesses choose to compose HRIA teams entirely of their own in-house personnel or to include both in-house experts and external experts. This can **limit the independence of the assessment** and be problematic in terms of

factors such as ensuring the legitimacy of findings and building trust between the impact assessment team and rightsholders. It may also be **difficult for an internal HRIA team to come back with 'difficult' or otherwise expensive recommendations** (e.g. a recommendation that more human rights staff should be hired to be able to adequately monitor human rights risks and impacts).

Rather than having company representatives on the HRIA team itself, it **may be desirable to form a steering or governance group for the HRIA** that comprises HRIA team members, company representatives and other relevant stakeholders. Specific human rights capacities within companies may often be limited outside of specialised teams. Therefore, it should be considered carefully who internally should be involved and how to best involve them, to ensure that internal knowledge and expertise is built up as part of the HRIA.[7]

**If insufficient resources are allocated for the HRIA, this is also likely to limit the composition of the HRIA team**. This may be a particular problem for HRIA of digital products or services when they are in the development phase since there is a need to ensure that the HRIA team is multi-disciplinary to be able to capture the full range of potential adverse human rights impacts.

Table C, below, <u>**highlights key factors to consider when putting together a HRIA team**</u>.

| TABLE C: FACTORS TO CONSIDER IN COMPOSING A HRIA TEAM | |
|---|---|
| **Factors** | **Steps to take** |
| Skillset of HRIA team | • Make sure to include team members who have the following skills: human rights expertise (on e.g. right to privacy, freedom of expression, non-discrimination) and experience in direct rightsholder engagement; context knowledge of the relevant location; appropriate language skills; and knowledge of the particular digital project, product or service and an understanding of how it may relate to human rights.<br>• Consider including technical experts (e.g. programmers and data engineers) who can help unpack certain kinds of impacts and assess the technical and financial feasibility of mitigating measures.<br>• Ideally, the team should be diverse, with members from different cultural and educational backgrounds and with expertise regarding the specific country and/or region, as relevant. This could include lawyers, sociologists, anthropologists and others. |

| TABLE C: FACTORS TO CONSIDER IN COMPOSING A HRIA TEAM | |
|---|---|
| **Factors** | **Steps to take** |
| | • Specific expertise will also differ from case to case: child rights experts, gender experts, experts on non-discrimination, individuals with expertise relevant to assess impacts on ethnic minorities etc. |
| Neutrality | • Pay attention to the neutrality of the persons who are conducting the assessment. They should be considered neutral and trustworthy by the rightsholders and other stakeholders who are engaged as part of the HRIA process. |
| Gender | • Make sure to include a balance of women and men on the HRIA team. The HRIA team should also have sufficient gender expertise to conduct gender analysis, recognise and respond to power dynamics and systemic gender discrimination, and implement the HRIA in a gender-responsive manner that accounts for the rights of women, girls and LGBT+ persons. |
| • Local outreach | • Make sure to include local team members, including women, who are from the location relevant to the digital project, product or service—i.e. where the potentially impacted individuals are located. This is important, as these people will be critical in building trust with the rightsholders and can help with understanding the dynamics within the communities and the cultural context in which the HRIA is taking place (see example of this in Box 1). The local team members should have pre-existing networks to support the identification and mapping of stakeholders and to help with reaching out to rightsholders.<br>• Consider including persons from specific affected rightsholder groups, both women and men, in the HRIA team, bearing in mind implications regarding the neutrality of the team.<br>• Consider making use of a local person who knows and can provide access to local stakeholders. In certain situations, such as when consulting vulnerable and marginalised groups in a specific region in a country, |

| TABLE C: FACTORS TO CONSIDER IN COMPOSING A HRIA TEAM | |
|---|---|
| **Factors** | **Steps to take** |
| | such a local person, who has a broad network, knows various stakeholders with different opinions and can facilitate setting up meetings, is required. |
| Local language | • Include person(s) in the team who speak the local languages of rightsholders and other stakeholders and understand the local cultural context.<br>• Consider hiring an interpreter if only part of the team speaks the local language(s). Regardless of whether the interpreter is a professional (the first option) or not, preparation with the person so that they understand the key concepts and terms of the HRIA and human rights issues is necessary.<br><br>• The interpreter should understand his/her own role as a neutral party to the process who should strive to accurately interpret everything that is said and not give their personal interpretation of what a person is saying.<br><br>• To ensure neutrality and impartiality, interpreters should be independent. |
| Reference group/ steering committee | • Consider forming a reference group/steering committee which advises and supervises the HRIA team on methodological and ethical questions. Especially in the context of bigger and more difficult digital projects, or widespread use of digital products or services, this might be necessary. However, the reference group/steering committee should take care not to infringe on the independence and impartiality of the HRIA team. The reference group could also provide a space where people can direct any questions or grievances that they might have about the HRIA process. |

# END NOTES

[1] National Telecommunication and Information Administration (2016), *"An Ethical Framework for Facial Recognition",* Submission by the ACLU to the NTIA Multi-stakeholder Process on Facial Recognition Technology: https://www.ntia.doc.gov/other-publication/2016/privacy-multistakeholder-process-facial-recognition-technology [Accessed July 29, 2020].

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

[3] See for example: Reporters Without Borders (2020), "*World Press Freedom Index"*: https://rsf.org/en/ranking [Accessed July 29, 2020]; Akademie (2014), *"Media Freedom Indices: What they tell us – and what they don't": https://issuu.com/dwakademie/docs/mediafreedomindices* [Accessed July 29, 2020].

[4] Hindustan Times (Aug 14, 2020), *"Connectivity gets better but parts of India still logged out":* https://www.hindustantimes.com/india-news/connectivity-gets-better-but-parts-of-india-still-logged-out/story-VSqXriMdGUudWb7eBcWzjN.html [Accessed Oct 7, 2020].

[5] Drawing on: European Integration Office (2011), "*Manual for Preparing Terms of Reference,* Belgrade: Republic of Serbia Government and European Integration Office" p.6; CDC (2016), *"Practical guidance and Terms of Reference (TORs) templates for enhanced assessment of human rights risks and impacts"*: https://toolkit.cdcgroup.com/reference-materials/ [Accessed July 29, 2020].

[6] Ibid.

[7] See B-Tech Project (forthcoming), *"Foundational Paper Series",* OHCHR: https://www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx [Accessed July 29, 2020]

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