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on Sustainable Investment

A JOINT CENTER OF COLUMBIA LAW SCHOOL  
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THE DANISH  
INSTITUTE FOR  
HUMAN RIGHTS

SciencesPo  
LAW SCHOOL

# A COLLABORATIVE APPROACH TO HUMAN RIGHTS IMPACT ASSESSMENTS







A COLLABORATIVE  
APPROACH TO  
HUMAN RIGHTS  
IMPACT ASSESSMENTS

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## About the partners

The **Columbia Center on Sustainable Investment** is a joint center of Columbia Law School and the Earth Institute at Columbia University. Its mission is to develop practical approaches for governments, investors, communities, and other stakeholders to maximize the benefits of international investment for sustainable development. This includes an explicit focus on international investments and human rights, under which CCSI has provided support to the Carter Center and local partners in conducting community-led HRIAs of mining and infrastructure projects in the Democratic Republic of the Congo.

The **Danish Institute for Human Rights** is Denmark's National Human Rights Institution. Its mandate is to promote and protect human rights and equal treatment in Denmark and abroad. The Human Rights and Development Department focuses on the role of the private sector in respecting human rights. DIHR has led a large number of company-initiated HRIAs in various sectors; has developed a guide, in collaboration with IPIECA, on how to integrate human rights into environmental and social impact assessments; and, in partnership with the Institute for Human Rights and Business, has developed and piloted a methodology to assess the human rights impacts of an entire sector through Sector Wide Impact Assessments. In 2016, DIHR launched the road-testing version of its HRIA Guidance and Toolbox, a resource that contains guidance and practical tools and templates for conducting, commissioning, reviewing or monitoring human rights impact assessments of business projects and activities.

The **Sciences Po Law School Clinic** is an experiential learning program, set within the Sciences Po Law School and articulated around local, national, and global public interest projects and objectives. Masters-level students, academics, and practitioners work together within the clinic's four programs. Within the clinic's Human Rights, Economic Development and Globalization (HEDG) program, students have worked with the Carter Center's Lubumbashi office and local organizations to develop community-led HRIAs of mining projects in the Democratic Republic of the Congo, and are currently assisting a French multinational company to develop a HRIA tool.

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## WHAT IS THIS PAPER ABOUT, AND WHO IS IT FOR?

This paper suggests a new collaborative and participatory approach to human rights impact assessments (HRIAs). It was written for stakeholders—in particular, communities, workers, and other project-affected people; their representatives, including local and international civil society organizations; companies; and others—who seek more effective strategies for investigating the human rights impacts of business projects or operations, and who are willing to consider a collaborative assessment. For this audience, the paper provides a set of considerations relevant to such an undertaking. This paper may also be of interest to representatives of companies, project-affected people, or civil society organizations who are not yet ready to undertake a fully collaborative assessment, but who wish to make their human rights impact assessments more inclusive and responsive, or who seek to encourage greater buy-in from other stakeholders. Such readers might be particularly interested in, for example, the sections on stakeholder involvement and meaningful participation (pp 28-36), the steering committee (pp 38-42), or transparency and disclosure (pp 72-74).



# EXECUTIVE SUMMARY

Human rights impact assessments (HRIAs) are increasingly used by companies and communities to assess the actual or potential impacts of a business project or operation. While methodologies and standards have evolved, current HRIA practices frequently confront a set of common challenges. This paper sets out a new, collaborative approach to the conduct of HRIAs of business projects or operations in an effort to address one of the key challenges of current practices: the limited engagement of relevant stakeholders, which can undermine effectiveness and trust. A collaborative approach seeks to bring project-affected people, a company, and other relevant stakeholders together to jointly design and implement an assessment, with the objectives of improving communication, increasing the information sources that can be drawn upon, and encouraging greater engagement by all participants in the HRIA's findings and recommendations. The intended ultimate result of such an approach is the more effective prevention or mitigation of a project's negative human rights impacts.

This executive summary provides a brief description of what a collaborative HRIA would entail, reasons for undertaking one, and factors that may affect its feasibility. The summary then briefly explains how a collaborative HRIA could work in practice: from ensuring meaningful participation; to structuring, governing, and funding the process; through to conducting the assessment, developing and implementing an action plan, and disclosing results.

## **WHAT IS A COLLABORATIVE HRIA?**

A collaborative HRIA is a joint process undertaken by project-affected people and a company, and potentially with involvement of the host government or other stakeholders, to investigate, measure, and respond to a business project or operation's potential or actual human rights impacts. It requires formal processes to facilitate collective decision-making among participating stakeholders, who together design and conduct the HRIA. This differs from existing approaches, where HRIAs are generally undertaken or commissioned by *either* a company *or* project-affected people, with limited interaction among stakeholders, except as part of standard stakeholder consultations. Such practices, particularly when coupled with existing tensions, can lead to suspicion of HRIA results, rendering them ineffective or contentious. To date, no collaborative HRIA has been carried out and tested, although some HRIAs have incorporated particularly strong efforts to increase stakeholder engagement.

## **REASONS FOR UNDERTAKING A COLLABORATIVE HRIA AND FACTORS TO CONSIDER**

Collaborative HRIAs offer shared incentives for stakeholders. They could, for example, improve information sharing, leading to deeper understandings of impacts. They could also facilitate efforts by stakeholders to engage in dialogue, identify shared priorities, and reach agreement on key issues.

In addition, for companies, collaborative HRIAs could reduce the risk of social conflicts and associated financial and reputational costs. They could also improve the company's human rights capacities, engagement strategies, and decision-making, including for future projects. Companies engaging in collaborative HRIAs and other "best practices" may be able to differentiate themselves from competitors.

For project-affected people, collaborative HRIAs could provide a new avenue for direct communication with the company, which could help them more effectively influence decision-making related to the design or implementation of a project or operation that stands to affect them. Participation in a collaborative HRIA could also provide opportunities to further develop relevant knowledge and skills.

When governments participate, their involvement could send an important signal to companies regarding the importance of rights-compliant investments. Government involvement could also increase the potential that it will engage meaningfully with the HRIA's recommendations. Working both with companies and with project-affected people could also help governments to reconcile their obligations to respect, protect, and fulfill human rights with their frequent interest in attracting investment.

### **WHEN WILL A COLLABORATIVE HRIA BE APPROPRIATE?**

The suitability of a collaborative HRIA depends on various factors, including specifics related to the project or operation being assessed, the characteristics of participating stakeholders and the pre-existing relationships between them, and the political context in which the assessment will take place.

Relevant characteristics of the project or operation include the amount of money already invested, whether it is tied to a specific location, and its overall complexity. The company's relevant characteristics include its human rights sensitization, its resources and expertise, and its internal structure. Factors concerning project-affected people include the extent to which internal divisions exist, whether project-affected people uncompromisingly oppose the project, and the availability of capacities and skills. Meanwhile, the suitability of a government's participation in a collaborative HRIA will depend on characteristics such as its attitude toward human rights obligations, its commitment to transparency and disclosure, and its democratic legitimacy, as well as the attitude of project-affected people towards governmental involvement in the process.

## STAKEHOLDER INVOLVEMENT AND MEANINGFUL PARTICIPATION

Accurately identifying all relevant stakeholders and ensuring their effective participation is key to unlocking the value of a collaborative HRIA. Care must be taken to ensure that relevant subgroups of stakeholders—including those who may be marginalized or more vulnerable to a project's impacts—are appropriately engaged and represented. The various internal components of a participating company (such as headquarters and in-country office, and the different departments and hierarchies within each) and, if involved, the government (national, regional, and local levels, each with their own agencies and institutions) also need to be properly understood to ensure appropriate representation, coordination, and engagement.

Once the relevant stakeholders and their representatives are identified, capacity building will be needed—especially for representatives of project-affected people and, potentially, for representatives of the company or government—to ensure effective participation. Assistance for such capacity building could come from local or national civil society organizations (CSOs), as well as from international organizations and experts with expertise in capacity building, in HRIA methodologies, or in specific issues relevant to the assessment. These actors, as well as others, might also join as participants in the HRIA or remain involved on an ad hoc basis.

## STRUCTURE AND COMPOSITION

The structure of a collaborative HRIA will influence how the assessment functions, and should be designed to encourage collaboration and avoid replication of existing power imbalances between participating stakeholders. Rules of conduct will be needed, as well as entities that can assist with oversight of the process and compliance with the rules. While a collaborative HRIA could take many forms, the following three components are proposed:

- A **steering committee**, composed of representatives from project-affected people, the company, and other participating stakeholders, to set up the collaborative HRIA and oversee the process, as well as to provide a forum for improved communication between participating stakeholders and, potentially, for dispute resolution. The steering committee should have one or more independent facilitators to manage meetings and build consensus, to assist with project coordination, and to oversee compliance with the rules of conduct.
- A **trustee** or other trusted entity to receive and disburse funds as needed.
- An **impact assessment (IA) team**, also composed of representatives from project-affected people, the company, and other participating stakeholders, to carry out the actual assessment, as well as to design the recommendations and action plan to address the project's human rights impacts. The IA team should also have one or more independent

IA practitioners to ensure sufficient skills and expertise, to act as project manager, and to conduct interviews when it is not appropriate for representatives of project-affected people or the company to be present.

## **GOVERNANCE**

Participants can take steps to ensure that the collective decision-making processes in both the steering committee and IA team operate in an equitable manner. This is important, given that participants will have varying degrees of experience with formal processes, and uneven access to support and resources. The decision to carry out a collaborative HRIA should be recorded in an agreement, which can set out the structure and the rules of conduct. The rules should include processes for decision-making and dispute resolution; they can be enforced by the steering committee, with the independent facilitator taking the primary role of overseeing compliance.

In the course of a collaborative HRIA, disputes and grievances may arise. For instance, members of the IA team may disagree on how to carry out a specific part of the assessment, representatives on the steering committee may reach an impasse on a particular issue, or non-participating stakeholders may have grievances regarding the conduct of the IA team. Stakeholders establishing a collaborative HRIA may decide to have some or all of these types of issues resolved by the steering committee according to clear processes, or they may agree to turn to an external dispute resolution process. When the steering committee is tasked with resolving certain disputes, there should be a process in place to address any failure to reach consensus.

## **FUNDING**

Ensuring sufficient funding for the assessment is critical. Equally important is ensuring that the source of funding does not adversely influence the process and outcomes, or affect the assessment's credibility. Each funding source has its own advantages and drawbacks. Sourcing funding from the company, for example, may encourage company buy-in, and might also be the most scalable approach. However, company funding also carries the greatest risk of inadvertently influencing the assessment—or creating the perception of doing so. The host government, as the primary duty-bearer of human rights obligations, might be a logical funding source, but also presents challenges regarding actual or perceived influence. Neutral-party funding—from philanthropic organizations or foundations, bilateral donors, or other entities that are not direct stakeholders in a project—could help shield a collaborative HRIA from problematic influence and protect perceptions of the assessment's legitimacy. Neutral party funding is, however, less replicable and scalable than relying on funding from an involved stakeholder.

Despite its drawbacks, funding from one or more neutral parties is the recommended option. Where this is not possible, the process could adopt a phased approach that combines neutral-party funding for the scoping phase (to determine issues such as which rights will be covered and

what methodology will be used) with funding from the company for the assessment phase. A third option would be to seek funding from multiple sources for all phases of the project, with the goal of diluting any single funder's contribution and thus potential influence.

### **IMPACT ASSESSMENT METHODOLOGY**

As with existing HRIA practices, a collaborative HRIA will have a number of stages. These include: planning and scoping the issues to be covered; investigating and collecting data; analyzing impacts and making recommendations; and undertaking monitoring, evaluation, and follow-up activities. All stages of the assessment process require ongoing stakeholder engagement and access to dispute resolution processes.

The participatory nature of the IA team can create complications regarding who from the team can interview which types of stakeholders. For instance, when the IA team interviews project-affected people, company representatives on the IA team generally should not be present to ensure interviewees are comfortable and open during interviews. Similar concerns might arise regarding the presence of representatives of project-affected people during some interviews of company representatives—for example, when sensitive company information might be shared. In some situations, one of the independent IA practitioners on the team will be best placed to conduct interviews.

### **DESIGNING THE RECOMMENDATIONS AND ACTION PLAN**

Once findings have been assembled, all members of the IA team will work together to develop recommendations, and to convert these into action items in an action plan. The action plan should include provisions for monitoring implementation, for adapting to unforeseen issues and impacts that subsequently arise, and, potentially, for undertaking follow-up measures and/or other forms of ongoing engagement.

### **TRANSPARENCY AND DISCLOSURE**

Ensuring that project-affected people have access to relevant information is an important aspect of conducting a rights-respecting process. Transparency is an essential (although not regularly observed) component of HRIsAs. Disclosure of information throughout the assessment process—particularly regarding methodology, findings, and the action plan—is important for the legitimacy of a collaborative HRIA. In some cases, a company participating in the collaborative HRIA may have concerns regarding full disclosure of information gathered during the HRIA. Solutions should be established to address those concerns while still affording opportunities for project-affected people to access relevant information. While it is recommended to always disclose relevant information, the identities of interviewees should always be kept confidential and protected.

## THE WAY FORWARD

A collaborative approach to HRIAs creates a mechanism for collaboration and communication between key stakeholders. This can minimize knowledge asymmetries, contribute to a deeper understanding of each stakeholder's perspective and priorities, help to build trust, and result in more effective action plans to address a project's human rights impacts.

The need for capacity building and sensitization, and the radically different backgrounds of participating stakeholders, mean that a collaborative HRIA will be time-intensive and will require stable funding. In addition, strong governance structures will be critical to ensure that the process does not replicate or exacerbate existing power imbalances between stakeholders—an issue with which other multi-stakeholder efforts have struggled.

Despite these challenges, a collaborative approach to HRIAs offers enormous potential. Such an approach could provide a new way for companies, project-affected people, and other stakeholders to work together on understanding and addressing potential or actual human rights impacts. By doing so, a collaborative HRIA could support a range of stakeholders seeking better and more effective ways of assessing impacts and protecting rights in the context of business projects and operations.

# INTRODUCTION

Human rights impact assessments (HRIAs) provide a process to systematically investigate, measure, and address the potential or actual human rights impacts of a project or business operation.<sup>1</sup> HRIAs have become increasingly prominent, undertaken both by companies and by project-affected people<sup>2</sup> (such as local communities or workers, often with the support of a civil society organization). Yet despite their expanding use, challenges remain. This paper suggests a new collaborative approach that could help address one of the key challenges of most HRIAs: the limited engagement of relevant stakeholders, which can reduce both effectiveness and trust. This paper provides a rationale for a more collaborative HRIA process, and describes relevant considerations for those wishing to implement such an approach.

HRIAs differ from Environmental and Social Impact Assessments (ESIAs) by using a human rights framework; this includes benchmarking against human rights instruments and assessing risks to rights-holders,<sup>3</sup> as well as adherence to cross-cutting human rights principles, such as participation and non-discrimination.<sup>4</sup> HRIAs can be used as a tool for prevention, advocacy, and/or redress. As a preventative tool, they offer a mechanism

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1 For conciseness, this paper uses “project” to refer to both “project” and “business operation.” This paper thus uses “project” in the sense of a particular “investment project” (such as a mine or a plantation), as well as to cover a “business operation” more generally (a term that may be more suitable for some companies, such as those focused on fast-moving consumer goods, and which might cover, for example, the sourcing of a specific commodity from a circumscribed area). Apart from projects and business operations, HRIAs can also be used to assess other things, such as government policies or trade agreements. See, e.g., NomoGaia, *Human Rights Impact Assessment Toolkit* (2016), <http://nomogaia.org/tools/>.

2 Human rights frameworks refer to entities with human rights obligations (such as states) as “duty-bearers” and to those with human rights (such as people) as “rights-holders.” Some HRIAs thus use “rights-holders” rather than “project-affected people.” This paper, however, uses “project-affected people,” a term that may be more comprehensible to a broader set of stakeholders.

3 BSR, *Conducting an Effective Human Rights Impact Assessment: Guidelines, Steps, and Examples* (2013), p. 6, [http://www.bsr.org/reports/BSR\\_Human\\_Rights\\_Impact\\_Assessments.pdf](http://www.bsr.org/reports/BSR_Human_Rights_Impact_Assessments.pdf).

4 In addition to integrating cross-cutting human rights principles, assessments may also be guided by a supplementary set of principles developed by the assessment team or steering committee. For example, the Marlin Mine assessment defined a set of “Ethical Principles” for the assessment, which focused on transparency, inclusivity, independence, informed consent, and confidentiality of participants. On Common Ground Consultants Inc., *Human Rights Assessment of Goldcorp’s Marlin Mine, Commissioned on behalf of Goldcorp by the Steering Committee for the Human Rights Impact Assessment of the Marlin Mine* (2010), p. 12, [http://csr.goldcorp.com/2011/docs/2010\\_human\\_full\\_en.pdf](http://csr.goldcorp.com/2011/docs/2010_human_full_en.pdf) (hereafter “Marlin Mine Human Rights Assessment”).

for undertaking human rights due diligence as urged by the UN Guiding Principles on Business and Human Rights (UNGPs). As an advocacy tool, they offer opportunities for workers, local communities, and other affected stakeholders to raise concerns, either before or after a project has begun. As a redress tool, they allow key stakeholders to understand harms that have occurred and to take steps to remedy them.

Although HRIA methods and standards have evolved over the years,<sup>5</sup> one significant challenge arises from the tendency of companies and people affected by a project to view any HRIA led or commissioned by the other “side” to be biased or unconvincing. Indeed, HRIAs are generally undertaken or commissioned by *either* a company *or* by project-affected people, with limited interaction among stakeholders. Company-led HRIAs are often conducted with little to no involvement of civil society organizations, community representatives, or workers, except as part of standard stakeholder consultations. Likewise, assessments led by project-affected people rarely involve company representatives. These dynamics, particularly when coupled with existing tensions, can lead to suspicion of HRIA results. This, in turn, can render them ineffective or contentious. Indeed, although HRIAs are sometimes touted for their potential to build dialogue between different sets of stakeholders, they often fail to do so—and in the worst cases, they might exacerbate distrust between parties.

A second significant challenge is the limited participation of host governments<sup>6</sup> in most HRIAs. In some contexts, this may be necessary: for example, when project-affected people do not trust a government due to its record of human rights violations. Indeed, one way of viewing the role of HRIAs undertaken to date is that they have helped to fill existing vacuums

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5 Some companies and civil society organizations have published their methodologies for conducting HRIAs. Examples from companies include the Marlin Mine assessment conducted by On Common Ground, the assessments of Kuoni’s operations in Kenya and India by TwentyFifty, and HRIAs of Nestlé’s operations in seven countries by the Danish Institute for Human Rights. See also the *Guide to Human Rights Impact Assessment and Management*, an online tool for companies created by the International Business Leaders Forum, the International Finance Corporation, and the United Nations Global Compact. Civil society organizations that have developed or refined HRIA methodologies include the community-led impact assessment methodologies of Rights and Democracy, Oxfam America, Federation International de Droits de L’Hommes (FIDH), Poder, and the Carter Center, as well as NomoGaia’s HRIA methodology and toolkit.

6 In the context of international investment, governments and countries can be categorized as “host” or “home”—the former is a government/country that is “hosting” or receiving the (inward) international investment while the latter is a government/country from which the (outward) investment is made. Traditionally, governments have focused on human rights within their territories, although international law has been interpreted as incorporating extraterritorial obligations as well—meaning that, in some situations, home governments must also seek to protect human rights from the business operations of their outward investors. This paper focuses primarily on the potential participation of host governments, although it is possible that a home government might also be interested in participating in a collaborative assessment.



arising from governments' failure to effectively protect human rights from the impacts of business operations. Yet governments are the primary duty bearers of human rights legal obligations; HRIAs undertaken by project-affected people often direct many recommendations to governments for this reason. Given the expanding use of HRIAs as a key human rights tool, a lack of involvement by governments may, in some cases, represent a missed opportunity to more fully engage the actors with the greatest obligations under human rights law. (The below section on "Characteristics of government" further discusses when government involvement might or might not be appropriate.)

A critical reflection on the current state of HRIA practices raises the question of whether a new approach, one that brings together key stakeholders to work collaboratively, might provide an avenue for more effective and inclusive assessments. Is a collaborative HRIA a possible solution?

This paper, based on lengthy research and interviews,<sup>7</sup> provides guidance on the possible shape that a collaborative HRIA could take. We define a collaborative HRIA as a joint process undertaken by project-affected people and a company, and potentially the host government or other stakeholders,<sup>8</sup> to investigate, measure, and respond to the human rights impacts of a project. This approach, which emphasizes deep collaboration between stakeholders from the very start of the assessment, can be distinguished from processes in which a company hires, or teams up with, a civil society organization to conduct an assessment without creating space for project-affected people to jointly define and implement the process from the beginning. It also differs from processes whereby different stakeholders undertake parallel assessments of the same project. While our focus in this paper is primarily on larger-scale investment projects, as well as specific operations tied to the global supply chains of multinational companies (such as the sourcing of specific commodities from a circumscribed area), a collaborative HRIA could potentially be applied to other types of projects or activities as well (discussed further in Box 1, below).

A collaborative approach could help address the legitimacy challenge that standard HRIAs confront, providing a process that is more trusted by all stakeholders. By bringing together stakeholders in a more participatory

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7 The research methodology is described at the end of this paper in Annex A.

8 At a minimum, a collaborative HRIA must include participation by project-affected people and the company. When appropriate (see the below section on "Characteristics of government"), the host government should also be considered a core participant. This paper assumes the participation of government representatives in appropriate situations while acknowledging that this is not desirable in all cases; governments could also be involved in more limited ways or not at all. In certain contexts, other relevant stakeholders, such as local, national, or international civil society organizations, could potentially be involved, as elaborated in the below section on "Involving other stakeholders."

manner, collaborative HRIAs could also have better results—more insightful analyses, more appropriate action plans, and more receptive audiences for recommendations.<sup>9</sup> Most importantly, collaborative HRIAs could help realize intrinsic democratic and rights-based values of participation by affected people in decision-making processes.<sup>10</sup>

Yet a collaborative HRIA is also fraught with its own challenges. Whether this approach could even succeed, and in what form, is still an open question: to date, no collaborative HRIA has been carried out and tested, although some HRIAs have incorporated particularly strong efforts to increase stakeholder engagement. This approach is also not suggested as a replacement for all HRIAs, or other types of impact assessments; it is simply another tool that could complement (or occasionally replace) them in certain situations, providing a mechanism for moving away from unilateral and contested assessments.

### **BOX 1. WHAT TYPES OF PROJECTS OR BUSINESS OPERATIONS DOES A COLLABORATIVE HRIA ASSESS?**

A collaborative HRIA can be applied to different types of projects or business operations. Examples include:

- A project-level collaborative HRIA that assesses the impacts of a single investment project, such as a mine, a factory, a plantation, an oil pipeline, or a hotel.
- A collaborative HRIA tied to a specific commodity that is being sourced from a specified and circumscribed area, for example, palm oil production in a specific area of Indonesia or cocoa production in a specific part of Ghana. This type of assessment may be more relevant for companies with large global supply chains.

The approach contemplated in a collaborative HRIA would be very difficult to apply to sector wide impact assessments (SWIAs), which assess an entire industry or sector in a specific country or particular geographic context. A

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9 In this way, collaborative HRIAs build on recent developments in social choice theory, which highlight the positive correlation between participatory decision-making, social welfare, and economic efficiency (see, e.g., Amartya Sen, “Social Choice,” *The New Palgrave Dictionary of Economics* (2nd Edition, 2008)).

10 See, e.g., Cathal Doyle and Jill Cariño, *Making Free Prior & Informed Consent a Reality: Indigenous Peoples and the Extractive Sector* (2013), p. 21, <http://www.piplinks.org/system/files/Consortium+FPIC+report+-+May+2103+-+web+version.pdf> (noting that indigenous representatives have asserted that they do “not want companies to employ external consultants to conduct [environmental, social, and human rights impact assessments], as the result[s] were often flawed and constituted a totally inadequate basis for an informed consent process.”).

core requirement of collaborative HRIAs is the adequate representation and involvement of project-affected people throughout the process. The large geographical scope of SWIAs greatly expands the number of project-affected people who may be affected; a collaborative HRIA process that features deep collaboration between those affected people and all relevant companies would thus be extremely challenging.

One exception regarding the feasibility of collaborative SWIAs, however, might be a scenario where people are affected by multiple projects in a smaller geographical area. For example:

- A hotel zone with multiple hotels and other tourism-related companies that collectively have an impact on a specific community.
- Oil concessions in a region where multiple oil companies are operating and affecting a specific community.
- A circumscribed area that produces a specific commodity sourced by multiple companies, similar to the point discussed above.

While this paper discusses options for navigating inherent challenges, any collaborative HRIA undertaken in practice will need to be designed according to the specific context in which it will be implemented. The ideas in this paper thus are not provided as a “model,” but rather as a set of considerations for companies, project-affected people, and other stakeholders seeking to work together on understanding and addressing the potential or actual human rights impacts tied to a specific project or business operation.

The paper starts with an overview of why various stakeholders might wish to undertake a collaborative HRIA, as well as preliminary factors to consider. The paper then offers suggestions on how a collaborative HRIA could work in practice, from ensuring meaningful participation of stakeholders; to structuring, governing, and funding the process; through to conducting research, compiling findings, implementing an action plan, and disclosing results.

## **BOX 2. A HUMAN RIGHTS-BASED APPROACH**

A collaborative HRIA should apply a human rights-based approach, and be grounded in human rights principles, to ensure that the assessment process itself respects and upholds human rights. A human rights-based approach has three core components:<sup>11</sup>

- Application of international human rights standards.
- Application of cross-cutting human rights principles.
- Analysis of the roles and capacities of rights-holders and duty-bearers, combined with efforts to strengthen the capacities both of rights-holders to make their claims and of duty-bearers to meet their obligations.

Particularly relevant for a collaborative HRIA are the cross-cutting human rights principles of:

- Equality and non-discrimination: It is important to recognize and address different types of discrimination and vulnerability throughout the collaborative HRIA process. This also includes taking a gender-sensitive approach.
- Participation and inclusion: The process should ensure meaningful representation and participation of, and consultation with, all relevant subgroups of project-affected people, including obtaining informed consent, adjusting timing to facilitate meaningful participation, and taking steps to understand and address power dynamics between different stakeholders.
- Accountability: The assessment process should clearly analyze and define who the rights-holders (project-affected people) and duty-bearers are, and identify which rights are affected and how such impacts should be addressed.
- Transparency: Pertinent information regarding the assessment process, findings, and action plan must be made accessible to all participating stakeholders and, where possible, the public, so that project-affected people can hold duty bearers to account.

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11 UN Practitioners' Portal on Human Rights Based Approach to Development Programming, The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies, <http://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies>.

# REASONS FOR UNDERTAKING A COLLABORATIVE HRIA AND FACTORS TO CONSIDER

Companies, project-affected people, and other stakeholders may have a number of reasons for undertaking a collaborative HRIA. A successful collaborative HRIA, in turn, will require understanding participating stakeholders' expectations and motivations. These are shaped by each stakeholder's internal organization (and the contestation of different viewpoints therein), culture, experiences, goals, and constraints. Yet even when there are interested stakeholders, a collaborative HRIA may not be suitable in every project context. Suitability will depend on multiple factors, including stakeholders' characteristics, the history of their relationships, and the political context. Set out below are multiple considerations that may be relevant when determining the appropriateness of a collaborative HRIA.

## WHY PARTICIPATE?

### **Shared incentives for companies, project-affected people, and other key stakeholders**

Current HRIA practices often lack robust collaboration between stakeholders, with consequences ranging from ineffective assessments to increased distrust. The collaborative HRIA approach aims to transcend the problems that can arise from the limited participation of other stakeholders, potentially leading to:

- **Deeper understandings of actual and potential impacts, including through improved information sharing:** HRIAs that do not include meaningful engagement of other key stakeholders risk relying on an incomplete understanding of realities on the ground. Assessments commissioned or conducted by a company, for example, may inaccurately account for project-affected peoples' priorities, needs, and concerns. Those conducted by project-affected people may not be privy to information needed to fully understand the potential impacts of, or the scope for, company action. By ensuring that stakeholders collaborate at the initial scoping phase of the assessment, and by allowing shared control over relevant information and its use, collaborative HRIAs can incorporate more perspectives and information, and enable more comprehensive assessments.
- **Identification of shared priorities, enhanced communication, and shared decision-making:** By creating a joint process, collaborative HRIAs may help identify shared priorities or concerns. This in turn may support greater collaboration and communication among stakeholders, opening up space for stakeholders to design a participatory HRIA process and to create long-term problem-solving channels. Given the need for shared decision-making

throughout the process, collaborative HRIAs provide multiple opportunities for stakeholders to agree on and potentially revise the methodology and intermediary findings. Such constantly renewed agreement throughout the process may improve the quality of the results, the legitimacy of the action plan, and the likelihood of eventual uptake of recommendations.

- **Conflict management and prevention:** Standard HRIAs generally do not offer direct opportunities to resolve disputes tied to the underlying project. Collaborative HRIAs, however, include built-in opportunities for dialogue between stakeholders, and thus may provide formal or informal mechanisms for communicating grievances and resolving disputes throughout the assessment process. In addition, when collaborative HRIAs are initiated before disputes occur, they could potentially help prevent serious conflicts from arising.

### **Incentives for companies**

Both external pressures and internal dynamics drive companies' behavior. External actors and institutions, such as home and host governments, providers of finance, and international organizations, have created applicable legal frameworks or guidelines on best practices. The UNGPs in particular have established a duty for companies to respect human rights and to implement due diligence processes. Civil society organizations, workers' organizations, and others have advocated for stronger policies and processes to respect human rights and create positive social and economic outcomes in the context of business projects. In parallel to and as a result of these efforts, some companies have become increasingly aware of the need to improve their performance with regard to human rights, and have developed their own human rights policies and strategies. Yet the question of how to effectively comply both with internal initiatives and with the evolving soft and hard human rights legal framework remains a challenge for companies.

Engaging in a collaborative HRIA may be an effective means of responding to this challenge. Companies participating in such a process may be better positioned to understand and adapt to project-affected people's expectations within the legal, economic, social, and cultural context of a specific project—for instance, through increased information sharing with project-affected people and, potentially, with public authorities.<sup>12</sup> Improved relationships can reduce the risk of project-related social conflicts and associated financial and reputational costs for the company due to, for example, consumer boycotts, lawsuits, or divestments. In this way, collaborative HRIAs may become an effective component of corporate risk management strategies.

Strengthened understanding and relationships may also improve the company's decision-making in a wide range of situations. This includes in

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<sup>12</sup> This is especially important where the company is not familiar with the regional context or specific local issues, such as overlapping land tenure systems or unique logistical constraints.

relation to the project-affected people involved in the collaborative HRIA, as well as to other stakeholders in future projects. Participating in a collaborative HRIA can also deepen in-country company representatives' awareness of human rights issues and of the company's duties and commitments, thus enhancing the quality and effectiveness of the company's human rights due diligence overall and in the long term.

Companies evolve alongside competitors. Competition may undermine a company's willingness to participate if it perceives collaborative HRIAs as optional and costly processes that would not be undertaken by its competitors. In other cases, competition might actually drive uptake of collaborative HRIAs. For instance, in a mature product market with a small number of major players competing and limited potential productivity gains, competition may lead companies to seek to differentiate themselves by engaging in "best practices," which could include adopting an innovative due diligence practice such as a collaborative HRIA.

### **Incentives for project-affected people**

Community-led HRIAs have many important benefits, such as providing project-affected people with the opportunity to undertake their own assessments of potential or actual project impacts. Yet such assessments face considerable challenges and constraints: for example, project-affected people may not have access to sufficient information to undertake *ex ante* assessments (i.e., before the project begins), while *ex post* assessments (i.e., after the project has commenced) may occur too late to shape the design of the project or to avoid negative impacts.

Collaborative HRIAs can establish avenues for project-affected people to directly communicate with the company. Communication can often be very challenging due to power imbalances and/or linguistic and cultural differences. Collaborative HRIAs provide an opportunity for project-affected people to raise their concerns directly with, and communicate their perspectives and priorities directly to, the company. In this way, collaborative HRIAs might also enable project-affected people to influence decision-making related to the design or development of the project.

Besides creating mechanisms for communication and participation, a collaborative HRIA may also provide project-affected people with an opportunity to further develop relevant knowledge and skills. Participating in a collaborative HRIA may enhance project-affected people's knowledge about their own rights and the avenues that exist to support and advance their claims. Participation may also provide the chance to better understand other stakeholders' cultures and rationales, which may help in their ongoing and future interactions with companies. This potential for capacity building can also reinforce the ability of project-affected people to effectively participate in other decision-making that stands to affect them.

### **Incentives for government actors**

Government involvement could send an important signal to companies on the importance of rights-compliant investments. It could also give the impact assessment team better access to government-held information, and increase the potential for government engagement with the HRIA's action plan. This engagement is important given governments' role as the primary duty-bearers of human rights obligations, and in light of the UNGPs, which re-affirmed governments' duty to protect those under their jurisdiction from human rights infringements by companies.

Following the assessment, some recommendations in the action plan will most likely be made to public authorities, which could include the host or home government at national or local levels. Involvement at the early stages of the collaborative HRIA may help the government to fully understand both the stakes of the assessment and the need to engage in a cooperative dialogue and to support implementation of the action plan.

Further, since collaborative HRIAs represent an opportunity for companies and project-affected people to agree on key priorities to address, they may offer governments a platform to reconcile their occasionally divergent roles as the primary duty-bearer of human rights obligations and the main actor seeking to attract (foreign direct) investment. By supporting the process, governments may thus simultaneously fulfill multiple objectives.

While their participation is important in many contexts, governments are not likely to be as involved in the process itself as companies and project-affected people. Depending on the context, participants might decide, for example, that the government will participate in the initiation phase, then only periodically throughout the assessment, and more thoroughly again during the implementation of the action plan. A government's degree of involvement in the assessment could thus be adapted to the needs of all participants; to the extent that it does not engage as deeply as other participants, its participation would thus be less resource intensive.

### **FACTORS TO CONSIDER IN DETERMINING THE APPROPRIATENESS AND FEASIBILITY OF A COLLABORATIVE HRIA**

While a collaborative HRIA offers a range of benefits in theory, various factors should be considered when deciding on the relevance and feasibility of such a process in a given context. The general surrounding context of the project has to be taken into account, including factors such as pre-existing relationships between stakeholders (e.g., pre-existing conflicts or tensions related to previous projects) and the political context of the assessment (e.g., conflict zones, which may not be a suitable environment for a collaborative HRIA; local or national elections, which may influence the position of public authorities towards a collaborative HRIA; or contexts in which project-affected people may fear retaliation from the company or corrupted public authorities).



Specific key factors—relating to the characteristics of the company, the project-affected people, and the government—are discussed below.

These factors, however, should not be read as a static checklist. Each context presents a combination of positive and negative factors that should be examined comprehensively before determining whether or not to carry out a collaborative HRIA (and if so, under which conditions). Moreover, these factors are best conceived of as continuums rather than binary considerations: for example, while “community division” is considered a potential negative factor, a community can be more or less divided or united, rather than simply being either “divided” or “united.” Finally, some factors themselves are not static and can be actively influenced: for example, the human rights knowledge of project-affected people can be built before or throughout the HRIA process.

### **BOX 3. EX ANTE OR EX POST: THE TIMING OF A COLLABORATIVE HRIA**

When, during the project cycle, should a collaborative HRIA take place? An *ex ante* impact assessment that occurs before the project begins will often be preferable. In general, the earlier a collaborative HRIA occurs, the more likely that it will influence the design or direction of the project and reduce the project’s negative human rights impacts.

An *ex ante* HRIA can take place at different moments. It can take place before the company has carried out a feasibility study, before a concession has been granted, or right before production begins. In some cases, it may be efficient and sensible to carry out a collaborative HRIA alongside an ESIA or another *ex ante* impact assessment that may be planned by, or required of, the company. (Of course, even an *ex ante* HRIA could face some constraints. For example, a company’s agreement to undertake a collaborative HRIA may suggest that it has already made a significant financial commitment and/or public commitment to the project, which may limit the company’s ability to change course. The extent to which a company is amenable to making changes based on the assessment’s results and recommendations is therefore a crucial factor for other participants to evaluate.)

An *ex ante* collaborative HRIA is not always possible or feasible, however. For example, companies or project-affected people may not understand the need for this type of approach until after a project has commenced and negative impacts have begun to occur. In such situations, an *ex post* collaborative HRIA might provide an opportunity for project-affected people to seek resolutions to existing grievances and develop better communication channels with the company, for the company to avoid or mitigate sources of conflict, and for all stakeholders to work together to develop a shared understanding of impacts and ways to address them.

## Characteristics of the company and the project

- A crucial factor to evaluate when considering the feasibility of a collaborative HRIA is the **company’s level of familiarity and engagement with human rights issues**. Significant differences exist between companies in this regard, depending, for example, on the industry in which it operates or the value the company places on ensuring that its projects are “responsible.” A company’s willingness to participate may thus depend on its existing human rights policies and commitments, as well as its managers’ and leadership’s attitude toward, and engagement with, human rights issues. Attitude and engagement may be influenced by previous experiences: either positive, such as successful HRIAs, or negative, such as litigation or naming and shaming conducted by non-governmental organizations (NGOs). Companies that are more sensitized to human rights issues may be more open to new methods of human rights due diligence, and more capable of participating effectively in a collaborative HRIA. Companies without prior human rights experience, however, could acquire necessary knowledge through capacity building prior to and during the assessment.
- A collaborative HRIA will be more feasible for a company with **sufficient resources**—material as well as human—to support participation over a sustained period of time. A collaborative HRIA may also be more feasible when participating company employees have skills that facilitate collaboration with other stakeholders (including cultural and linguistic awareness) and knowledge or expertise that enhances the conduct of assessments (for instance, expertise related to water pollution when that is key to the assessment).
- The **amount of time or money already invested in the underlying project** may also affect a company’s participation in a collaborative HRIA. This factor is less predictable. For example, a company that has invested little to date may be less concerned with impacts on the ground, yet may be more open to changes in project design. Similarly, a company that has invested a lot may be more incentivized to find common ground with project-affected people and to avoid potential disruptions to the project, but less willing to make significant changes to its business operations.
- Characteristics related to the **structure of the company**—such as interactions and allocations of roles between the company’s “in-country” offices and its “headquarters”<sup>13</sup>—may be important. Human rights policies are often decided at company headquarters, where the company’s decision-making power, human rights awareness, and key skills to engage in HRIA

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<sup>13</sup> In many cases, an investor company will establish a subsidiary company in the jurisdiction of the host country of the investment, meaning that this interaction takes place between parent and subsidiary company, rather than between headquarters and in-country offices.

processes may be concentrated. In-country office staff may be tasked with, and audited regarding, compliance with such policies, but may not be as sensitized to human rights issues and processes. This dynamic may complicate efforts to identify which representatives will participate in the collaborative HRIA, or may affect the level of support provided by relevant company representatives.

- Some projects (such as projects in the extractive sector) may need to take place in a very specific location. This reduces the potential for significant changes to the project to be arrived at through a collaborative HRIA. The **more potential alternatives and general room to maneuver** that exist, the more the company and project-affected people are likely to find the necessary ground for conducting the collaborative HRIA.
- The **overall complexity of the project** will also weigh on the feasibility or scope of the collaborative HRIA. This complexity is affected by multiple factors, including, for example, the number of stakeholders involved, the technicality of issues at hand, language and ethnic diversity, the size of the population and territory potentially affected by the project, and the surrounding infrastructure (e.g., transport, means of communication, etc.).
- In some cases, a company's pre-existing practice or policy of **carrying out Environmental and Social Impact Assessments (ESIAs)**—or any ESIA obligations under domestic law—may render the company less willing to engage in additional impact assessments, such as a collaborative HRIA. On the other hand, a company that is already interested in undertaking a collaborative HRIA might see a planned or required ESIA as presenting an opportunity on which to build a collaborative HRIA process.

### **Characteristics of project-affected people**

- The extent to which **divisions exist among project-affected people** may ease or complicate the conduct of a collaborative HRIA. While there is unlikely to be unanimous endorsement of, or opposition to, an incoming or existing project, the degree of disagreement among project-affected people may affect the likelihood that a collaborative HRIA can accommodate divisions. These divisions can take different forms. Some of the subgroups of project-affected people (such as women, workers, or local farmers) may be more vulnerable and/or less powerful than others. Alternatively, a project might affect multiple communities, such as different villages or ethnic groups. These scenarios pose specific challenges in terms of designing a collaborative HRIA that can ensure adequate representation of all relevant interests.
- The **level and nature of politicization of project-affected people** may also be relevant. For example, if some project-affected people took an uncompromisingly oppositional attitude to the project, that stance could undermine the feasibility of a collaborative HRIA.

- Project-affected people who are **familiar with international human rights standards** may be more prepared or willing to undertake a collaborative HRIA. Project-affected people less familiar with human rights, on the other hand, might find it more difficult, or require more time and resources, to “translate” their needs and priorities within the human rights framework and to feel ownership of this framework.
- A collaborative HRIA may be more feasible when project-affected people have the **relevant knowledge, capacity, and skills** to carry out such a process. This may include: familiarity with relevant laws, or the technical and/or research skills needed to understand them; negotiation and assessment skills; and experience and willingness to undertake collective decision-making.
- While familiarity with human rights and skills gaps can be addressed through capacity building (see below section on “Engaging in meaningful participation: the importance of capacity building”), project-affected people’s **financial and educational resources** may impede effective participation in the process. Since the collaborative HRIA process relies primarily on stakeholders, as opposed to third-party expertise, to design and conduct the assessment, these resources are crucial. Yet HRIAs often take place in contexts of intense poverty, low education levels, and reduced access to communication, transport, and media. Project-affected people who are able to identify representatives who are able to read, write, or participate in statistical tasks may be better equipped to participate. A careful evaluation of capacity-building and resource needs prior to the start of the assessment—as well as a plan to address them—may be key to addressing these obstacles.

### Characteristics of government

The extent and modalities of host government participation in a collaborative HRIA will depend on several factors. Some relate to the government’s attitude towards HRIAs and willingness to participate. Others relate to the nature of the government. Given the potential benefits and drawbacks of government participation, stakeholders interested in undertaking a collaborative HRIA should carefully assess whether government representatives might be appropriate participants in the HRIA. If participation of the government seems entirely unfeasible, a collaborative HRIA process may still be implemented without involving the government.

- The **human rights sensitization** of the government is a key factor. This includes the government’s awareness of the project and its potential associated negative human rights impacts. Awareness of those risks may incentivize government involvement. However, in other cases, the government may simply be less concerned about protecting human rights, or more focused on attracting (foreign direct) investment, and therefore less amenable to participating in a collaborative HRIA.

- A government's **commitment to transparency and disclosure** of relevant information related to business projects will likely make it a more active and effective participant, should it decide to participate in the assessment. This type of commitment may be less likely if the government's economic interests are perceived to conflict with its human rights duties—for instance when state-owned entities are shareholders of the company undertaking the project being assessed (either through direct participation or joint-venture).
- Existing and potential **divisions between branches of government, or levels of government**, on either the specific project or on issues related to business and human rights generally, should also be considered prior to the assessment. In addition, some public agencies, or government representatives, may be willing to provide more support than others. Their respective potential involvement in the process or the action plan should be assessed during the initial stage of scoping and identifying human rights issues.
- More generally, **a government's democratic legitimacy**, as well as its track record in protecting human rights, should be assessed to estimate how likely it is to effectively participate. Public representatives of **“failed” or highly corrupt states** are unlikely to be as committed and involved as agents of other states. A lack of accountability mechanisms, and/or a lack of resources, may further diminish a government's level of involvement in the process and the action plan.
- Finally, government involvement might increase or be perceived as increasing the risk of politicizing the collaborative HRIA, especially around the time of popular elections. More generally, **project-affected people may be opposed to the involvement of the government**, for example because of mistrust or fear of future retaliation. In such cases, government involvement will not be feasible.

# STAKEHOLDER INVOLVEMENT AND MEANINGFUL PARTICIPATION

## KEY STAKEHOLDERS

Accurately identifying all relevant stakeholders, and ensuring their effective participation when appropriate, is critical for meeting the potential offered by a collaborative HRIA. Meaningful stakeholder involvement is necessary throughout the process, including during the design of an action plan. To realize this, capacity building may be needed—especially for the representatives of project-affected people and, potentially, for companies—to ensure that participants can take part in the collaborative HRIA in an informed and effective manner.

### Groups and subgroups: distinctions among stakeholders

As discussed above, “stakeholders” are rarely homogenous entities. For example, “project-affected people,” “the company,” and “the government” are constituted by different individuals and subgroups, with distinct positions and interests. Hence, mapping the subgroups that constitute each entity is important when determining which stakeholder representatives should participate.<sup>14</sup>

Project-affected people may be composed of particularly diverse subgroups—for example, in terms of gender, age, socio-economic profile, or religion. Ensuring that these different perspectives are represented is essential for a collaborative HRIA, as the distribution of a project’s positive and negative impacts may vary vastly among the diverse social subgroups. Moreover, this is nonnegotiable for a human rights-based approach, which requires non-discrimination, participation, and inclusion.

Companies are also rarely homogenous entities. A company’s headquarters and in-country (or subsidiary) offices, as well as the different departments and actors within them, will have different and possibly diverging agendas and capacities. However, these potential divergences do not necessarily require the involvement of multiple representatives; instead, such differences can usually be resolved by the company’s internal hierarchies and decision-making processes.

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<sup>14</sup> Various guides for conducting stakeholder mapping exist. See, e.g., BSR, *Stakeholder Mapping* (2011), [http://www.bsr.org/reports/BSR\\_Stakeholder\\_Engagement\\_Stakeholder\\_Mapping.final.pdf](http://www.bsr.org/reports/BSR_Stakeholder_Engagement_Stakeholder_Mapping.final.pdf), which is designed for use by companies, but also contains useful guidance that could be adapted and used by project-affected people and other stakeholders.

The government is also composed of different entities with differing agendas and capacities, including line ministries (such as the ministry of agriculture), regulatory agencies (such as the environmental protection authority, or health or labor agencies), statutory bodies or authorities, and members of parliament. Government representatives may also work at the national, subnational, or local levels, adding an additional level of complexity.

### **Representation of project-affected people**

Representation of project-affected people may pose several context-dependent challenges. One challenge lies in defining the limits of who comes within the “project-affected people”: the geographical boundaries of the project’s physical impacts may be blurry (for example, water or air pollution may extend beyond the project area’s immediate surroundings), and some projects or business operations can have larger-scale impacts (for example, adverse impacts on consumers at a transnational scale). Another challenge is related to the representation of vulnerable or marginalized subgroups or social layers. Special attention must be given to ensuring that the collaborative HRIA process does not replicate existing hierarchies and/or marginalization of subgroups. In the context of indigenous peoples, it is particularly important to consider and respect the existing representative structures, as part of their right to self-determination. Pre-existing local representation and decision-making structures, as well as ad hoc committees formed in response to an incoming project, could be used to help identify representatives; they should be scrutinized, however, to determine whether they allow for adequate representation of all subgroups or whether additional representatives are needed for those who may not have a strong voice in such structures.

When selecting representatives, workers should be given special attention in light of their relations with other stakeholders. As employees whose jobs and working conditions depend on their employers, workers may be (or may be perceived to be) dependent on, and thus more easily influenced by, the company. They may also be, or be perceived to be, under social pressure from the wider community in which they live—their families, villages, and different social subgroups—to oppose the company’s project, even though they individually participate in and benefit from it. These contrasting pressures should be taken into account when choosing worker representatives and throughout the assessment.

Another challenge in identifying representatives of project-affected people lies in the timing of the collaborative HRIA. If the collaborative HRIA is initiated *ex ante* (see Box 3, above for more on *ex ante* and *ex post* assessments), it may be harder to identify the people who stand to be affected by the project. However, these difficulties need not prevent the assessment from going forward. An iterative process, which can include relevant project-affected people (including people previously deemed to be unaffected) throughout the assessment, should complement the first stage of identification of project-affected people.

Those who are chosen to represent project-affected people during the HRIA should:

- Have the trust of the people they are representing (human rights defenders and trade union representatives may be particularly good choices)
- Be selected according to a process decided on by those people
- Regularly consult with, and regularly report back to, project-affected people before and throughout the collaborative HRIA process (this can be done using a range of tools, such as in-person meetings as well as radio broadcasts)

### **Company representatives**

The representative(s) of the company should have sufficient authority within the company's internal hierarchy to meaningfully participate in the HRIA and influence company operations and policies in line with the action plan. Whether it will be more appropriate for a representative from the company's headquarters or in-country staff to participate, and in what role, will depend on the specific person's position, as well as the company's culture and organization.

In general terms, employees from a company's headquarters may be perceived by stakeholders as more removed from the company's on-the-ground operations, and thus as potentially being more committed to working towards successful completion of a collaborative HRIA. They may also have more time, capacity, resources, or support from the company to participate; for instance, some staff members, such as those whose position involves human rights issues, may be more familiar with best practices in human rights due diligence. Employees from headquarters may also have greater access to decision-makers within the company's senior management, which could affect the degree to which the company engages with and endorses the collaborative HRIA's findings or the extent to which the company implements the action plan. A representative from headquarters is also more likely to draw from his or her experience with the collaborative HRIA process when working on future projects, thus adding to the value for a company of undertaking such a process.

The company's in-country employees, on the other hand, are likely to be more familiar with the project's day-to-day operations. They may be more invested in building and maintaining close working relationships with local stakeholders. They likely have a deeper knowledge of the local context, which can be useful in adapting the collaborative HRIA process to local circumstances. Depending on their role, however, in-country employees may be less aware of best practices in human rights due diligence, and may have less time to dedicate to such activities.



Companies are not homogeneous structures through which information flows freely. The existence of different departments (horizontal divisions) and different levels of hierarchy (vertical divisions) within the same company may undermine efficient communication. Different departments may have different agendas and some may be less responsive to human rights issues than others. Feedback loops and processes, such as internal working groups, should be created to report back on progress and to encourage each relevant department to be involved and responsive.

### **Government representatives**

As noted above, the appropriateness of involving host government representatives should be carefully assessed. Their participation will depend on the government's attitude to the process or to human rights issues in general, as well as on the attributes of the specific government body represented, if any.

If government involvement is deemed acceptable, stakeholders may wish to start by engaging with local government. Local government actors regularly interact with, and have a deep knowledge of the dynamics between, stakeholders within the project's local context. Their participation may therefore be highly valuable in improving the human rights situation, as well as relations between stakeholders in the long term.

National government representatives may, however, be more familiar with human rights issues, and could apply lessons learned during the collaborative HRIA process to a wider range of subsequent situations. These representatives may also have more leverage to implement the assessment's recommendations and action plan. On the other hand, national-level government actors may have conflicting agendas, which have to be taken into account when selecting a representative who can participate meaningfully. For instance, a representative from an environmental protection authority with a mandate to prevent or mitigate a project's negative environmental impacts may be more appropriate than a representative from an investment promotion agency that is primarily concerned with quantity, rather than quality, of incoming investment.

Where continuous government involvement in the collaborative HRIA presents significant challenges, relevant government actors could be involved only during specific stages of the collaborative HRIA, including:

- The scoping stage: for instance, a local government representative could provide input on the local context and potential issues that may arise
- Data collection: the government may have relevant information and documentation that can be disclosed to the impact assessment team
- Development of the action plan: involving a government representative at this stage could help increase the chances that the government will

be responsive to relevant recommendations in the action plan, such as recommendations for reforming laws or policies

- Implementation and monitoring of the action plan: since governments generally have their own monitoring processes, they could potentially help support monitoring tied to the assessment

### **Involving other stakeholders**

While project-affected people, the company, and government actors are the core stakeholders, they may not possess all the information, resources, and skills necessary to conduct the assessment and implement the action plan. As discussed in the below section on “Structure,” involving an independent facilitator is recommended to help guide the process and facilitate consensus. The participation of other key actors, such as local CSOs, independent experts, and international NGOs, may also be essential for the success of the collaborative HRIA. In particular, a collaborative HRIA would benefit from drawing on the knowledge and expertise of other human rights actors, such as: human rights NGOs and CSOs; national human rights institutions; academics focused on human rights issues; and national, regional, and UN-based human rights experts. Human rights actors could play an important role in a collaborative HRIA given their insights into how international human rights norms apply in specific contexts.

### **Local or national civil society organizations and unions**

Local or national CSOs, which include NGOs, village associations, women’s groups, faith-based organizations, and labor unions, may be effective participants in a collaborative HRIA. In some cases, local CSO involvement may provide an additional safeguard for supporting meaningful representation of project-affected people in a collaborative HRIA process. In addition, CSOs driven by human rights or community-focused agendas draw on useful expertise and experience in human rights research and advocacy. More generally, CSOs may be able to benefit from local resources, knowledge, and networks that could support pre-assessment preparations—such as experience in capacity-building, which could benefit the participants—and the assessment process itself. Their prior involvement in local issues, however, could have varying effects on the engagement and buy-in of different stakeholders. For example, a company that has faced strong opposition from a local CSO may be more reluctant to participate in a collaborative HRIA with that CSO, whereas the involvement of a trusted and respected local CSO might reassure and legitimize the collaborative HRIA initiative amongst project-affected people.

### **International NGOs**

International NGOs may also be effective participants in a collaborative HRIA, providing relevant skills and experience. International NGOs can also assist with the capacity building of local CSOs and project-affected people, including by facilitating peer-to-peer learning between different groups of

project-affected people, or by strengthening the representative structures and skills of local populations. Some NGOs may also have the experience and skills that would allow them to assist in mediating relationships between stakeholders as needed. In addition, they may provide both resources and expertise in the assessment process itself, and in designing the subsequent action plan. Because NGOs are driven by their own agendas, which may or may not be in line with the concerns of project-affected people, they should not be assumed to represent the diversity of interests that likely exist within project-affected people.

### **Other organizations or experts**

Other organizations, such as National Human Rights Institutions, or independent experts may be usefully included in a collaborative HRIA, either as participants in the HRIA or on an ad hoc basis to provide capacity building or support on technical issues. Areas of independent expertise required by the HRIA will vary by context, but may include:

- **HRIA expertise:** depending on who participates in the assessment, a HRIA expert may be needed to provide technical assistance in the conduct of the HRIA, such as helping to collect data or translating local issues into human rights terminology
- **Sector-specific or subject-matter expertise:** expertise and technical assistance might be needed on environmental, public health, anthropological, cultural, linguistic, technological, social, or industry-specific issues, among others

While experts can provide useful contributions, criteria for their inclusion should be established. This might include independence and the level of expertise or experience required. The involvement of experts should not come at the expense of maintaining the core stakeholders' ownership of the collaborative HRIA process. It is therefore important to avoid a situation in which experts outnumber representatives of the company and project-affected people in the operating structure of the HRIA.

### **Initiating the process**

The reality of a collaborative HRIA is that, in most situations, there may be no perfect way to initiate it. At its core, a collaborative HRIA requires joint participation between stakeholders from the start of the assessment—while also serving as a means of deepening collaboration and trust between those stakeholders. But if a collaborative relationship does not already exist, is joint participation from the beginning possible? Who has the right to initiate a collaborative HRIA? Who has the capability? Does the person or entity initially interested in a collaborative HRIA inadvertently influence the composition of stakeholders who eventually participate? And would such influence undermine the assessment?

These questions illustrate the caution that is required when initiating such a process. They also, however, point to a more practical takeaway—if there is no perfect initiator, then any stakeholder could in fact be the one who seeks to initiate the process, bringing the idea to other stakeholders to discuss. Workers or local community members, for example, may recognize the potential of a collaborative approach, and then might discuss it with company representatives and others. Or a company may be interested in this type of assessment, subsequently raising it with community members and/or workers. In some situations, it may instead be a third party, such as a local civil society organization or an independent HRIA practitioner, who sees the potential for a collaborative HRIA in a specific context and suggests the idea to core stakeholders.

While the initial interest in a collaborative HRIA might arise from a specific individual or set of individuals, the actual process of initiating it—finding the right stakeholders, setting up the structure—should be collaborative. This process will be different for each collaborative HRIA, although one commonality should be strong stakeholder mapping at the very outset. Depending on the complexity of the situation, this initiating process might involve multiple steps: for example, an initial round of discussions and stakeholder mapping, which might lead to the creation of an informal advisory group, which then supports another round of discussions and stakeholder mapping, and so on.

As important as finding the right stakeholders is ensuring that they are able to engage meaningfully. In particular, project-affected people will need sufficient time and, in most cases, capacity building (discussed in detail below) and other assistance to decide whether they wish to participate in a collaborative HRIA. This should generally include legal assistance, so that project-affected people are apprised of their rights under domestic and international law, as well as additional assistance to understand the possible impacts of the proposed project, and, potentially, why the collaborative HRIA has been proposed.

It thus may be prudent to refrain from finalizing the assessment's structure or composition too quickly. Indeed, just as the composition and representation of stakeholders for the collaborative HRIA itself must be carefully considered (as discussed above), similar care should be taken to ensure adequate representation of, and meaningful engagement by, relevant stakeholders in the *initial* discussions that lead to the eventual creation of a collaborative HRIA.

### **ENGAGING IN MEANINGFUL PARTICIPATION: THE IMPORTANCE OF CAPACITY BUILDING**

Once the relevant stakeholders and their representatives are determined, there remains at least one major precondition to the start of the assessment: participants must be supported, as necessary, in building both the

knowledge and the skills needed to undertake a collaborative HRIA. While all stakeholders might need assistance, building the capacity of project-affected people, companies, government actors, and possibly local NGOs should be prioritized.

Capacity building can increase the chances that the collaborative HRIA will be successful. Ideally, capacity building could also help reduce power imbalances between participating stakeholders. From a longer-term perspective, capacity building may be an opportunity to reduce social conflicts more generally, raising stakeholders' awareness of human rights issues and providing them with the skills needed to address such issues outside of a specific collaborative HRIA process.

Capacity-building needs will vary between and among different groups of stakeholders. Some HRIA participants may need support in understanding basic human rights norms and obligations, or how similar projects have operated in practice. Others may need assistance with technical skills, such as researching, interviewing, or collecting evidence. In other cases, participants may need support in understanding the local culture and context, developing effective consultation techniques or conflict resolution strategies, or building their communication and advocacy abilities.

### **Who should receive capacity building?**

Project-affected people are not always equipped with the substantive knowledge or assessment skills needed to participate effectively in a collaborative HRIA. Community-led HRIAs often feature capacity building as an important component of the process; this is perhaps even more important when taking a collaborative approach to HRIAs, which is designed to enable project-affected people to have a strong participatory role alongside other actors. The importance of such capacity building is highlighted by the experience of existing multi-stakeholder initiatives designed to encourage collaboration, where project-affected people tend to have few opportunities to directly participate and NGOs frequently serve as their proxies. Specific knowledge and skills relevant for project-affected people likely include knowledge on human rights and the relevant industry, technical skills for conducting impact assessments (for those participating on the impact assessment team), and methods for participating in formal collaborative decision-making structures and effectively engaging with a company.

Similarly, company representatives will often need capacity building before the start of a collaborative HRIA. In contrast to company-led HRIAs, which are often undertaken by, or in partnership with, external consultants, collaborative HRIAs assume direct participation by company representatives, and thus require such representatives to possess the required capacities to participate effectively. Representatives from both headquarters and in-country (or subsidiary) offices might be involved; they likely will not have the same level of knowledge regarding the relevant country context and culture,

or of relevant human rights issues. Because the company representatives in charge of implementing the assessment's follow-up actions may be different from the company representatives who participate in the collaborative HRIA process, capacity building and awareness raising may be required for a broad range of company representatives.

When government representatives are involved in the collaborative HRIA, they too will likely need some capacity building: for example, on the assessment process itself, or on relevant human rights issues. Ensuring their capacity to participate effectively is particularly important given their potential role in implementing certain follow-up actions agreed upon as part of the collaborative HRIA process.

### **What shape should capacity building take?**

Challenges remain as to the mechanisms and effects of capacity building; capacity building requires pedagogical and technical skill, but must not be ideological or paternalistic. To avoid those risks, the modalities of capacity building should be carefully established. Examples of capacity-building methods include the use of skits, theater, and drawing (all commonly used in community settings), as well as more traditional pedagogical strategies, such as classes or workshops, booklets, and videos, which could be applied to any audience. Capacity building of project-affected people and of company representatives could also be combined in some instances, helping to balance each stakeholder's knowledge base while, potentially, building trust between them.

Among possible scenarios, capacity building could be implemented by local CSOs or subject-matter experts (which would allow for adaptation to the local culture and context) or by international experts or NGOs (who would offer a broad range of experiences and potentially a deeper knowledge of international best practices). One method for ongoing capacity support of broader stakeholder groups is the use of media and the internet to share information with community members and workers throughout the assessment. Finally, peer-to-peer learning could be valuable. For instance, community-to-community sharing (between the project-affected people and another community that has experienced the effects of comparable business projects and/or undertaken HRIA processes) could provide project-affected people participating in the collaborative HRIA with experience-based learnings. Similarly, company-to-company sharing of experiences could help equip the participating company to deal with common challenges or to harness best practices.

## STRUCTURE AND COMPOSITION

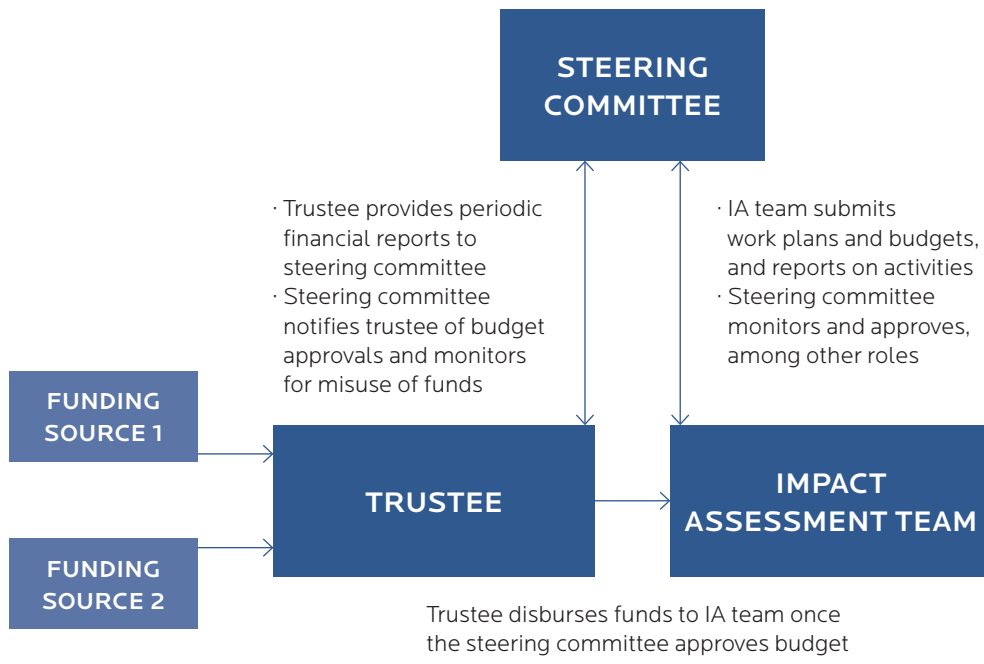
The structure of a collaborative HRIA will influence whether the assessment is able to function effectively and in a rights-compliant way. Setting up a clear structure with different entities that are allocated distinct procedural and operational roles can assist participants in making decisions regarding, and in carrying out the various tasks required of, a collaborative HRIA. Rules of conduct are also needed to encourage good governance within and amongst these entities (as discussed in the section below on “Governance”).

Having a clearly defined structure is especially important given that participating stakeholders will have different backgrounds and interests. For instance, project-affected people and the company will usually have differing levels of technical capacity, access to support and resources, and overall ability to influence decision-making. In addition, they will often, at least initially, have divergent perspectives and agendas for what they hope to achieve from such a process. The structure of the collaborative HRIA therefore needs to be designed to encourage collaboration and avoid replication of existing power imbalances.

While a collaborative HRIA could take many forms, and iterations will vary based on the stakeholders’ preferences and agreement in any particular case, it is advisable that the collaborative HRIA structure have the following three components:

- (1) A **steering committee** to set up the collaborative HRIA process and provide oversight, as well as to provide a forum for communication between participating stakeholders and, potentially, for dispute resolution;
- (2) A **trustee** or other trusted entity to receive and disburse funds as needed; and
- (3) An **impact assessment (IA) team** to carry out the actual assessment, as well as to design the recommendations and action plan to address past, existing, and/or potential negative human rights impacts.

**FIGURE 1. STRUCTURE OF COLLABORATIVE HRIA**



## THE STEERING COMMITTEE

### Roles

The steering committee will usually be the first component of the collaborative HRIA's structure to be formed, and will likely be composed of some or all of the actors who initiate the process and negotiate the collaborative HRIA's rules of conduct (discussed below). The steering committee can act as an important check to help ensure that the overall collaborative HRIA process is not co-opted or unduly influenced by any participating stakeholder. In addition to its responsibilities during the assessment itself, the steering committee might also wish to reconvene periodically after the assessment has concluded to review compliance with the recommendations and plan of action, or to perform other functions.

The roles of the steering committee, once established, may include:<sup>15</sup>

- Articulating the objectives of the collaborative HRIA process
- Designing criteria for, and selecting, the members of the impact assessment (IA) team, ensuring an appropriate balance between different stakeholder interests and any independent technical expertise needed

<sup>15</sup> The first two of these tasks could also be addressed during the negotiation of the agreement establishing the collaborative HRIA, and included in the agreement's text; discussed below in the section on "Governance."



- Building on the agreement that establishes the collaborative HRIA to further develop the rules of conduct
- Setting or approving proposals regarding wages or compensation for members of the steering committee and assessment team<sup>16</sup>
- Approving the IA team's work plan and budget, and any subsequent changes thereto, and authorizing payments from the trustee to the IA team or other payees as needed
- Reviewing financial reporting from the trustee and the IA team, and monitoring for, and dealing with, any actual or alleged fraud or misuse of funds
- Receiving the IA team's periodic activity reports and providing strategic assistance or advice to the IA team when needed
- Encouraging compliance with the rules of conduct, and taking steps to rectify any breaches thereof
- Deciding on relevant disputes or questions referred to it, or referring them to an external dispute resolution process, in accordance with the rules of conduct
- After the assessment has concluded, periodically reconvening to monitor compliance by relevant stakeholders with the recommendations and plan of action
- Potentially reconvening to perform other relevant functions, as agreed by participating stakeholders, such as providing a forum for dialogue and communication between the stakeholders or resolving grievances associated with either the collaborative HRIA process or the project in general

### Composition

The core members of the steering committee should be representatives of project-affected people and the company, as well as—when appropriate—government representatives. The steering committee should also include one or more independent facilitators. Additional stakeholders could also participate in the steering committee, depending on the circumstances and on the outcomes of the stakeholder mapping done in the preparatory phases of the collaborative HRIA. Considerations of gender and diversity should also influence the selection of the steering committee's members.

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<sup>16</sup> When deciding on the wages or compensation payable to individual members of the steering committee—for instance, representatives of project-affected people—these individual members should abstain from the decision and leave the room during deliberations.

As discussed in the section above on “Stakeholder involvement and meaningful participation,” the local context will shape which representatives of **project-affected people** should participate in the steering committee. Those establishing the steering committee should seek to ensure that all relevant perspectives held by project-affected people are meaningfully represented without replicating existing hierarchies that would undermine the participation of marginalized subgroups. Care is also needed when selecting who will represent the **company** to ensure that the company is sufficiently engaged and invested in the process, and will actually implement the collaborative HRIA’s recommendations and action plan.

The number and ratio of representatives of project-affected people and of the company will vary. The steering committee will almost always need multiple representatives of project-affected people to ensure that different subgroups have their voice heard, even if it may not be feasible for every subgroup to have its own representative. Project-affected people might also demand that they have more representatives on the steering committee than the company and other participants, in order to help prevent their perspectives from being over-ridden by participants who may have greater technical capacity, access to technical expertise, and/or experience with formal processes. While having more representatives will not by itself level the playing field, it could help limit the ability of company or other representatives to disproportionately influence discussions and decision-making.

There might also be scope for the **host government** to be involved in the steering committee. As discussed above, this should only be contemplated when there is a reasonable expectation that the government will be a good faith participant, and that state involvement will not hinder or imperil the collaborative HRIA’s operation. Stakeholder mapping will also help in identifying which types of government representatives may be most appropriate.

The **independent facilitator(s)** will manage each steering committee meeting, facilitate dialogue and build consensus among committee members, and assist with project coordination. The facilitator(s) should also bear the primary responsibility of ensuring that all participants comply with the rules of conduct (as discussed in the section below on “Governance”). These responsibilities mean that the facilitator(s) must to some extent be trusted by all participating stakeholders. There should also be a process established for oversight of the facilitator(s) by the remaining members of the steering committee or an external entity, such as an independent organization or academic institution. The oversight process could include regular checks for conflicts of interest, as well as evaluations based on articulated criteria that aim to measure quality of performance and the extent to which all stakeholders are able to contribute to decision-making. The facilitator(s) should have experience in some or all of the following: facilitation, dispute resolution and mediation, project management, and the conduct of HRIAs. In some cases, it may be most effective to have

facilitator(s) who hail from the host country—but not the specific project area—to ensure they have some familiarity with the local context while still being perceived as impartial. In other cases, a facilitator might need to come from outside of the country to be perceived as independent and free of biases. The potential for multiple facilitators should also be contemplated if a single facilitator who possesses the necessary skills and experience (which include project management, mediation, and facilitation skills, as well as familiarity with human rights frameworks) cannot be identified.

#### **BOX 4. CASE STUDY: SELECTING AN INDEPENDENT FACILITATOR**

At the Xstrata (now merged with Glencore) Tintaya mine in Peru, project-affected people, NGOs, and company representatives sought to establish a “dialogue table” to address community grievances relating to the mine. Key to this process was the selection of a professional facilitator to build consensus and direct the process. The local community, the NGOs, and the company each nominated three candidates to fulfill such a role; their selections had one facilitator in common, and that person was selected to facilitate the dialogue table.<sup>17</sup>

While this is an example of a relatively smooth process for deciding on a facilitator, collaborative HRIA stakeholders could use similar processes to select the facilitator(s). Contingencies could be established for when there is no overlapping consensus, such as: starting the process again, expanding the number of facilitators nominated by each party, or discussing and negotiating until a candidate is agreed upon.

Adding **other stakeholders** to the steering committee may make its operation more complex, but could also help equip it with the necessary expertise to properly supervise the IA team and collaborative HRIA process. Additional steering committee members may also be needed if one or more members of the steering committee represent an entity that is providing financial support to the collaborative HRIA; in such cases, the risk of undue influence should be tempered by including sufficient alternative perspectives on the steering committee. Other members of the steering committee could include:

- Subject-matter **experts**, whether from the local area, the host country, or abroad, who bring expertise and credibility on relevant issues, and who could support and oversee the IA team in responding to those issues in the scoping, methodology design, and assessment stages

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<sup>17</sup> ACCESS Facility, *Putting Ourselves in Their Shoes: The Dialogue Table of Tintaya*, <https://vimeo.com/32384076#t=950s> (at 15:50).

- Representatives from local or international **civil society organizations** who could assist representatives of project-affected people and help to build their capacity before and during the process
- **International organizations** and/or **academics**, who have expertise and experience in key issues that the collaborative HRIA process might encounter, and who could provide technical or capacity-building support, while possibly also lending a degree of impartiality or credibility to the process

#### **BOX 5. CASE STUDY: THE STEERING COMMITTEE OF THE MARLIN MINE HUMAN RIGHTS ASSESSMENT**

The human rights assessment of Goldcorp's Marlin Mine in Guatemala, published in 2010, provides an example of a multi-stakeholder steering committee charged with overseeing a human rights due diligence process. The assessment was carried out at the behest of a group of the company's shareholders who were concerned with the human rights challenges of mining. The shareholders eventually entered into a memorandum of understanding with Goldcorp, which set out that a human rights impact assessment would take place, and that the process was to be directed by a steering committee comprised of a representative from Guatemalan civil society, the concerned shareholders, and the company. The steering committee did not include representatives of project-affected people or the host government. Although an international NGO was selected to act as a peer reviewer of the process, it was later determined that a peer assessment was not possible after revisions to the assessment's scope. (The revisions also included a change in terminology, from "human rights impact assessment" to "human rights assessment.")

According to the assessment report, the steering committee was tasked with "overseeing the assessment process, setting the scope and timeline of the assessment, selecting the consultant(s) to conduct the assessment, and managing the overall assessment process."<sup>18</sup> In practice, this included working with the consultants to revise the scope after they encountered challenges in ensuring a fully participatory approach, and selecting specific assessment tools to be used by the consultants in carrying out the assessment.

The assessment report noted that "the conditions for carrying out a participatory human rights impact assessment did not exist,"<sup>19</sup> explaining that the national and local context was increasingly polarized regarding mining in general, and the Marlin mine in particular. Despite the fact that project-affected people did not participate directly, the structure of the Marlin mine process provides an interesting example of how different stakeholders can be brought in to contribute to the design and oversight of an assessment process.

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<sup>18</sup> Marlin Mine Human Rights Assessment, p. 8.

<sup>19</sup> Marlin Mine Human Rights Assessment, p. 13.

## THE TRUSTEE

### Roles

The trustee's primary role is to pay out relevant funds to members of the IA team and other entities or persons as needed to carry out the collaborative HRIA. Having a trustee provides another check on the misuse of funds, and also reduces the administrative burden relating to managing funds for the steering committee and the IA team.

The specific roles of the trustee may include:

- Receiving funds from the collaborative HRIA's source(s) of funding (see the below section on "Funding") and safely maintaining them in bank accounts as appropriate
- When requested and deemed appropriate, submitting proposals to the steering committee regarding wages or compensation amounts for representatives of project-affected people serving on the steering committee
- Disbursing funds, including wages and money needed for daily expenses, to IA team members and other payees consistently with budgets and timelines approved by the steering committee
- Providing financial reports on the funds managed by the trustee to the steering committee
- Reporting any detected misuse of funds that it has paid out to members of the IA team or any other payee

### Composition

The trustee should be an independent organization or individual that is trusted by participating stakeholders to manage the collaborative HRIA's funds. The trustee should have experience independently managing funds for the benefit of third parties, access to bank accounts, and the ability to contract and to receive and disburse funds.

## THE IMPACT ASSESSMENT (IA) TEAM

### Roles

The IA team is the component of the collaborative HRIA structure that actually carries out the assessment, under the supervision of the steering committee.

The specific roles of the IA team include:

- Conducting initial scoping research, and then determining the scope of issues that will come within the collaborative HRIA
- Designing a work plan that articulates the methodology that the IA team will employ in carrying out the collaborative HRIA and the timeframe for doing so, and submitting these to the steering committee for approval
- Preparing a budget of operations, and submitting it to the steering committee for approval
- Collecting data on the project and its past, existing, and/or potential negative human rights impacts, including through interviews (although not all members of the IA team will be involved in all interviews, as discussed in the below section on “Impact assessment methodology”)
- Assembling findings on the project’s actual or potential human rights impacts
- Designing recommendations for how relevant stakeholders should address past, ongoing, and potential human rights impacts
- Designing the action plan that sets out how recommendations should be operationalized in practice, including a timetable for action

### Composition

The IA team should be composed of independent IA practitioners and representatives of project-affected people, the company, and other stakeholders or relevant experts as needed. Having various stakeholders represented on the IA team provides another collaborative forum for building trust and contributing to greater awareness of each stakeholder’s priorities; it can also increase access to relevant information and perspectives. There should be some degree of gender balance within the IA team to ensure a diversity of perspectives, and that, for instance, female interviewees have the option to be interviewed by a woman. The above section on “Stakeholder involvement and meaningful participation” discusses issues around choosing the appropriate representative(s) of different stakeholder groups.

Having one or more independent **IA practitioners** on the IA team will help to ensure that the team has the required skills and expertise needed for an effective assessment. Depending on the IA practitioners’ professional background, they may also help to provide a degree of perceived impartiality to the IA team’s operations.

Including **project-affected people** on the IA team supports the collaborative HRIA’s function as a participatory process. There are also practical benefits to their inclusion: project-affected people are often best placed to understand the local context and identify the most pressing issues in need of redress,

and can provide unique insights when designing the process's scope and methodology. Including project-affected people could also support more sustained engagement and communication between the company and rights-holders, the lack of which is something that company-commissioned HRIAs have been criticized for.

If feasible, and depending on the scope of the HRIA, one or more representatives of potential or actual **workers**—a subgroup of project-affected people, given that their labor rights and other human rights may be at risk—should be included on the IA team. That said, the inclusion of workers may pose particular challenges. While they are a subgroup of project-affected people, workers may be regarded by the local community as outsiders in some circumstances, given their association with the company and especially when they do not hail from the local area. It thus may be inappropriate for a worker representative on the IA team to interview other subgroups of project-affected people, and vice versa. Workers also form part of the company hierarchy; this means that it may also be inappropriate for a worker representative on the IA team to interview other workers, if doing so would mean that interviewees might be reluctant to speak freely.

Including representatives of the **company** on the IA team can increase company buy-in for the collaborative HRIA process. The company representative will also be in a unique position to provide insights into the company's decision-making regarding the project, and will likely have access to pertinent information that would not otherwise be available to project-affected people and other stakeholders. The participation of a company representative in some interviews may also be deemed inappropriate, however; for example, company representatives should not be present during interviews of project-affected people, as discussed in the below section on "Impact assessment methodology."

#### **BOX 6. CASE STUDY: THE STRUCTURE OF A COMMUNITY ENVIRONMENTAL MONITORING PROGRAM**

One example of a project-specific multi-stakeholder process is the Community Environmental Monitoring Program (CEMP) of the Lundin (formerly Rio Tinto) Eagle Mine in the United States. The CEMP was designed to independently monitor and communicate information about the mine's environmental impacts. In its original form, the program's structure included three key entities:

- **An environmental monitoring body:** the Superior Watershed Partnership, an environmental NGO, carries out environmental monitoring and reports its findings to the public.

- **A foundation:** the Marquette County Community Foundation receives funds from the company twice-annually and disburses them to the monitoring body, provided that the body runs the CEMP program in accordance with rules set out in the CEMP agreement. The foundation's President or CEO also now acts as a non-voting chairperson of an ad hoc dispute resolution process that can be invoked by the Eagle Mine or the monitoring body.
- **An oversight board:** the board was originally comprised of community members appointed by the foundation (one with mining experience, one with environmental experience, a chair, and one from the "general community"), with one additional member appointed by the Keweenaw Indian Community. The oversight board approved the monitoring body's work plans and was charged with resolving disputes regarding the interpretation of the CEMP agreement. A 2016 amendment to the CEMP agreement removed the oversight board, however; the monitoring body now submits its work plan to the mining company, and any disputes regarding the work plan are resolved by an ad hoc dispute resolution committee selected by the foundation's President or CEO from a shortlist of candidates prepared by the company and the monitoring body.

In its original form, the CEMP was a promising example of a company committing to transparency, supporting a non-affiliated third party to publicly monitor its operations, and enabling oversight of the process by local community representatives. That said, the CEMP agreement was between the company and the monitoring body, meaning that community members did not directly participate in the design of the process and had less influence because they were not parties to the agreement. The 2016 amendment of the agreement has further restricted the already limited space for community representatives to participate, removing their role in providing independent oversight and dispute resolution.

While different from a collaborative HRIA, the original CEMP structure illustrates how the different social layers of a community can be represented in a project-specific process that engages a company and includes external oversight. The 2016 changes, meanwhile, demonstrate the fragility of innovative structures and processes, and the reluctance that a company may have in ceding control of process to community representatives.

A member of the IA team will also need to play the role of the **project manager**, who will report to the steering committee and manage the day-to-day operations of the IA team. Ideally, the project manager should be someone who is perceived as impartial; this may help the manager in resolving disagreements or referring issues of dispute to the steering committee. The project manager also needs to be present for the day-to-day workings of the IA team throughout the conduct of the HRIA. Potential project managers may include an IA practitioner, a local or international NGO



representative (if regarded as sufficiently independent), or a representative from an international organization or academia.

While representation is important, there will also be a tension between facilitating full representation of all perspectives and ensuring the feasibility of the process. For instance, the IA team's daily operations may become another site for contestation among stakeholders. This could derail the process if participating stakeholders cannot reach agreement, or it could undermine the process's perceived impartiality. As such, the size of the IA team should strike a balance between sufficient representation of different perspectives on the one hand, and agility and ability to carry out the HRIA in a timely manner on the other. Clear rules of conduct and a steering committee tasked with overseeing the HRIA and resolving disputes or conflicts can also support a participatory process. Such rules may include a process for determining when certain representatives in the IA team should *not* be present—for instance, it may be deemed inappropriate for certain participants to be present at interviews of project-affected people (see the below section on “Impact assessment methodology”).

#### **BOX 7. WHAT ABOUT A PRACTITIONER-ONLY IMPACT ASSESSMENT TEAM?**

The alternative to having an IA team staffed by different stakeholders is to have a practitioner-only IA team (without the presence of representatives from the company, project-affected people, and other stakeholders). Such an approach might resemble existing company-commissioned HRIAs and would be less participatory than if stakeholders were included as part of the IA team. This structure might also be less likely to build trust, could diminish buy-in by different stakeholders, and could miss opportunities for efficiently incorporating the knowledge of project-affected people or the company into the IA team's daily operations.

Despite these drawbacks, there may be some cases where stakeholders decide to have a practitioner-only IA team. The factors that might influence the decision on whether to have a collaborative IA team (with a mixture of stakeholder representatives and practitioners) or an IA team staffed only by IA practitioners include:

- **Time and scope:** a multi-stakeholder IA team may move more slowly, which may either extend the duration of the collaborative HRIA or limit which issues can be adequately addressed given the time and resources available.
- **Funding:** the process may cost more with a multi-stakeholder IA team, as it may take longer, and/or involve more team members who may need to be remunerated.

- **Desire for increased stakeholder communication:** a multi-stakeholder IA team allows for more interactions between representatives of project-affected people and the company, which can lead to deeper, shared understandings.
- **Level of trust:** if trust between the project-affected people and the company has been eroded, a multi-stakeholder IA team may struggle to function as a vehicle for collaboration, although it may also present an opportunity—albeit one that is hard to realize—for closer cooperation.

If the participating stakeholders opt for a practitioner-only IA team, the steering committee could become more involved in the IA team's operations, to increase stakeholder participation in the process. For instance, the steering committee could directly participate in decision-making regarding the HRIA's scope and/or methodology, rather than simply approving the IA team's proposals regarding those aspects of the process. The steering committee could also help determine the recommendations and action plan once the IA team has conducted its assessment; this could facilitate stakeholder engagement and buy-in, and could assist in the development of recommendations and action plans that are realistic and effective.

One exception to increasing the steering committee's role in the IA process is when a member of the steering committee also provides funding for the collaborative HRIA. In such circumstances, caution should be exercised: closer involvement of the steering committee in the IA team's conduct could lead to conflicts of interest or risks that the committee member in question could unduly influence the IA team's conduct (or could be perceived as doing so).

## GOVERNANCE

To facilitate meaningful multi-stakeholder collaboration, the collaborative HRIA process should be carried out in compliance with clear rules of conduct that describe, among other things, processes for decision-making and dispute resolution. These rules, which can be included in a negotiated agreement, can help to mitigate existing power imbalances and increase the likelihood that the collaborative HRIA will succeed. Such rules should be established at the outset; this is particularly important for issues that are sensitive or integral to the process. Determining rules in the early stages can also help strengthen the relationships between stakeholders, and avoid situations in which disputes arise without a clear mechanism for resolution.

### THE AGREEMENT

As suggested in the above section on “Initiating the process,” a collaborative HRIA can only proceed after the project-affected people and their representatives have had sufficient time, capacity building, and other assistance to carefully negotiate an agreement with the company and other participating stakeholders. The agreement can set out how the collaborative HRIA will be structured and the rules of conduct according to which it will operate. The agreement does not need to be a formal, binding contract, but should be recorded in writing and should clearly reflect any agreements reached and promises made. This process may take time.<sup>20</sup>

Those participating in the negotiations will also need to report back to the people or entities they represent. This will include, for instance, the different subgroups coming within the project-affected people (such as women, workers, indigenous peoples, and others, as appropriate), relevant actors within the company (both at headquarters and within the in-country subsidiary or affiliate), and, if the government participates in the collaborative HRIA, the relevant government stakeholders that have decided to participate in the HRIA (which, as discussed above, can include a range of actors and agencies at local, regional, and national levels). The representatives should confirm the commitment of the people and the entities they represent through this process of feedback and consultation, and should have the authority to sign the agreement on their behalf.

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<sup>20</sup> In some cases, such an agreement might even be preceded by a more general precursor agreement setting out in broad terms what the parties hope to reach agreement on and the process they will take to get there.

The following issues should be discussed and potentially included in the agreement:

- Who the parties to the agreement are, including which subgroups of project-affected people will participate in the collaborative HRIA
- That the parties agree to establish a collaborative HRIA
- The mandate or objectives of the collaborative HRIA
- The structure of the collaborative HRIA and the names and affiliations of the specific people on the steering committee
- The criteria and process for the steering committee to select the trustee<sup>21</sup> and IA team members
- Rules of conduct for the collaborative HRIA, including how the steering committee and the IA team will make decisions and how disputes within or between any of the different parts of the collaborative HRIA's structure will be resolved
- How the collaborative HRIA will be funded, ideally with a plan to avoid a funding shortfall down the line and a plan for how additional funds can be raised or approved if the original budget becomes insufficient
- Clarity on what potential outcomes are on or off the table, including alternatives for how the project or operation being assessed could take place at that location, or elsewhere
- Rules regarding the handling, sharing, and protection of sensitive information, such as identifying information of interviewees and information on prices of goods or services used by the company (these rules may vary for different types of information)
- A commitment to ensuring that future agreements or contracts relevant to the project or operation will be shared with other participating stakeholders
- Rules to protect those who disclose information to the steering committee (“whistleblowers”) regarding illegal or untoward conduct by the IA team, trustee, or one or more members of the steering committee

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<sup>21</sup> If parties agree on the trustee before the agreement is drafted, the identity of the trustee can be included in the agreement.

- A commitment by participating stakeholders to use their best efforts<sup>22</sup> to comply with the collaborative HRIA's recommendations and action plan
- A commitment by all participants to continue the engagement after the initial recommendations and plan of action are published (including, for example, commitments around implementation measures, periodic reconvening of the steering committee, and the potential for follow-up assessments or activities)
- Processes for monitoring and evaluation of the implementation of the collaborative HRIA's recommendations and plan of action
- Processes for the resolution of impasses, disputes, or grievances (see discussion of "Dispute resolution," below)

The agreement can also address the right of participating stakeholders to carry out additional activities regarding the project's human rights impacts. Exactly how this issue is resolved may vary from case to case. Some companies may be resistant to project-affected people reserving their right to carry out other activities—especially if there is a risk that these will be subsumed by oppositional advocacy campaigns—given the amount of time and energy that the collaborative HRIA will require. On the other hand, allowing for those aggrieved to carry out their own processes, which may also critique the collaborative HRIA, can help participants to air grievances or resolve deadlocks, and is consistent with a human rights approach, including respect for freedom of expression. To address these considerations, any such reservation could be coupled with an obligation to disclose when an alternative process is being carried out, and a statement of understanding that encourages parties to focus on the collaborative HRIA as the primary means of finding solutions to address the project's human rights impacts. Another alternative for stakeholders may be to consider commitments not to take certain actions for a limited period of time: for instance, project-affected people could commit to not initiating new complaints with a relevant grievance mechanism (such as the OECD National Contact Point) for a limited period of time (for instance, six months), in exchange for a moratorium on further development or operation of the project by the company.

While collective decision-making is at the heart of the collaborative HRIA, care is needed to ensure that the collective decision-making processes in both the steering committee and IA team operate in an equitable manner, taking into account that participants will have had varying degrees of

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22 Framing each participant's commitment as "using its best efforts to," rather than a strict commitment to, comply with recommendations has obvious downsides, but will likely make engaging in the process more palatable to company representatives, and thus more likely that the company will actually proceed with the collaborative HRIA.

experience with formal processes. To this end, the rules of conduct should be carefully enforced by the steering committee, with the independent facilitator(s) taking the primary role of overseeing compliance.

#### **BOX 8. CASE STUDY: SETTING UP A MULTI-STAKEHOLDER BODY IN THE CONTEXT OF COMMUNITY DEVELOPMENT AGREEMENTS**

In Ghana, community representatives and the mining company Newmont entered into a series of agreements to establish a system of benefit sharing and communication concerning Newmont's Ahafo mine. A multi-stakeholder forum was created as part of this effort. The forum provides an opportunity for different stakeholders to interact, oversees the board of an associated development foundation's day-to-day management of a community development fund, and contributes to decision-making regarding local development projects to be funded by revenue coming from the mine.

The forum was established by a written agreement, which set out the criteria for each member; the names of each member were also included in an annex to the agreement. The forum is composed of:

- An external moderator and co-moderator appointed by the forum
- Three representatives from the company (General Manager for Environment and Social Responsibility, the External Affairs Manager, and the External Affairs Superintendent)
- Eight representatives from regional and district government structures (the Regional Minister, three members of parliament within the two districts, two District Chief Executives, and the two Presiding Members of the District Assemblies)
- 20 traditional chieftain representatives (the paramount chief, one subject from each town nominated by the paramount chief, and one Chief Farmer from each district)
- 18 representatives from community groups (six representatives of women's groups and ten youth representatives, chosen by election—in which the community and "citizens" participate—and two farmers' representatives)
- Two representatives of non-governmental organizations, one from each district, chosen by election

The agreement also established a standing committee for the forum, which comprised a smaller number of forum representatives. The standing committee was tasked with acting on behalf of the forum in matters arising between forum meetings and with performing duties assigned to it by the forum.

## **AFTER THE AGREEMENT: DECIDING ON ADDITIONAL ISSUES**

Depending on the level of detail in the agreement, the steering committee may need to undertake the following tasks (listed roughly in order of priority):<sup>23</sup>

- Articulate more specific rules of conduct for the steering committee and the IA team, and the process for approval of IA team work plans and budgets by the steering committee
- Determine the intended frequency of steering committee meetings
- Establish reporting obligations for the trustee and IA team, and processes both for monitoring and enforcing the rules of conduct and for dispute resolution
- Select the trustee and provide guidance on the trustee's responsibilities
- Select the members of the IA team, according to the agreed upon criteria
- Agree on other relevant issues, such as: the level of disclosure of assessment findings (discussed further under the below section on "Disclosure"); the degree to which, and the specific modalities through which, participating stakeholders will consult with project-affected people regarding the findings of the impact assessment, recommendations that will be made, and items to include in the action plan; and the monitoring of items included in the action plan<sup>24</sup>
- Set (or approve the IA team's proposals regarding) realistic timelines for different stages of the collaborative HRIA<sup>25</sup>

## **DISPUTE RESOLUTION**

Disputes or grievances may arise in the course of a collaborative HRIA, and there should be clear processes for resolving them. Given its role in overseeing the collaborative HRIA, the steering committee may be well

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23 If the representatives who negotiate the agreement closely correlate with each member of the steering committee, most of these tasks could also be determined during the negotiation of the agreement, and included in the agreement's text. These issues should be decided after the bullet points listed under "The agreement," above.

24 If the steering committee is of the view that the IA team will be better placed to decide on these questions, it could require the IA team to prepare a proposal, which the steering committee would then need to review and approve.

25 If the steering committee is of the view that the IA team will be better placed to decide on this issue, it could require the IA team to prepare a proposal, which the steering committee would then need to review and approve.

placed to play a leading role in resolving disputes.<sup>26</sup> In other cases, those establishing the collaborative HRIA may decide to designate an external dispute resolution process for all disputes or grievances. In either case, the agreement or rules of conduct should set out that the designated entity (e.g., the steering committee or an external entity) can be charged with resolving:

- **Disputes between members of the IA team:** Particularly if the IA team is composed of different stakeholders, the team may, at times, reach an impasse regarding how it should carry out the assessment. For instance, IA team members may seek resolution of disagreements such as whether a specific issue should be included within the collaborative HRIA's scope, or how interviews and data collection should be carried out.
- **Grievances raised by other stakeholders:** Stakeholders may have grievances regarding how the collaborative HRIA is being, or was, conducted. For instance, a subgroup of project-affected people may feel excluded from the entire process. Or local civil society organizations might seek to raise concerns regarding problems with the IA team's interview practices or regarding the steering committee representatives' failure to continually update and consult with the people or entities they are charged with representing. The steering committee or other entity tasked with resolving disputes would be responsible for receiving such grievances and working with participating stakeholder representatives to respond to and resolve them.

There should also be a process for **disputes and impasses that arise within the steering committee**, including where the steering committee cannot reach consensus on how to resolve any disputes that have been referred to it. This will likely require referral to external mediators or other persons tasked with resolving the dispute, or the use of existing dispute settlement structures. The details regarding external dispute resolution should also be included in the agreement or rules of conduct, and can include procedures for deciding on the individuals who will resolve such disputes and the process that will be followed.

### **Establishing dispute resolution processes**

Dispute resolution processes work most effectively when established before disputes or grievances arise. The agreement or the rules of conduct should

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<sup>26</sup> Stakeholders may also seek to build on the collaborative HRIA's structure to form a grievance mechanism for the project more generally that allows project-affected people to submit grievances or complaints, though this is outside the scope of this paper. For one example of a participatory approach to grievance mechanisms, see EarthRights International and SOMO, *Community-Driven Operational Grievance Mechanisms discussion paper for a new model*, [https://www.earthrights.org/sites/default/files/documents/ogm\\_discussion\\_paper.pdf](https://www.earthrights.org/sites/default/files/documents/ogm_discussion_paper.pdf).



clearly articulate the collaborative HRIA's approach to resolving disputes, and should address the following issues:<sup>27</sup>

- **Scope**, including what topics or types of disputes or grievances can be considered
- **Process**, including how disputes or grievances are referred, what role the person or entity raising the grievance will play (if any) during the dispute resolution process, the timeframe for the process, and the extent to which grievances or disputes can be kept confidential or anonymized to ensure that potential complainants are not discouraged from lodging grievances because of fears of retaliation or reprisal
- **Assessment** of the grievance or dispute, including the criteria or principles according to which disputes will be assessed and resolved (if any)
- **Publicity and dissemination**, including awareness-raising strategies that will be employed to ensure that all relevant stakeholders are aware of the dispute resolution process and of how to refer a matter for resolution
- **How dispute resolution can lead to improvements**, including how lessons learned from the consideration and resolution of the dispute or grievance can be incorporated into the ongoing operation of the collaborative HRIA to avoid similar issues arising

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27 For further guidance on establishing dispute resolution mechanisms and operational level grievance mechanisms, see Office of the Compliance Advisor/Ombudsman for the International Finance Corporation, *Advisory Note: A Guide to Designing and Implementing Grievance Mechanisms for Development Projects* (2008), <http://www.cao-ombudsman.org/howwework/advisor/documents/implemgrieveng.pdf> and Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights* (2011), Art. 31 "Effectiveness criteria for non-judicial grievance mechanisms," [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

## FUNDING

Funding presents particular challenges for collaborative HRIAs. Ensuring sufficient funding for the assessment is critical. Equally important, however, is selecting the source of funding, which might directly or indirectly influence the process and outcomes. To protect the assessment's credibility, participants should make careful decisions on who contributes funding, how that funding is managed, and the types of mechanisms needed to guard against actual or perceived influence.

### HOW MUCH FUNDING IS NEEDED?

The overall cost of an assessment will depend on a number of factors specific to the assessment itself, including duration, location, and depth and scope (such as the number of interviewees, the number of issues assessed, and the geographical areas covered). While these factors make it difficult to provide clear estimates of how much a collaborative HRIA might cost, Annex B provides examples of items that might typically be covered in the assessment's budget.

In addition, because the methodology design is meant to be *part* of the collaborative HRIA process, it will be particularly hard to assess in advance how much money is required for any specific assessment. This uncertainty opens up the possibility that the amount of money provided or raised at the outset might influence the methodology design itself (depending on sequencing, the funds raised might also influence other aspects of the collaborative HRIA, such as the size or mandate of the steering committee). This challenge could be partly addressed by a phased approach to funding, described below.

While the uncertainty over the amount of funds required might be somewhat reduced once collaborative HRIAs have been piloted and lessons drawn from their experience, it is always possible that the budget for an assessment may change over time—as frequently happens in practice with other types of HRIAs. This points to the need for flexibility, strong leadership, and mechanisms to ensure that unanticipated or increased costs can be absorbed. Aside from ensuring that budgets for the assessment allocate sufficient funds to cover unforeseen costs, this also means that there must be a plan for how additional funds can be raised or approved if the original budget becomes insufficient. For example, there may need to be an agreement with the funder(s) that if, at any point in the process, more money is needed than originally allocated, the collaborative HRIA steering committee can ask for additional funds from the funder(s) or can seek funding from other parties.

Alternatively, a commitment from funder(s) to cover reasonable additional costs could help ensure that there will not be a lack of funding down the line.

## WHO SHOULD FUND THE COLLABORATIVE HRIA?

There are multiple potential funding sources for a collaborative HRIA, each with their own benefits and drawbacks. There are also different approaches that could be taken for guarding against the most significant drawbacks of particular funding sources. This section discusses the main funding sources that may be available, and provides a set of funding options that could be explored.

### Funding sources

There are good reasons for the **participating company** to fund the collaborative HRIA: a collaborative HRIA fits with its need to undertake human rights due diligence, and providing financial support for a collaborative HRIA would be consistent with past experiences of impact assessments<sup>28</sup> and could help create buy-in for the process. Sourcing funding from the company might also be the most scalable approach, as a company's participation in a collaborative HRIA could be made contingent on the provision of funding. However, company funding also carries the greatest risk of inadvertently influencing the assessment. An effective collaborative HRIA will have to deal with how to address existing power imbalances between the company (and government, if involved) and project-affected people; funding from a company may tilt the dynamic even more in favor of the company. This could happen despite a company's best intentions. For example, there might be inherent risks that participants in the process may modify their behavior to please the company providing funding out of fear that such funding might otherwise be withdrawn. Perhaps a greater risk is that company funding may create the *perception* that the assessment lacks integrity or is subject to improper influence, regardless of whether that is actually the case.

The **host government**, as the primary duty-bearer of human rights obligations, might be a logical funding source, but this also presents challenges regarding actual or perceived influence. In some contexts, the host government might appear more interested in protecting business than in protecting rights, or might be deeply distrusted by its own citizens due to its human rights record. In such cases, funding from the host government could raise serious concerns or affect perceptions of the assessment's neutrality. More practically, however, a host government of a low-income country may not have sufficient financial resources to allocate towards this type of assessment. (Box 11, below, discusses whether governments could support a longer-term funding solution through a new tax/fee.)

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28 See, e.g., Marlin Mine, where the affected community insisted that the company pay for a HRIA after years of alleged impacts; see also Rio Tinto's (and later Lundin's) paying for environmental monitoring undertaken by a local non-profit under the Eagle Mine CEMP agreement, discussed in Box 6.

## **BOX 9. PROJECT-AFFECTED PEOPLE: CONTRIBUTIONS OR COMPENSATION?**

Project-affected people cannot be expected to contribute monetarily to the collaborative HRIA. Individuals and communities whose human rights may be or have been affected by a project are often not in the position to contribute financially. More importantly, if human rights abuses might occur or have already occurred, it is inappropriate to expect the people suffering abuses to help finance an effort to assess and address them. As crucial participants in the process, however, project-affected people can be expected to provide certain in-kind contributions, such as dedicating time to attend community or worker meetings related to the HRIA.

In-kind contributions of time, however, should not be asked of project-affected people who will spend significant time on the collaborative HRIA through participation on the IA team or steering committee. In many cases, it is simply not feasible for project-affected people to devote a lot of time to an assessment—potentially forgoing wages or livelihood opportunities—without receiving wages for their efforts.

Setting these wages could be the responsibility of the steering committee. In cases where a person entitled to receive compensation sits on the steering committee, the trustee could be responsible for suggesting the amount, with the committee confirming (and the implicated person(s) abstaining and leaving the room during deliberations). Drawing from experience with community-led HRIAs, the selected wage rate(s) should take into account that:

- Because it is often difficult to recruit project-affected people who can work full-time on an assessment, some participants might work on the assessment part-time while maintaining their previous employment or livelihood activities. In such scenarios, compensation would not need to equate to a full-time salary. (Although experience shows that it can be useful to have some IA team members who can work full-time on the assessment.)
- Representatives of project-affected people should not be paid unduly large amounts of compensation for participating in the process. Compensation that is too high may create the risk that representatives will be less willing to protect the interests of those they represent, and will instead be incentivized to hold onto the “job” at any cost.

**Neutral-party funding**—from entities that are not direct stakeholders in a project—could help shield a collaborative HRIA from problematic influence and can help protect perceptions of the assessment's legitimacy. Such funding might not be purely neutral in that the funding providers may still have various interests related to the project, but their lack of direct involvement in the project would help minimize concerns about undue influence or a lack of impartiality. Unless a longer-term solution is found (see Box 11, below), neutral-party funding is less replicable and scalable than relying on funding from an involved stakeholder. Entities that might be willing to fund a collaborative HRIA include:

- **Philanthropic organizations or foundations:** Foundations have supported community-led HRIAs and sector-wide HRIAs in the past, either directly or indirectly through the funding of broader programs.
- **The United Nations (UN) or other international organizations:** UN entities, such as the Office of the UN High Commissioner for Human Rights, or other international organizations might be interested in funding a collaborative HRIA in certain circumstances.
- **Home governments:** The governments of home countries (for example, the country where the company's headquarters are located) might be willing to support a collaborative HRIA, through **embassies, ministries or departments of foreign affairs, or bilateral development agencies**. Home governments have extraterritorial human rights obligations: this provides a rationale for supporting a collaborative HRIA, although might also lead to potential concerns about influence and partiality.
- **Other bilateral donors:** In some contexts, a development agency that does not represent the company's home country may still be interested in supporting a collaborative HRIA if it would help further the agency's own development objectives, such as protecting human rights or supporting responsible business conduct. Funding from such a development agency may be seen as more neutral than if there were specific links between the agency and the company or underlying project.<sup>29</sup>
- **Institutional investors:** In some cases, institutional investors (such as pensions or hedge funds) with financial links to or interest in a company, sector, or region might have an interest in mitigating human rights risks through a collaborative HRIA. Such investors might have important

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29 Development agencies occasionally partner with companies on for-profit projects as part of their development activities; in such cases, a development agency may wish to fund a collaborative HRIA of the joint agency-company project using its own funds. Under this scenario, funding from the development agency could raise similar concerns, and require similar caution or safeguards, as funding from a company.

leverage over the company, although they too could present obstacles for whether an assessment is perceived as credible.

- **Crowd funding/online fundraising campaigns:** Various online platforms provide opportunities to seek funding for specific projects or needs. Crowd funding has been used to support human rights-related work in the past, and is a possibility that could be explored. It may be difficult to raise the full amount needed in this manner, but crowd funding could nevertheless help supplement other efforts to secure funding.
- **Universities:** Academics or researchers affiliated with universities may be able to raise funds for a collaborative HRIA if it is undertaken in the context of a research project. This makes universities a rather unique funding source (or, more accurately, conduit of funds), as they may be more likely to fund projects at earlier pilot stages rather than after the collaborative HRIA approach has been more firmly established.

### **Funding options**

The funding sources discussed above could be used individually or in combination, and for some or all of the collaborative HRIA phases. Three different proposed options for funding a collaborative HRIA are discussed below, along with a brief comment on options that may be suitable in a more narrow set of circumstances. These options have their own benefits, drawbacks, and considerations. Box 11, below, also describes two potential longer-term solutions.

Whether a funding option is both feasible and acceptable for any given collaborative HRIA will depend on the context of the assessment and the perspectives of participating stakeholders. For any option considered, stakeholders should carefully assess what risks might arise, whether those risks are acceptable, and whether there are options for guarding against potential concerns.

#### **Option one: Neutral-party funding for the entire collaborative HRIA**

Funding from one (or more) of the neutral parties described above has the significant benefit of avoiding the most serious concerns about, and possible perceptions of, undue influence or partiality. Avoiding those concerns may prove critical for building trust between participants, and for helping to minimize existing power imbalances between stakeholders. For this reason, it is strongly recommended to first explore this option before considering other options.

This option might look different depending on the circumstances. In some situations, there may be one single funder; in others, a mix of funding might be needed to ensure sufficient support. A mixture of funds could also arise over time, and the sources and percentages of funding do not have to remain static.

Neutral-party funding is not without its downsides, however. First, as noted above, some of the “neutral” funding sources may still have links to the underlying project that might raise concerns or affect perceptions. Stakeholders should thus carefully analyze each potential funder to determine risks and options to guard against them (discussed in Box 10, below). Second, a reliance on neutral-party funding will always be ad hoc, with each collaborative HRIA having to find its own source of funding, and the pool of potential funders for any given assessment will be limited. This raises significant questions regarding the feasibility, sustainability, and replicability of a collaborative approach. This option thus may be more suitable as the approach is piloted and tested, and may prove less feasible in the long term.

**Option two: Phased approach of neutral-party funding followed by company funding**

Another option is to use a phased approach that combines neutral-party funding for the scoping phase with funding from the company for the assessment phase. Under this option, neutral-party funding would be secured for the initial scoping work, which would determine issues such as which rights will be covered and what methodology will be used. The initial scoping would also help identify more accurately the costs of the actual assessment. As with the rest of the collaborative HRIA, the scoping work would be undertaken collaboratively. Subsequently, the company would commit to reasonable funding for the rest of the HRIA, including the (post-scoping) assessment by the IA team. Possible exceptions could be made for activities that might be best supported by others, such as ongoing capacity building or technical support for project-affected people, or subsequent monitoring and follow-up.

The neutral-party funding for the scoping phase would help provide the safe space needed for stakeholders to begin collaborations with fewer fears or perceptions of influence. And the company funding for the next phases may present a more realistic and scalable approach than relying solely on neutral-party funding. Company funding also lays a significant part of the collaborative HRIA’s financial burden on the actor that stands to gain the most from the underlying project being assessed and whose operations stand to create significant human rights impacts.

This option presents questions related to sequencing, which may be resolved on a case-by-case basis. For instance, when should the company commit to funding the remaining phases? The phased approach suggested here would not work if the company was not willing to fund the work remaining after the scoping phase—yet the company may decline to commit before a more accurate assessment of costs is available. The project-affected people might also have concerns that the scoping phase will be biased towards the company if funding is secured in advance (or, alternatively, concerns that

the scoping phase would be biased if funding is *not* secured until after the scoping results are reviewed).<sup>30</sup>

As noted above, company funding presents particular challenges for avoiding both actual and perceived influence and bias. If this option is selected, participants will need to work extra hard to ensure that all stakeholders perceive the assessment as both fair and an accurate reflection of the needs and concerns of project-affected people. Box 10 provides some suggestions on how to do this.

#### **BOX 10: ADDRESSING CONCERNS AND GUARDING AGAINST RISKS POSED BY PARTICULAR FUNDING SOURCES**

Given the concerns that may arise when certain funding sources or options are pursued, it is critical to make sure that all participating stakeholders are comfortable with how the collaborative HRIA is or will be funded. In this regard, one of the most important steps is to ensure that project-affected people and their representatives are involved in developing any processes and safeguards that they believe are necessary to be comfortable with the funding source. While this box lists several mechanisms, the suggestions are only a starting point; there may be many things that are important to project-affected people that cannot be generalized or anticipated in advance, but that will be critical to ensuring that the collaborative HRIA is seen as valid.

Steps that could help prevent the funding source from influencing the assessment and its outcomes include:

- Routing the money through a neutral entity, so that funds are administered by a party that is not directly involved in either directing or undertaking the assessment. This is why the collaborative HRIA suggested structure includes a trustee that is separate from both the steering committee and the IA team. (See also Box 6, which describes one example of a similar set-up.)
- Jointly developing the collaborative HRIA's methodology before funds are received from any party directly implicated in the underlying project (such as the company or the host government). Alternatively, creating a process whereby the funding source is not able to dominate the methodology development.
- Ensuring that the funding source does not receive the assessment report before anyone else, and does not have editorial rights. (To address power

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<sup>30</sup> In circumstances where scoping occurs before funding of the actual assessment has been confirmed, it may be helpful for parties to commit to at least considering the possibility that the assessment will be funded by the company.



imbalances more generally, the company should never have the right to receive the assessment report before anyone else or have editorial rights that override other participants, regardless of whether it provides funding.) Moreover, while all members of the steering committee could review the report for factual errors, they should not be allowed to share the report with others until it is ready to publish.

- Transparently communicating all funding sources for the collaborative HRIA, as well as publishing financial statements (in which some lines, such as salaries, could be aggregated to protect participants).
- Clearly communicating progress to all stakeholders represented in the collaborative HRIA process, including developments and challenges, on a periodic basis.

### **Option three: Mixed funding for the entire collaborative HRIA (or for the second phase in a phased approach)**

A third option is to seek funding from multiple sources, with the goal of diluting any single funder's contribution and thus potential influence. This would not occur in a phased approach like the one discussed above, but would rather serve as a strategy for funding the entire HRIA from the outset. (Although this strategy could also be considered when seeking funding for the assessment phase of a phased approach.) For example, funding could be split equally between the company, the host government, and a neutral entity, or equally between the company and one or more neutral entities.<sup>31</sup>

The level of "dilution," and mix of funding sources, needed to assuage concerns will depend on the stakeholders involved. Mixed funding from entities with substantially aligned interests (or those that are perceived as such)—such as funding from the headquarter company and a local joint venture, or, in some circumstances, from the company and the host government—may not lessen the concerns of project-affected people. Steps discussed in Box 10, above, could help in addressing potential concerns.

### **Other options for particular situations**

Certain contexts may present alternative funding opportunities that might also be acceptable to all stakeholders. For example, in areas where multiple projects or business operations occur or are anticipated, stakeholders may

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<sup>31</sup> For instance, one civil society representative described a three-year negotiation with a large mining company that had approached a human rights organization to complete an HRIA. Some headway was made in the negotiations, but the project ultimately was not carried out. The plan for funding was to have equal contributions from the company, the human rights organization, and from an industry organization; the idea was that joint funding, combined with joint management of the funds, would help address concerns of bias. Interview with civil society representative, January 28, 2015.

be interested in undertaking a wider collaborative HRIA that brings together multiple companies to consider, in partnership with other stakeholders, their own impacts as well as any cumulative impacts. This could be the case, for example, where multiple hydropower projects are planned in close proximity, or where multiple food and beverage companies are sourcing the same commodity. In such situations, the multiple implicated companies may wish to each provide funding for a joint collaborative HRIA; project-affected people may (or may not) see this as less risky, as no single company would have control over the assessment. Alternatively, other funding sources might be interested in supporting this type of assessment: for example, multilateral banks interested in that type of project in a specific area, or an industry group that is interested in human rights impacts in a certain area. Here, too, the project-affected people may (or may not) see these alternative funding sources as an acceptable funding option.

Another situation that might present an additional source of funding is where Environmental and Social Impact Assessments are required, where funding for such assessments already exist, and where a collaborative HRIA could be feasibly integrated into, or built off of, that type of assessment. While it may be rare to find such a situation in practice, stakeholders seeking new funding sources could explore whether this or similar opportunities exist.

#### **BOX 11. LONGER-TERM FUNDING SOLUTIONS: A DEDICATED TAX OR DESIGNATED FUND**

If collaborative HRIAs, once tested, become a more common practice, other longer-term funding solutions could be considered. Two possibilities, for example, include host government funding through a dedicated tax or fee, or the creation of a new fund that is administered by a neutral entity.

- Although not without challenges, host government financing of collaborative HRIAs generally—rather than on an ad hoc basis—could present a possible solution for ensuring adequate funds while maintaining the integrity of collaborative HRIAs. Indeed, a host government arguably has an important role to play in supporting such assessments, given its human rights obligations. Host governments are also in a unique position to raise funding for such assessments, either by creating a new tax or levy on certain types of projects or business operations, or by deciding to dedicate a portion of investment-related revenue to human rights assessments. These monies could then go into a dedicated fund that supports such assessments. Care should be taken, however, to ensure that the fund does not, by creating a new source of revenue, inadvertently incentivize government approval of projects with negative impacts. While this solution does not fully negate potential concerns regarding a government’s involvement, there may be ways to create a structure and process that

minimizes these concerns: for example, the fund could be administered by a national human rights commission or other government entity without conflicts of interest. While no government has attempted this as of yet, somewhat similar approaches have been suggested in some countries. In Sierra Leone, for example, the government has explored the creation of a fund to support legal services for communities, funded in part by fees paid by investors as part of their impact assessment registration.<sup>32</sup>

- If collaborative HRIAs are eventually seen to be an important approach to human rights due diligence, it is feasible that a larger amount of funds could be raised—for example, from home country governments or industry bodies—to support collaborative HRIAs more generally. Those funds could be managed by a neutral entity in the international sphere, and then interested companies and project-affected people could apply jointly for support. The funds could either be provided to cover the entire cost of a collaborative HRIA, or to cover a certain percentage, with the rest provided by the company or other stakeholders.

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32 Food and Agriculture Organization of the United Nations, *Governance of Tenure Technical Guide N. 4: Safeguarding land tenure rights in the context of agricultural investment* (2015), p. 55, <http://www.fao.org/3/a-i4998e.pdf>.

## IMPACT ASSESSMENT METHODOLOGY

HRIAs consist of a number of phases. Assessments usually start with the drafting of a terms of reference, which is a written document that presents the scope and purpose of the HRIA.<sup>33</sup> This is followed by planning and scoping issues that will be investigated during the assessment. The phases applied in company-led HRIAs<sup>34</sup> and community-led HRIAs<sup>35</sup> are often quite similar: starting with establishing the IA team; then defining the scope of the assessment and the methodology for data collection and analysis; before moving to data collection and investigation; then analyzing the impacts and report drafting; and finishing with monitoring, evaluation, and follow-up activities. A cross-cutting item that applies to all phases of the assessment process is stakeholder engagement. It is suggested that a collaborative HRIA, once initiated, will have a similar set of phases as company-led and community-led HRIAs. The phases would broadly align with those set out in Figure 2.

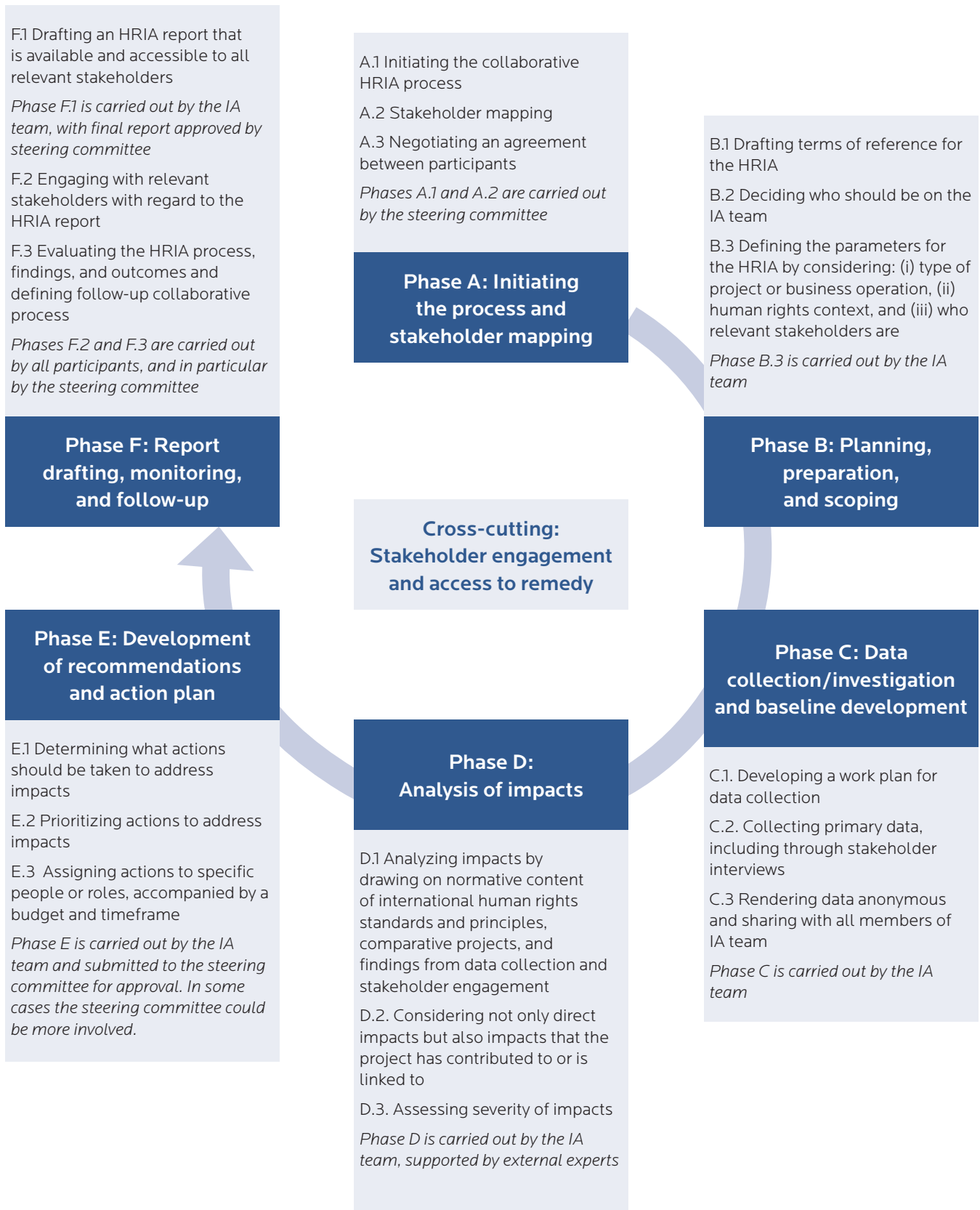
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33 More information on Terms of Reference for HRIA can be found under phase 1 of DIHR's *Human Rights Impact Assessment Guidance and Toolbox* (2016), [http://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/business/hria\\_toolbox/phase\\_1/phase\\_1\\_planning\\_and\\_scoping\\_final\\_jan2016.pdf](http://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/business/hria_toolbox/phase_1/phase_1_planning_and_scoping_final_jan2016.pdf).

34 For sources on HRIA methodology, see: Danish Institute for Human Rights, *Human Rights Impact Assessment Guidance and Toolbox* (2016), <http://www.humanrights.dk/business/tools/human-rights-impact-assessment-guidance-and-toolbox>; International Business Leaders Forum, International Finance Corporation and the UN Global Compact, *Guide to Human Rights Impact Assessment and Management* (2010), [https://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/GuidetoHRIAM.pdf](https://www.unglobalcompact.org/docs/issues_doc/human_rights/GuidetoHRIAM.pdf); NomoGaia, *HRIA Tool* (2013), <http://nomogaia.org/tools/>; World Bank and Nordic Trust Fund, *Human Rights Impact Assessments: A Review of the Literature, Differences with other forms of Assessments and Relevance for Development* (February 2013), [http://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/HRIA\\_Web.pdf](http://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/HRIA_Web.pdf).

35 For further information on the six phases of a community-led HRIA process, see Rights and Democracy, *Getting it Right: Human Rights Impact Assessment Guide*, <http://hria.equalit.ie/en/index.html>.

**FIGURE 2. PHASES OF A COLLABORATIVE HRIA**



While most of the impact assessment methodology will resemble the steps and phases of existing impact assessment methodologies, there is considerable potential for a different approach in the collaborative HRIA that moves away from an exercise that is based on scaling and ranking impacts. A collaborative HRIA has the potential to differ from other types of impact assessments through emphasis on the collaborative nature of the assessment process itself: for example, by focusing primarily on enabling dialogue between project-affected people and company representatives, as well as on building consensus and facilitating agreement on shared priorities. This process in itself might increase the chances that an action plan to address negative impacts will actually be implemented.

### **CONDUCT OF INTERVIEWS**

In the data collection phase of the impact assessment, interviews will be held with various stakeholders, including project-affected people, company representatives, government representatives, and others, in order to understand the project's potential or actual impacts. When the IA team interviews project-affected people, company representatives should not be present, to ensure that project-affected people who are interviewed do not restrict their responses out of a fear that the company would retaliate against them for disclosing information regarding the project's human rights impacts. Similarly, because different subgroups of project-affected people may have opposing views of a project, caution should be taken when deciding whether representatives of project-affected people should be involved in interviewing other types of project-affected people. For example, as mentioned in the above section on the composition of the IA team, community members generally should not interview workers, unless this is considered appropriate by all parties. Given these limitations, it may be most appropriate for impartial members of the IA team, such as any participating IA practitioners or experts, to conduct interviews with workers.

Similar to concerns regarding the presence of company representatives in interviews with project-affected people, there might be concerns about the presence of representatives of project-affected people from the IA team during interviews of company representatives—for example, in cases where sensitive company information might be shared. Where possible, however, the opportunity for community representatives to be part of interviews to learn and understand more about company perspectives should be encouraged, provided that company interviewees consent to their presence.

An independent third party, such as the IA team's project manager or any other participating IA practitioners or experts, would be best placed to conduct interviews in cases where it would be inappropriate for project-affected people or company representatives to be present. Every person conducting interviews with project-affected people or company representatives should make an effort to understand the relevant/local

context; this may include, for example, efforts to learn about local cultures, religions, etiquette, dress codes, and gender dynamics.

In some contexts, project-affected people may be keen to share their concerns with the company directly. While a collaborative HRIA should provide an avenue for project-affected people to raise project-related or HRIA-related concerns directly with company representatives, this should generally occur outside of the interview process. Sharing concerns could be done through a variety of avenues. For example, after the interviews with project-affected people by an impartial member of the IA team and the analysis of the findings, feedback sessions with company representatives could be held for project-affected people who are willing to share their thoughts about the collaborative HRIA or the project's impacts. In such sessions, the assessment findings could be shared with relevant parties to facilitate the discussion. Such a process could help enhance engagement between stakeholders while also assisting the company in further understanding the perspectives of project-affected people.

All information shared by interviewees and reported back should be shared in a safe and confidential manner, ensuring that identities of those interviewed are kept confidential to avoid potential retaliation. This does not only apply to information provided by project-affected people, but also to information shared by company representatives, such as company data related to costs and prices. When information is received by IA team members, including notes and recordings from interviews with project-affected people and company representatives, this data should be handled and processed in a manner that guarantees confidentiality. Practically, this might mean that data from interviews is recorded through a coding system and that all names and other characteristics of interviewees that could reveal their identity are removed.

In all cases, interviewees should be able to subsequently withdraw statements made during the assessment. This might be necessary, for example, if an interviewee subsequently fears that he or she may be retaliated against if the information shared were disclosed. A clear and accessible process should be established for interviewees to contact the IA team in order to withdraw statements. Additionally, a grievance mechanism should be established for project-affected people or others who have participated in assessment interviews and have concerns about the process.

## FOLLOW-UP FRAMEWORK

HRIAs—whether conducted using a collaborative approach, or company- or community-led—require the development of recommendations and an action plan. The recommendations and action plan usually include a description of what actions the company or other stakeholders, including government representatives, should take to address the impacts set out in the HRIA's findings. Such actions can be prioritized and assigned to specific people or roles within the company or government entity, accompanied by a timeline for implementation.<sup>36</sup>

### DESIGNING THE RECOMMENDATIONS AND ACTION PLAN

As noted in the above section on “Impact assessment methodology,” there is immense value in the process of the collaborative HRIA, which can empower stakeholders and encourage effective dialogue and communication. That said, the core expectation in engaging in such a process remains the actual prevention or mitigation of project-related human rights abuses. The main challenge thus remains translating the findings and agreed recommendations resulting from the collaborative HRIA into actions to be included in the action plan. Such actions should be “SMART,” meaning that they are specific, measurable, assignable (to a specific actor), realistic, and time-bound. The action plan should include a detailed list of actions assigned to all relevant stakeholders (identifying, where possible, the specific persons responsible), including for government actors, as well as a budget and a clear timeframe for implementation.

In this particular phase, it may be challenging to productively negotiate and reach consensus, and mechanisms of collaborative decision-making may be required. Given the IA team's familiarity with the data gathered, and especially if a funder is a member of the steering committee, the IA team should draft the proposed action plan, and submit it to the steering committee for approval. Where the IA team does not contain representatives from the company, the project-affected people, and other stakeholders, the steering committee should be more closely involved in the development of the recommendations and action plan to encourage greater buy-in from participating stakeholders.

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<sup>36</sup> Danish Institute for Human Rights, *Human Rights Impact Assessment Guidance and Toolbox* (2016), Phase 5: Reporting and Evaluation, p. 8, [http://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/business/hria\\_toolbox/phase\\_5/phase\\_5\\_reporting\\_and\\_evaluation\\_final\\_jan2016.pdf](http://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/business/hria_toolbox/phase_5/phase_5_reporting_and_evaluation_final_jan2016.pdf).



Depending on the content of the action plan, it may be worth consulting with previously uninvolved actors. For example, even if central public authorities were not involved in the collaborative HRIA process, drawing their attention to the action plan may be important if it includes recommendations for legislative or policy reform. Collaborative HRIAs may provide the evidence of stakeholder consensus and the legitimate factual reports necessary to compel relevant actors into action.

### **FOLLOW-UP AND ADAPTATION**

The action plan should include provisions for monitoring its implementation, as well as for subsequent adaptation to unforeseen issues and impacts that subsequently arise. This is necessary for any type of collaborative HRIA, but may be particularly important for an *ex ante* collaborative HRIA that is based on estimates of future impacts.

To account for those contingencies, participants can establish follow-up measures, and may eventually plan for follow-up assessments or other forms of ongoing engagement. The collaborative HRIA provides stakeholders with an operational process that can be adapted to future monitoring processes as needed, potentially making subsequent assessments less resource-intensive. However, even if follow-up assessments are undertaken, it may be necessary to review some elements, such as the choice of stakeholders' representatives: the social structures of project-affected people may evolve, new subgroups may arise and be affected by human rights impacts that had not been accounted for, and political power may be redistributed. In situations where there is no appetite for lengthy and resource-intensive follow-up assessments, regular meetings with all stakeholders could instead be held, through the steering committee or other mutually agreed arrangements, to discuss progress of the action plan, as well as new issues or outstanding grievances.

## TRANSPARENCY AND DISCLOSURE

Ensuring that rights-holders have access to relevant information is a key principle of the human rights-based approach (see Box 2, above). The UNGPs also assert that companies should provide information regarding how they address the human rights impacts of their projects.<sup>37</sup> In addition, transparency and reporting is an essential—although not regularly observed—component of, in particular, company-led HRIAs. Indeed, disclosure of findings and recommendations help to achieve an accountable HRIA process and can assist project-affected people and their representatives in better comprehending the implications of a project, communicating their perspectives, and demanding greater corporate (and government) accountability.<sup>38</sup>

Transparency and disclosure are considered one of the main challenges in the implementation of the UNGPs. While the UNGPs require companies to communicate on the human rights issues they assess, companies are often reluctant to publicize the potential negative human rights impacts of their operations. As such, only a limited number of company-led HRIA reports have been made publicly available. This lack of transparency by companies is one of the key criticisms of company-led HRIAs: if project-affected people do not know the content of an HRIA, they cannot meaningfully engage with the process, findings, or follow-up of an assessment.

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37 Office of the High Commissioner for Human Rights, *UN Guiding Principles on Business and Human Rights* (2011), Principle 21, p. 23.

38 Alejandro Gonzalez, *Evaluating the Human Rights Impacts of Investment Projects: Background, Best Practices, and Opportunities*, Poder (2014), <http://projectpoder.org/wp-content/uploads/2015/01/PODER-HRIA-Best-Practices-Dec-2014.pdf>.

## BOX 12. EXAMPLES OF PUBLICLY AVAILABLE HRIA REPORTS

- Kuoni, a tour and travel company, in collaboration with TwentyFifty, published two reports of HRIAs conducted in Kenya and India. Both reports include the methodology used, stakeholders consulted, main findings, and actions taken.<sup>39</sup>
- NomoGaia, an independent organization that has developed a corporate HRIA methodology and assesses the human rights impacts of corporate projects, has conducted a number of HRIAs of projects in the agriculture and extractives sectors, which provide detailed information about methodology, stakeholders consulted, assessment findings, and recommendations. NomoGaia has also published follow-up reports on past HRIAs, which describe any actions taken that alter the company's impact on human rights.<sup>40</sup>
- After a human rights assessment of Goldcorp's Marlin Mine in Guatemala was conducted by On Common Ground Consultants, a full HRIA report was published on a dedicated website in Spanish and English. The report included the methodology, findings, and recommendations.<sup>41</sup>
- In 2007-2008, the organization Centro de Estudios Aplicados a Derechos Económicos, Sociales y Culturales (CEADESC) supported communities in a community-led HRIA assessing the impacts of a natural gas exploration project by Total E&P in five communities on the ancestral territory of Muyupampa Guaraní People in the Luis Calvo province, Chuquisaca Department of Bolivia and published a full HRIA report (available in Spanish).<sup>42</sup>
- The telecommunications company Telia commissioned BSR to conduct a number of HRIAs of their operations in multiple Eurasian countries. While the full texts of the assessments were not disclosed, the company published a report summarizing the HRIAs.<sup>43</sup>

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39 Kuoni Travel Holding Ltd., TwentyFifty and Tourism Concern, *Assessing Human Rights Impacts: Kenya Pilot Project Report* (2012), [http://cr.kuoni.com/docs/kuoni\\_hria\\_india\\_2014\\_website\\_0.pdf](http://cr.kuoni.com/docs/kuoni_hria_india_2014_website_0.pdf). See also: Kuoni Travel Holding Ltd., TwentyFifty and Tourism Concern, *Assessing Human Rights Impacts: India Project Report* (2013), [http://cr.kuoni.com/docs/assessing\\_human\\_rights\\_impacts\\_0\\_0.pdf](http://cr.kuoni.com/docs/assessing_human_rights_impacts_0_0.pdf).

40 NomoGaia, Completed assessments, <http://nomogaia.org/work/#item1>.

41 Marlin Mine Human Rights Assessment, [http://csr.goldcorp.com/2011/docs/2010\\_human\\_full\\_en.pdf](http://csr.goldcorp.com/2011/docs/2010_human_full_en.pdf).

42 Centro de Estudios Aplicados a los Derechos Económicos, Sociales y Culturales (CEADESC), *TOTAL E&P Bolivia y sus Impactos en los Derechos Humanos del Pueblo Guaraní de la Capitanía de Muyupampa* (2011), <http://www.ideaspaz.org/tools/download/59433>.

43 BSR, *Human Rights Impact Assessments and Responsible Divestment Plan for Telia Company Business Region Eurasia* (2016), <http://www.teliacompany.com/globalassets/telia-company/documents/about-telia-company/bsr-telia-company-hria-summary.pdf>.

Disclosure of information throughout the assessment process—particularly regarding the methodology, findings, and agreed-upon action plan—is important for the legitimacy of a collaborative HRIA. Ideally, information related to the IA process would be fully disclosed to all relevant stakeholders, and in particular to project-affected people and their representatives. One effective method for disclosing information throughout the assessment process is using (community) radio, so that everybody has access to the same information from the same source.

In practice, however, many factors may need to be considered when disclosing information related to the IA process. Depending on the circumstances, a company participating in the collaborative HRIA may have concerns regarding full disclosure of information gathered during the HRIA for commercial or competitive reasons, or due to fears that disclosure could increase the company's risk of legal liability. There may also be reluctance to share sensitive documentation with all participants of the assessment or more broadly. A potential solution could be to allow access to sensitive documentation and information, such as internal company documents, in a secure room, on the understanding that the documentation and information will not be shared beyond the participants of the assessment. This may assuage concerns about the potential leaking of sensitive data.

While it is recommended that the methodology, findings, and action plan of a collaborative HRIA be disclosed, the identities of all interviewees should be protected, and no information that could reveal their identities should be provided. Having clear rules regarding this will help to encourage interviewees to share information in an open and frank manner, without fearing retaliation for doing so.

It is ultimately up to participants to reach agreement regarding what information from the collaborative HRIA process will be made transparent and how it will be disclosed. Such an agreement should preferably be reached before commencing the assessment, in order to avoid misunderstandings and disputes at a later stage. If a valid reason exists for stopping short of full disclosure, participating stakeholders should commit to, at a minimum, disclosing a summary of the assessment findings, as well as a summary of the action plan. In that scenario, participating stakeholders should also consider setting up a process to enable individuals to access the entire assessment report upon request, subject to reasonable requirements to maintain confidentiality.

## CONCLUSION

Ensuring that HRIAs lead to the better understanding and management of a project's potential or actual human rights impacts remains an ongoing challenge. Central to this difficulty is the question of how project-affected people can meaningfully participate in an HRIA, while still ensuring strong company engagement with both the process and the measures designed to address the human rights impacts identified. An additional question is whether and how governments, as primary bearers of human rights obligations, should participate in this increasingly important human rights tool. A collaborative approach to HRIAs creates a forum for partnership and communication between key stakeholders, which can minimize knowledge asymmetries, contribute to a deeper understanding of each stakeholder's perspective and priorities, help to build trust, and result in more effective action plans to address a project's human rights impacts.

At the same time, there are risks and challenges associated with such an approach. The need for capacity building and sensitization, and the radically different backgrounds of participating stakeholders, mean that a collaborative HRIA will be time-intensive and require significant and stable funding. Strong governance structures will also be required to ensure that the collaborative HRIA does not replicate or exacerbate existing power imbalances between stakeholders—something that many other multi-stakeholder-focused efforts have struggled with.

This paper has sought to identify the inherent challenges of a collaborative HRIA, and to offer suggested approaches or solutions, with a view to creating a meaningfully participatory and collaborative approach to HRIAs. It is intended to be a useful and effective approach for companies, project-affected people, and other stakeholders seeking to work together on understanding and addressing the potential or actual human rights impacts tied to a specific project or business operation.

## ANNEX A: METHODOLOGY OF PAPER

This paper was drafted by the Columbia Center on Sustainable Investment (CCSI), the Danish Institute for Human Rights (DIHR), and the Sciences Po Law School Clinic. It builds on relevant work that the three organizations have undertaken on HRIAs, as well as on a roundtable on HRIAs organized in April 2014 by CCSI and the Sciences Po Law School Clinic, during which participants identified the development of collaborative HRIAs as a potential way forward in addressing certain key challenges of current HRIA practices.

We have been exploring the idea of a collaborative HRIA ever since. The ideas in this paper are based on individual interviews undertaken in 2015 and 2016 with 49 people who have experience with human rights impact assessments or multi-stakeholder initiatives/processes, including representatives of companies, civil society organizations, and communities, as well as academics and others with relevant insight. The ideas also benefited from the conversation at the 2014 roundtable and the associated outcome document,<sup>44</sup> as well as presentations we have given and discussions we have had regarding this idea at various conferences and practitioner meetings. A draft version of this paper was discussed at an all-day roundtable in December 2016 that brought together HRIA practitioners, company representatives, and civil society representatives; the paper was subsequently revised and refined to address the workshop discussions as well as peer review comments.

We hope to continue this work through the eventual testing and piloting of a collaborative HRIA, which will allow further refinement of the approach and suggested guidance.

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<sup>44</sup> *Human Rights Impact Assessments of Large-Scale Foreign Investments: A Collaborative Reflection, Roundtable Outcome Document* (December 2014), <http://ccsi.columbia.edu/2014/12/01/outcome-report-of-roundtable-on-human-rights-impact-assessments-hrias-of-large-scale-foreign-investments/>.

## ANNEX B: SAMPLE DOCUMENTS FOR BUDGET PLANNING

This annex includes examples of the types of activities that are frequently covered in community-led and company-led HRIAs. While no assessment process is the same, these samples can help provide some indication of what the budget for a collaborative HRIA might cover. It would not be surprising, however, if some collaborative HRIAs were more expensive than a community-led or company-led HRIA, given the complexities that may arise from the multi-stakeholder approach. In addition, a collaborative HRIA budget would generally cover expenses associated with community-led HRIAs as well as those associated with company-led HRIAs (to the extent they differ).

A budget should factor in the number of persons required for the assessment (which depends on multiple factors, including the assessment's scope and methodology), the steps needed to carry out the assessment itself, and the cost of required activities (in terms of both human resources and other expenses, such as travel or equipment). It should also cover time and costs associated with any planned monitoring, evaluation, or follow-up work associated with the collaborative HRIA.

When developing a budget, it is important to remember that, during any type of impact assessment, activities might change or the time required for an activity might need to be adjusted, requiring budget adjustments.

## COMMUNITY-LED HRIAS

The below table, developed for the *Getting it Right Tool*,<sup>45</sup> includes example activities that might be included in a budget for a community-led HRIA.

Activities and Associated Expenses	Time Required	Funds Required
1. Salaries for assessment team		
a. Coordinator		
b. Other team members		
c. Outside experts (if necessary)		
2. Consultation Fees		
a. Travel		
b. Accommodation		
c. Meals		
d. Travel abroad (if necessary)		
e. Interpreter (if necessary)		
f. Audio-visual material (rental or purchase)		
g. Other supplies (pens, paper, etc.)		
3. Report		
a. Translation		
b. Proofreading and/or editing of translations		
c. Layout		
d. Legal review (if necessary)		
e. Printing (publication)		
f. Launch		
4. Other		
a. Photocopies		
b. Telephone, Internet fees, etc.		

45 Rights and Democracy, *Getting it Right: Human Rights Impact Assessment Guide*, Phase A, step 8, <http://hria.equalit.ie/en/phases/index.html#/phase/a/etape/8/>.



## COMPANY-LED HRIAS

The below table<sup>46</sup> shows an example of what activities might be considered as part of a company-led HRIA budget. The table does not include the time contributed by the company.

Activities and Associated Expenses	Time Required	Funds Required
1. Preparation phase		
a. Salaries for assessors (1-3) during preparation phase: development of assessment tools and methodology		
b. Salaries for local consultants (1-2): support in preparation of assessment tools and methodology and adaptation to local context		
c. Salaries for outside experts (if necessary)		
2. In-country assessment		
a. Salaries for assessment team (1-5 persons)		
b. International travel incl. visa fees, insurance + local travel (cars, drivers, domestic flights, etc.)		
c. Accommodation		
d. Per diems of assessment team members		
e. Interpreter(s) (if necessary)		
f. Costs associated with engagement with rights-holders (provision of food, travel costs, etc.)		
g. Miscellaneous (e.g., security if necessary)		
3. Assessment report		
a. Salaries for report writing and reporting back to company by assessment team		
4. Monitoring and evaluation		
a. Salaries for evaluation of assessment process + content by assessment team and company		
b. Salaries for regular follow-up calls or meetings with company to monitor progress against action plan		
c. Salaries and expenses for a return visit to project site for monitoring purposes		
5. Other expenses		
a. Miscellaneous costs during assessment: phone costs, photocopies, etc.		

46 This table is indicative and is tailored to company needs and context; it is based on examples of budgets for company-led HRIAs conducted by DIHR.





