

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

CROSS-
CUTTING:
STAKEHOLDER
ENGAGEMENT

GUIDANCE ON HRIA
OF DIGITAL
ACTIVITIES



CROSS-CUTTING: STAKEHOLDER ENGAGEMENT

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CONTENT

STAKEHOLDER ENGAGEMENT	5
1.1 INTRODUCTION TO ENGAGING WITH STAKEHOLDERS IN HRIA AND PARTICIPATION OF RIGHTSHOLDERS	6
1.2 IDENTIFYING THE RELEVANT STAKEHOLDERS TO ENGAGE WITH	11
1.2.1 STAKEHOLDER IDENTIFICATION AND ANALYSIS	11
1.3 ENGAGEMENT WITH RIGHTSHOLDERS	15
1.3.1 CONSIDERATIONS FOR ENGAGING WITH SPECIFIC RIGHTSHOLDERS	27
1.4 ENGAGEMENT WITH DUTY-BEARERS	41
1.5 ENGAGEMENT WITH OTHER RELEVANT PARTIES	45
1.6 VIRTUAL AND REMOTE STAKEHOLDER ENGAGEMENT	48
END NOTES	51

This document contains the cross-cutting Stakeholder Engagement section of the Guidance on Human Rights Impact Assessment of Digital Activities (the Guidance).

You can access the full version of the Guidance at:

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

A NOTE ON THIS VERSION

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

The preparation of this Guidance included a workshop in Denmark in November 2019, during which 20 expert reviewers participated in a discussion on human rights impact assessment of digital activities i.e. digital projects, products and services.

It is anticipated that in 2020-2021, a Phase II of the project will focus on applying the Guidance in practice, the gathering and sharing of learning, and subsequently updating the Guidance based on experiences from practice.

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

Please send comments, questions and suggestions to:

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CROSS-CUTTING

STAKEHOLDER ENGAGEMENT

WHAT HAPPENS IN STAKEHOLDER ENGAGEMENT?

Stakeholder engagement needs to be at the core of any HRIA, and participation of rightsholders is crucial at all stages of the assessment process.

In the planning and scoping phase, the HRIA team will identify the stakeholders who should be engaged in the process. Some preliminary interviews with stakeholders may also take place during this initial phase. In the data collection and context analysis phase, interviews with rightsholders and their proxies/representatives, duty-bearers and other relevant parties will be one of the main sources of primary data. Perspectives of rightsholders themselves will be an essential factor in the assessment of the severity of impacts in the analysing impacts phase. In the impact prevention, mitigation and management phase, stakeholders should be meaningfully involved in designing and implementing actions that effectively prevent, mitigate and remediate adverse impacts, as well as in monitoring their implementation. Finally, stakeholders, especially rightsholders, should be informed about results in a meaningful and accessible way, and subsequently engaged in the evaluation process.

In short, ensuring the meaningful participation of those who are affected is a prerequisite for a process seeking to assess human rights impacts as opposed to risks.

Participation in the HRIA should enable rightsholders to access information and better understand both the digital project, product or service and resulting impacts, but also to learn about their human rights and the respective obligations and responsibilities of duty-bearers to protect and/or respect these rights.

Lastly, the engagement of duty-bearers and other relevant parties in a HRIA is essential for ensuring a comprehensive assessment and fostering accountability.



KEY QUESTIONS ADDRESSED IN THIS SECTION:

- Why is it important to engage rightsholders and other stakeholders in HRIA?
- Who are the rightsholders, duty-bearers and other relevant parties that should be engaged in HRIA?
- How should rightsholders be engaged?
- What types of considerations need to be made for the engagement of specific rightsholder groups? What is the role of capacity building in HRIA engagement and participation?
- At which points during a HRIA should stakeholders be engaged?
- What are some of the human rights-based principles and ethics that the assessment team should apply in stakeholder engagement?

1.1 INTRODUCTION TO ENGAGING WITH STAKEHOLDERS IN HRIA AND PARTICIPATION OF RIGHTSHOLDERS

Stakeholder engagement is critical in any and all HRIAs and in all phases of a HRIA and has therefore been included as the key cross-cutting theme in this Guidance. The following sections provide guidance on how to engage with rightsholders throughout the HRIA process to ensure that they can meaningfully participate in the HRIA and influence the decision-making processes that impact their lives. These sections also provide guidance on engaging with stakeholders who have duties and responsibilities with regard to respecting the human rights of users, impacted individuals and impacted communities.

Stakeholders to be engaged in a HRIA include rightsholders, duty-bearers and other relevant parties. See Box 1, below, for more details on these different types of stakeholders and examples.

BOX 1: OVERVIEW OF THE DIFFERENT STAKEHOLDERS TO BE ENGAGED IN HRIA AND TERMINOLOGY

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

- **Stakeholders:** A stakeholder is a person, group or organisation with an interest in, or influence on, the digital product, project or service, as well as those potentially affected by it. Relevant stakeholders for the assessment of human rights impacts include affected rightsholders, duty-bearers and other relevant parties.
- **Rightsholders:** All individuals are human rights-holders. In the context of this Guidance, the focus is on rightsholders who are actually or potentially adversely affected by digital projects, products or services. Rightsholders are entitled to enjoy and exercise their rights by virtue of being human, as well as to access effective remedy when their rights have been breached. Organisations or entities, such as trade unions, digital rights groups or religious institutions, are not human rights-holders, but may act in a representative capacity or as proxies (see Box 5 in chapter 1.3 for more on proxies). **Customers and other individual end-users of digital products and services are likely to be those most at risk of adverse impacts on their human rights** and are therefore critical rightsholders. However, **the nature of digital technology is such that other individuals may also be affected** (e.g. information about a non-user of a digital communication platform is spread without the individual's consent, leading to a negative impact on the right to privacy). While all individuals are potentially at risk of adverse interferences, examples of other groups of rightsholders which merit particular consideration include workers, human rights defenders, and those vulnerable to discrimination (including, but not limited to, women, children and older persons, persons with disabilities, ethnic and racial minorities, LGBTI individuals, and migrants). **Duty-bearers:** Duty-bearers are actors who have human rights duties or responsibilities towards rightsholders. States are the primary human rights duty-bearers—they have a legal obligation to *respect, protect* and *fulfil* human rights. Companies have a *responsibility to respect* human rights, which includes avoiding infringing upon the rights of others and addressing impacts with which they are involved. Examples of duty-bearers in a digital context include: companies operating a project or otherwise applying or making use of digital products or services; business partners and contractors developing digital products or services; and government actors, such as government authorities, procuring or using digital products or services.
- **Other relevant parties:** These may include **individuals or organisations whose knowledge or views could assist in the assessment of human rights impacts.** They may include: specialist representatives from multilateral organisations (e.g. the UN, International Telecommunication Union (ITU), OECD, Council of Europe (CoE)); National Human Rights Institutions; NGOs and CSOs; local, regional and international human rights mechanisms and

experts; and organisations and individuals who represent or can speak on behalf of rightsholders organisations ('proxies').

What is the difference between a rightsholder and a stakeholder? Essentially, rightsholders are a particular stakeholder group: the potentially affected individuals and groups. These individuals are rightsholders, and the reason for recognising them as such (rather than as stakeholders) is to acknowledge that they have entitlements to have associated adverse impacts addressed.

Engagement should occur throughout the HRIA process, as well as for the life of digital projects, products or services. It should be done early, so that the views and concerns of rightsholders can inform business decisions, and in a proactive and ongoing manner.¹ Stakeholder engagement is commonly used in the area of corporate social responsibility (CSR), and there are different forms of stakeholder engagement (see Box 2, below, on typical CSR stakeholder engagement vs. HRIA stakeholder engagement).

BOX 2: TYPICAL CSR STAKEHOLDER ENGAGEMENT VS. HRIA STAKEHOLDER ENGAGEMENT

Stakeholder engagement is commonly **used in the area of Corporate Social Responsibility (CSR) to refer to a process through which a business strives to “understand and involve stakeholders and their concerns in its activities and decisions”**.² There are different ways to engage stakeholders. Companies can inform stakeholders with the purpose of **providing information** about a project, product or service, which is considered one-way communication. A second mode of engagement is **consultation**, which is two-way communication focused on sharing information and collecting information to adequately understand the context of the project, product or service, and the preferences, concerns and expectations of different parties, as well as to ensure that all parties understand and learn from one another's perspectives. Connected to this, another form of engagement is **responding**, where companies take action in response to an issue, concern or certain information identified during consultation.³ Finally, **negotiation** is a form of two-way communication between the company and stakeholders, focused on sharing decisions with the objective of coming to a shared agreement.

One of the key elements for meaningful stakeholder engagement is ongoing engagement with stakeholders that is two-way, conducted in good faith and is responsive to the views, experiences and expectations being exchanged.⁴ **The term ‘participation’ is often used as a synonym for meaningful stakeholder engagement.**

Taking a point of departure in the human rights-based approach, HRIA stakeholder engagement focuses in particular on engagement with rightsholders as the key stakeholder group. A HRIA identifies the entitlements of these stakeholders, as well as the respective responsibilities of duty-bearers, another central stakeholder group.

Lastly, human rights organisations, mechanisms and experts have a particular role to play in HRIA engagement through contributing their human rights knowledge and expertise to the analysis.

In the context of HRIA, stakeholder engagement pays particular attention to rightsholders, including to their rights to be consulted and to participate. Consultation and participation of rightsholders in decision-making that affects them has been incorporated in a number of international legal instruments, as well as in national legislation. See Box 3 below, on participation and consultation in international human rights law.

BOX 3: PARTICIPATION AND CONSULTATION IN INTERNATIONAL HUMAN RIGHTS LAW AND OTHER FRAMEWORKS

The right to public participation is enshrined in international human rights law. A number of treaties and conventions include provisions related to participation and consultation. The requirements in the international treaties is binding on states, who have a duty to respect, protect and fulfil those rights. However, the rights listed below remain highly relevant to businesses for their understanding of meaningful participation, as required by the UNGPs.

- Article 25 of the International Covenant on Civil and Political Rights (ICCPR) provides for the right of citizens to take part in political affairs, and Article 19 guarantees the right to freedom of expression, including the right to seek information.
- UN treaty bodies have issued numerous general comments that point to government responsibility to inform and hear the opinions of groups affected by political decisions, in particular with regard to their economic, social and cultural rights.⁵
- UN Special Procedures and other UN mechanisms have issued specific reports looking at digital products and services, clarifying the responsibility of governments and businesses to meaningfully consult with stakeholders, in general, and vulnerable groups, in particular.⁶

Furthermore, under international human rights law, specific groups can also have explicit rights to be heard and consulted in relation to certain decisions that affect them.

- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention No. 169 dictate that data collection must respond to the priorities and aims of the indigenous communities themselves.⁷
- The Convention on the Rights of the Child (CRC) states that children have the right to participate in decision-making processes that may be relevant in their lives and to influence decisions taken, including within the family, the school and the community.
- The Convention on the Rights of Migrant Workers and Members of their Families (ICMW) demands consultation with, and participation of, migrant workers and their families in decisions concerning the life and administration of local communities.
- A call for consultation has also been built into the Convention on the Rights of Persons with Disabilities (CRPD).⁸
- The Convention against the Elimination of All Forms of Discrimination against Women (CEDAW) has also insisted on the importance of the right to participation of women.⁹

In recent years, participation has been reflected in the human rights-based approach to development as a goal, as well as a cross-cutting principle. For more information about the human rights-based approach, see Phase 2: Data Collection and Context Analysis.

The responsibility for businesses to consult those affected by their activities has also increasingly been defined. For example:

- **UN Guiding Principle 18 explicitly points out that the process of identifying human rights impacts should involve “meaningful consultation with potentially affected groups and other relevant stakeholders”.** In the associated commentary, it is specified that businesses should seek to understand the concerns of potentially affected stakeholders “by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society.”¹⁰
- **The OECD Guidelines for Multinational Enterprises (2011) state that multinational enterprises should engage with relevant stakeholders** in order to provide meaningful opportunities for their views to be taken into account during planning and decision-making, especially for projects, product and services that may have significant impacts on rightsholders.¹¹ The OECD has also produced further guidance on the guidelines in its Due Diligence Guidance for Responsible Business Conduct.¹²

Participation of rightsholders in the HRIA process is key for identifying and analysing the impacts that they might be experiencing, as well as for discussing, understanding and designing actions and solutions that effectively prevent, mitigate and remediate these impacts. **Ensuring the participation of those who are or may be affected, or their proxies when direct rightsholder participation is not possible, should thus be the prerequisite of a process seeking to assess human rights impacts.**

Participation in the HRIA should enable rightsholders to access information and better understand both the digital project, product or service, as well as the resulting impacts. Through the HRIA process, **rightsholders should also learn about their human rights and the respective responsibilities of duty-bearers to uphold these rights.** If carefully done, participation can be a way to empower rightsholders.¹³ As highlighted in the *Rights & Democracy Getting It Right Guide*, “[a] human rights impact assessment should not be just about gathering information, but also an exchange of knowledge between participants throughout the assessment process.”¹⁴

It is essential that the engagement with stakeholders and rightsholders, in particular, occur prior to the finalisation or launch of a product or service, to ensure that the engagement can occur in the form of meaningful dialogue,¹⁵ and that engagement takes place early enough to influence decisions that might lead to negative impacts.¹⁶

1.2 IDENTIFYING THE RELEVANT STAKEHOLDERS TO ENGAGE WITH

1.2.1 STAKEHOLDER IDENTIFICATION AND ANALYSIS

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

The identification of relevant stakeholders will depend on various factors, such as the nature of the project, product or service, the impacts anticipated, (predicted) geographic reach, intended application and use cases, and so forth. There is no set list of stakeholders that applies universally to every context. However, it is essential that the stakeholders identified and included in the HRIA include the impacted rightsholders (and their proxies), responsible duty-bearers and other relevant parties (see Box 1, above, for further explanation of these different types of stakeholders). During the HRIA, further stakeholders which were not included at the outset of the process, are likely to be identified. The HRIA team should therefore remain flexible and open to including such stakeholders during the HRIA process. **The ‘snowballing’ method, whereby**

initial stakeholders are asked about who else should be consulted, may prove useful, particularly when trying to engage with marginalised populations.¹⁷

The identification of different stakeholders will assist the assessment team in understanding who the relevant individuals, groups and organisations are and what the relationships are between them and the company in question. It will also provide insight into stakeholders' interests in relation to the digital project, product or service, as well as their knowledge and capacity to engage. This, in turn, will enable the HRIA team to identify where capacity building may be necessary to ensure meaningful participation.

In understanding how different rightsholders might be impacted, it is important to be especially mindful of any vulnerable or marginalised individuals and groups requiring specific attention (see further in chapter 1.3, below).

BOX 4: RIGHTSHOLDERS VS. USERS

Often, users of e.g. social media platforms or end-users of other digital products or services are considered as the principal rightsholders. However, it is important to note that while, for example, a social media platform's users are of course critical rightsholders, so too are non-users whose images and/or videos could potentially be uploaded, or about whom discussions could take place. As such, you can have 'online rightsholders' that engage with your digital product or service, as well as 'offline rightsholders' that are not using the product or service but that may be negatively impacted because of actions of those that do.

This complicates rightsholder engagement since it means that a potentially very significant number of individuals can be relevant rightsholders. It is an important distinction to make, however, since there is otherwise a risk that the most impacted rightsholders are not consulted or engaged. The same can be said with other digital products, such as algorithms used by businesses or state agencies to facilitate and speed up decision-making. The user is the business or state agency, whereas the rightsholders are those potentially adversely impacted by biased or discriminatory decisions supported by the algorithm.

Rightsholders and other stakeholders may have a varying degree of knowledge and understanding of the technical aspects and functioning of the digital project, product or service in question. **Therefore, it may often be necessary for the company or the HRIA team to explain, in terms and in language that the relevant rightsholders understand, what the project, product or service entail and how it will be, rolled out, deployed or used.** Depending on the project, product or service, this capacity-building aspect of engagement may require significant time and follow-up, which should be adequately taken into account

when the TOR for the HRIA is developed (see Phase 1 for more on TOR development).

When the technology and its application is properly understood, it will be possible for rightsholders to meaningfully engage and assess whether they believe there are potential adverse negative impacts. It is important to note, however, that **it is an onus on the HRIA team and the company to be able to translate what rightsholders and other stakeholders tell them into potential and actual human rights impacts.**

After identifying relevant stakeholders and their various rights, interests and duties with regard to the impacts of the digital project, product or service, it will be necessary to determine:

- Which stakeholders to engage with during the HRIA.
- How those stakeholders should be engaged.

There are different methods for mapping stakeholders, for example, through a table, chart or grid. Dimensions used in such stakeholder mapping and analysis exercises include power, influence, rights, interests, proximity and needs.¹⁸ **The use of a ‘power map’ can help determine which stakeholders are most vulnerable and affected by the project, product or service.** Stakeholders are placed in a matrix with two axes: influence of the stakeholder on the digital project, product or service (influence/power axes), and (potential) impact of the digital project, product or service on the stakeholder (impact axes) (see Figure 1).

Figure 1: HRIA stakeholders power map



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

In HRIA stakeholder mapping, special attention is given to stakeholders that have the least influence yet are highly impacted by the digital products, project or service (see bottom right corner of Figure 1).¹⁹

In sum, **an effort should be made at the outset to identify and contact all relevant stakeholders, including groups or individuals with different or opposing views.** When key stakeholders do not agree or cannot participate in the impact assessment for various reasons, it is important to mention this in the HRIA report to demonstrate that an effort has been made to take into consideration the perspectives of all relevant stakeholders.²⁰

1.3 ENGAGEMENT WITH RIGHTSHOLDERS

Engagement and participation opportunities should prioritise potentially affected rightsholders or, if necessary, their legitimate representatives or proxies, and other credible, independent expert resources. **Particular attention should be given to vulnerable individuals and groups.**²¹

Table A, below, provides some examples of different rightsholders, as well as considerations for their engagement in HRIA.

TABLE A: EXAMPLES OF RIGHTSHOLDERS AND ENGAGEMENT CONSIDERATIONS IN HRIA		
Rightsholders	General considerations for engagement	Examples
<p>Potentially impacted individuals from minority groups</p> <p>These can include individuals that are subjects to discriminatory impacts of the digital project, product or service. This could concern e.g. indigenous human rights</p>	<ul style="list-style-type: none"> Identifying the individuals and groups affected by a particular digital project, product or service requires a good understanding of the local context. It is important to consider that not all groups or individuals within a group are affected in the same way. Intersectionality will mean that many individuals are members of multiple communities or groups, and some experiences will be specific to particular intersectionalities (e.g. women with disabilities). Nor are all the members of a group likely to share the same point of view of a project, product or service. Some may support the use of a digital product, while others may oppose it. These different perspectives should be represented and analysed during the assessment. 	<ul style="list-style-type: none"> In order to understand online hate speech against human rights defenders it can be essential to understand the local context and language, to also detect ‘coded language’, which can then be a key to identify the relevant rightsholders. Minority rightsholders from the same group might have widely different views on e.g. the legitimacy of an internet shutdown or the potential impacts (or benefits) of digital public service delivery. Due to the nature of digital projects, products and services, it will rarely be possible to include all potentially impacted rightsholders at each stage of the assessment or to ensure that all views are represented. In these cases, consultation with legitimate representatives or proxies are a viable

TABLE A: EXAMPLES OF RIGHTSHOLDERS AND ENGAGEMENT CONSIDERATIONS IN HRIA

Rightsholders	General considerations for engagement	Examples
<p>defenders that are harassed on social media platforms or ethnic minority groups that are negatively impacted by flawed automated decision-making in relation to credit risk scoring.</p>	<ul style="list-style-type: none"> ● It is important to take the time to engage and consult with an appropriate amount of rightsholders within a defined group, in order to identify who is affected, how and to what degree and to validate those findings. If some groups are left out, the reasons for this must be justified and clearly stated in the assessment findings. ● Care should be taken to identify differences in how impacts are experienced by women, men, non-binary persons and children, including through taking gender-sensitive and child-rights approaches to engagement.²² ● Rightsholders should be engaged directly (virtually or in-person) in the impact assessment process. However, in cases where this is not possible or appropriate, it may be necessary to engage through rightsholder representatives, representative institutions or proxies. Where this is the case, care needs to be taken to establish that representatives present a faithful account of rightsholders' views, interests and concerns. In some situations, it may 	<p>solution, to supplement limited direct rightsholder engagement.</p> <ul style="list-style-type: none"> ● Online hate speech may often be directed at certain groups within a society, it is therefore important to not see it as a single and general issue but to understand how it impacts different minority, differently. ● When developing an e-health platform that will impact the lives of persons with disabilities, the specific consultation rights enshrined in the Convention on the Rights of Persons with Disabilities should be duly considered.

TABLE A: EXAMPLES OF RIGHTSHOLDERS AND ENGAGEMENT CONSIDERATIONS IN HRIA

Rightsholders	General considerations for engagement	Examples
	<p>also be appropriate for the HRIA process to provide capacity building of representative organisations.</p> <ul style="list-style-type: none"> ● HRIA engagement strategies should be cognizant of the particular rights to participation and consultation that some rightsholders may be entitled to. ● While in some cases it will be necessary to engage with rightsholders in person in order to ensure that the engagement is meaningful, it is also important to note that a lot can be done virtually. Consultations, meetings and interviews, for example, can all be done virtually. However, it is critical to always consider the rightsholders’ abilities and possibilities to engage virtually, should such options be considered (see Box 9, for more). 	
<p>Workers and trade unions (as their representatives)</p> <p>These include workers that may be or are currently</p>	<ul style="list-style-type: none"> ● Workers can provide crucial information about their perception around human rights issues related the use of digital products and services in the workplace, such as ‘smart’ monitoring tools or other forms of worker surveillance. 	<ul style="list-style-type: none"> ● If a company has made use of natural language processing algorithms that analyse workers’ email conversations, or other human resources tools aimed at improving efficiency by monitoring worker related data, workers will be essential to engage to get first-hand information about the perceived and experienced impacts.

TABLE A: EXAMPLES OF RIGHTSHOLDERS AND ENGAGEMENT CONSIDERATIONS IN HRIA

Rightsholders	General considerations for engagement	Examples
<p>subject to different kinds of workplace monitoring, and workers that are involved in mitigation measures related to digital activities (e.g. content moderators).²³ National and local unions or site-level workers' organisations should also be consulted as the representatives of these rightsholders.</p>	<ul style="list-style-type: none"> • Where they exist, independent trade unions should be consulted as the legitimate representative organisations of workers. • Workers should be directly consulted (individually and/or in groups) to understand their concerns and any actual or potential impacts that they experience. • HRIA teams should ensure that workers are protected in their anonymity when giving their statement, as they might face pressure from other workers or superiors. Considering the need for anonymity, virtual and encrypted communication may be considered (see more in Box 9, below). • Care should be taken to identify any differences in how impacts are experienced by women, men and non-binary workers, including through taking gender-sensitive approaches to engagement. • To better understand the impacts of a digital project, product or service on workers, HRIA teams may also consult national trade union federations, as well as international trade union federations (e.g.: International Trade Union Confederation 	<ul style="list-style-type: none"> • Workers employed as content moderators as part of a company's efforts to mitigate impacts related to e.g. user-generated content may be suffer from negative impacts on their right to health, and should thus be engaged and consulted. • A gender-sensitive approach is essential since, for example, a 'smart recruitment tool' may not be identified as having negative impacts on men since e.g. the application of a digital tool may have benefitted them as a group, while women consider that the tool's application has led to discriminatory outcomes.²⁴

TABLE A: EXAMPLES OF RIGHTSHOLDERS AND ENGAGEMENT CONSIDERATIONS IN HRIA

Rightsholders	General considerations for engagement	Examples
	<p>(ITUC); The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF); UNI Global Union; IndustriALL).</p> <ul style="list-style-type: none"> ● In countries where independent trade unions are prohibited or restricted by law, it is important to take into consideration the sensitivities regarding this topic and the risks associated with consultations. Assessors should find alternative means to obtain data regarding workers' rights and freedom of association. This could include adaptation of the language regarding freedom of association and trade unions when engaging with workers, and could also include using encrypted communication channels for the consultation. 	
<p>Consumers, customers and end-users</p> <p>This rightsholder group includes individuals who buy</p>	<ul style="list-style-type: none"> ● Retail customers can be adversely affected by digital products procured and applied by retailers. ● Consumers and end-users can be negatively impacted if the product or service itself has negative impacts. ● Depending on the sector and product or service, consumers or consumer protection groups should 	<ul style="list-style-type: none"> ● Retail customers may, for example, be negatively affected when their behaviour and facial expressions are analysed by AI products without their knowledge.²⁵ ● Those playing video games and social media users may be negatively impacted by becoming addicted to the digital services or products that they use

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Rightsholders	General considerations for engagement	Examples
<p>and/or use digital products and/or services of the company in question. They can include direct and indirect consumers. Consumer protection groups and user groups may act as representatives of these rightsholders.</p>	<p>be consulted to understand the actual and potential impacts of the project, product or service.</p>	<ul style="list-style-type: none"> Children end-users or consumers may struggle to understand the extent and implications when permitting collection of potentially sensitive personal data, or when addiction to an online game leads to negative health outcomes.²⁶
<p>Human rights defenders, including digital rights and other activists</p>	<ul style="list-style-type: none"> Human rights defenders concerned about a digital project, product or service can be at risk of retaliation from repressive host-government agencies, businesses favouring the project, product or service, and other actors. Trade union activists may be at risk of discrimination by employers. Human rights defenders are likely to have valuable insights into potential and actual human rights 	<ul style="list-style-type: none"> Human rights defenders protesting against internet shutdowns, by a telecommunications company, the government or both, may be at risk of severe human rights impacts. Human rights defenders who are very outspoken against the use of e.g. facial recognition technologies may have relevant insights to share.

TABLE A: EXAMPLES OF RIGHTSHOLDERS AND ENGAGEMENT CONSIDERATIONS IN HRIA

Rightsholders	General considerations for engagement	Examples
	<p>impacts of the digital project as a whole, or the specific use or application of the product or service.</p> <ul style="list-style-type: none">● Important reminder: human rights defenders negatively impacted by e.g. hate speech or harassment that is spread through social media platforms may not be end-users of the products or services, but remain important rightsholders to engage and protect (see Box 4 for more on users vs. rightsholders).	

Whilst care should be taken to engage with rightsholders directly, **in some circumstances, it might not be possible to fully involve rightsholders in the impact assessment.** It may, for example, be difficult to reach out to certain rightsholders in situations where there is a lack of trust between rightsholders and the business in question.

An example could be a HRIA in a conflict-affected area where the security of both rightsholders and the assessment team is at stake. Additionally, in countries with generally repressive governments or where particular groups (including journalists, activists or minorities) are targeted, interviewing rightsholders might put them at risk.

It is important that the assessment team take all necessary precautions to make sure that the rightsholders who are engaged in a HRIA process are safe. This includes how data relevant to the engagement with rightsholders is protected (e.g. interview schedules and names of organisations or specific rightsholders, the HRIA team’s processes around note-taking, how interview notes are stored etc.).

If the risk of engaging rightsholders directly is high, or when direct engagement with rightsholders proves impossible or inappropriate (e.g. at early stages of the development of a digital product when specific rightsholders cannot be identified, or where trust among certain rightsholder groups has broken down due to legacy issues), it is important to consider alternatives. In such cases, **it may be necessary to engage with credible representatives, representative organisations or proxies** (see Box 5, below). These are third parties or interlocutors such as CSOs, trade unions, and academics and other experts who may have sufficient knowledge and experience engaging with the rightsholder groups, and that can therefore convey the potential concerns related to the digital project, product or service on the rightsholders’ behalf.

BOX 5: EXAMPLES ON HOW PROXIES CAN BE USED TO CAPTURE RIGHTSHOLDER PERSPECTIVES

Contribution by Richard Wingfield, Global Partners Digital.

What is a proxy?

For the purpose of this document, a ‘proxy’ is a person or group of persons who can speak about the experiences faced by a particular group of rightsholders, but who are not actually the rightsholders themselves.

Representative organisations

In societies where a group (such as LGBT+ individuals or persons with disabilities) faces high levels of stigma, marginalisation or discrimination, few individuals may be willing to talk about their experiences, particularly where the vulnerability is a hidden (i.e. non-visible) characteristic, which can pose an obstacle for conducting direct rightsholder engagement. In such situations, **a local organisation which represents a particular (and vulnerable) group**, but whose leadership does not necessarily comprise individuals who are members of that group, **may serve as a useful proxy to gain an understanding of that group's experience** and how a particular digital project, product or service may affect them.

The level of stigma and discrimination faced by a particular group may mean that no local representative organisations exist, for example religious minorities in theocratic societies. In such cases, there may be an international organisation that represents that group that can best serve as a proxy. While the leadership of the organisation may be members of that group, they will unlikely come from that particular society, making them proxies rather than impacted rightsholders.

Considerations:

- Does the organisation have some form of membership or regular contact with a sufficient number and diversity of individuals? It is important that the organisation has some form of direct contact with its members, and that it is able to speak to the experiences of a broad range of individuals within the community, rather than a narrow group (e.g. an LGBTI organisation should not be considered as representative if, in practice, almost all of its members are young gay men; a group representing religious minorities would not be representative if it only comprises a small number of religious groups).
- Are there multiple organisations representing the same group? If so, they may have different areas of focus. For example, there may be different disability rights organisations that focus on different issues, such as physical accessibility, mental health, or sensory impairments. Speaking to a wide range of local representative organisations will be necessary to ensure that the full range of experiences is captured.

Academics and researchers

There are several reasons why **academics and researchers** (whether from within a particular society or outside) may be useful proxies. Their ability to undertake their work relatively privately may mean that they have been able to make contact with individuals even in repressive societies; and their experience in impartial and objective research will help ensure a high quality of evidence.

Considerations:

- How much experience does the individual or research team have? If their experience is limited to a single short-term project, or on a very specific area, then they may not be able to speak to the broader experiences of a particular group.
- Has the individual or research team used a sufficient degree of rigour in their research to ensure objectivity? The quality of research methodologies employed varies greatly. Academics and researchers who can demonstrate a high degree of rigour, objectivity and avoidance of bias in their research will be able to provide more reliable information.

Family members and carers

For two particular groups—younger people and persons with disabilities—there may be some within the group (particularly very young children and persons with significant mental health challenges) who are not able to articulate their experiences. In such cases, those close to them may be better placed to speak to those experiences and able to identify particular impacts related to the relevant digital project, product or service. In most cases, these will be the individuals' **family members** (likely to be the parents in the case of children, but not always) and **carers** (whether family members or not).

Considerations:

- Is a sufficient diversity of perspectives captured? Neither children nor persons with disabilities are a homogenous group. The experience of a male child from a majority ethnic group will be quite different from that of a female child from an ethnic minority group, for example. It is important that within these groups, a wide range of individuals' family members and carers are consulted, reflecting broader demographics.
- Can the individual still be involved? While individual rightsholders may not always be able to fully articulate their experiences, their family members and carers will only ever have a limited appreciation of the individual's experience. As such, consideration should always be given as to whether the individual can be involved and participate, with support if necessary.
- Is the carer or family member representing the perspectives of the individual? It cannot be taken for granted that a family member or carer necessarily makes the same assessment as the individual would have. Family members could e.g. perceive adverse human rights impacts related to the use of a particular digital product, whereas the individual believes it is highly positive that s/he has access to the product in question.

Practical reasons, such as financial and time constraints or infrastructural challenges, might also impede participation of some individuals and/or groups in a HRIA process. In some circumstances, certain rightsholders might not be willing to participate, in particular if there is existing distrust towards the business and the HRIA is commissioned by the business. **They might also fear repercussions from the government when giving certain statements**, e.g. if a government is procuring surveillance technologies and some rightsholder groups are clearly speaking up against it. Another challenge is when rightsholders or CSOs experience consultation fatigue or have been disappointed about the outcomes of similar processes. Critically, no individual should be coerced to take part in a HRIA against her/his will.

Furthermore, within a rightsholder group there may be conflicting interests. Certain members of the group may be in favour of a digital project, product or service (e.g. because they are employed by the company in question and are dependent on their salary or because they believe that the benefits will outweigh the costs), while other members may oppose the digital project, product or service. There might also be conflicting interests among different rightsholders and groups of rightsholders.

In all cases, the HRIA team should take care to identify any potential conflicting views and limitations, be transparent about them in the assessment process and explain the steps that have been taken to address or overcome them.²⁷

With regard to rightsholder representatives, it should be noted that sometimes it is difficult to identify legitimate representatives of rightsholders.²⁸ An NGO, a member of parliament, or a community leader might claim to represent a certain rightsholder group. However, those persons/organisations might have an interest in a specific digital project going ahead and/or not represent the opinions of the individuals who they claim to represent. **Knowledge of the local context is essential for understanding such dynamics.**

Box 6, below, outlines some further potential challenges for HRIA practitioners in conducting effective stakeholder engagement with rightsholders. The box also offers some suggestions for how these might be addressed.

BOX 6: CHALLENGES FOR HRIA PRACTITIONERS IN CONDUCTING EFFECTIVE STAKEHOLDER ENGAGEMENT WITH RIGHTSHOLDERS

The presence of company representatives in meetings with rightsholders

HRIA practitioners should be independent and have full control over the interview process with rightsholders. As such, they should be able to engage with rightsholders without interference (e.g. from company representatives).

Even if the company representative(s) are not present during the meeting, the HRIA team should be aware of the perceptions of stakeholders. For instance, if a digital rights activist sees the HRIA team arriving to an in-person consultation in a company vehicle, this may be negatively perceived by that rightsholder. If the engagement is virtual, the same might occur if, for example, rightsholders are invited to participate remotely via the company's video conferencing software.

Additionally, having company representatives close by during an in-person consultation may not create a safe space for rightsholders, even if they do not join the meeting. If engagement is virtual, it will similarly be important to introduce everyone on the call, so that rightsholders know whether or not company representatives are listening or are otherwise present.

Finally, if consultations are done either in-person or virtually and if participants do not know whether their responses will remain anonymous or whether they will be made available to company representatives, it may also affect the answers given.

It can, in some circumstances, be an advantage to have company representatives present for certain engagement activities or parts of them, as it allows the representatives to hear directly from rightsholders what their experiences and perceptions are rather than reading it from a report.

This can be invaluable in sensitising company representatives and incentivising them to act on HRIA findings. In the case of ex-ante assessments, when the digital project has not been fully concretised, or the digital products or services not yet been launched, and no impacts have yet occurred, this might be especially important.

Additionally, the presence of company representatives at the beginning of a focus group discussion with a group of potentially impacted rightsholders can be vital to engage stakeholders who suffer consultation fatigue, by demonstrating that the company is committed and willing to listen to rightsholders, as well as clearly communicating the planned follow-up action to the HRIA.

However, it should be acknowledged that in a company-commissioned HRIA, the relation between the assessors and company representatives will inherently be close, given that the HRIA is commissioned by the company, and this proximity could lead to criticism. Specific recommendations to be considered by HRIA practitioners to ensure and demonstrate independence include:

- Agreeing with the company representatives beforehand on the respective roles of the assessment team and the company representatives in stakeholder, particularly rightsholder, engagement activities.

- Informing the rightsholders engaged clearly about who is on the assessment team and who the company representatives are, and explaining their respective roles in the impact assessment process, including sharing contact details.
- Ensuring that the majority of stakeholder engagement activities occur without any company representative present. This will also help to validate the findings.
- Ensuring that communication is secure.

1.3.1 CONSIDERATIONS FOR ENGAGING WITH SPECIFIC RIGHTSHOLDERS

A human rights-based approach to impact assessment **requires that engagement of rightsholders is conducted in a non-discriminatory manner** and that the **prioritisation of especially vulnerable or marginalised individuals and/or groups**—women, older persons, children and youth, minorities and others—is taken into consideration.

In addition to the cross-cutting right and principle of non-discrimination, as flagged above, **there are a number of rightsholder groups who enjoy specific protection under international human rights law, including children, women, migrants and persons with disabilities.** This is based on the recognition that specific individuals may have particular characteristics that warrant heightened attention and protection.

For example, HRIA teams should consider the particular needs and rights of women and girls with regard to the gender digital divide, the fact that children may be exposed to greater risks of business models based on large-scale data collection, or the special accessibility considerations in relation to persons with disabilities.

These protections are also based on a recognition that **certain rightsholders may be subject to systemic and entrenched discrimination in specific contexts.** As such, international human rights standards and principles recognise that there is **a need to ensure not only ‘formal’ equality** (i.e. treating people the same), **but also to take special measures to foster ‘substantive’ equality** (i.e. recognising that equal treatment does not always equate to equal opportunities).

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

- Taking into consideration the particular participation rights that specific rightsholder groups may be entitled to (see Table C), and
- Taking steps to identify and address discrimination, vulnerability and marginalisation in engagement processes.

BOX 7: DEFINING VULNERABILITY, MARGINALISATION AND DISCRIMINATION

- **Vulnerability** of individuals or groups refers to being “at a higher risk of being unable to anticipate, cope with, resist and recover from project, product or service-related risks and/or adverse impacts [...]. Vulnerable individuals or groups may include women, children, the elderly, the poor, ethnic, religious, cultural or linguistic minorities, or indigenous groups.”²⁹
- **Marginalisation** can be defined as “a form of acute and persistent disadvantage rooted in underlying social inequalities.”³⁰ Moreover, “poverty, gender, ethnicity and other characteristics interact to create overlapping and self-reinforcing layers of disadvantage that limit opportunity and hamper social mobility.”³¹ Essentially, marginalisation describes those individuals or groups that are limited or even excluded from certain benefits that others have access to and benefit from. This can include certain rights, opportunities, and resources which are not available to those who are marginalised. Individuals or groups that may be marginalised in certain contexts can include women and girls, minorities, indigenous peoples, rural populations, migrants, refugees and internally displaced people and persons with disabilities. Such exclusion can limit the participation of marginalised individuals in society in terms of political, economic and/or social dimensions.
- **Discrimination**, “should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”³²

‘Vulnerability’ or ‘marginalisation’ is not the same as discrimination. However, **vulnerability can often be caused or exacerbated by discrimination.**

Vulnerability can stem from an individual’s status or characteristics (such as race, colour, sex, language, religion, national or social origin, property, disability, age or other status) or from their circumstances (such as poverty or economic disadvantage, illiteracy or ill health). These vulnerabilities may be reinforced through norms, societal practices or legal barriers.

Vulnerable or marginalised individuals can experience adverse impacts more severely than others—data-driven digital tools may, for example, base automated decisions on existing prejudice and biases, with disproportionate negative impacts on vulnerable groups that are subjects to those biases, such as women and ethnic minorities³³. They may require specific consultation and

mitigation measures to ensure that they do not face adverse impacts in a disproportionate manner. Specific methods of engagement can help in identifying, avoiding, mitigating and remediating such impacts.

See Table B, below, for some examples of factors that may contribute to vulnerability.

TABLE B: EXAMPLES OF FACTORS CONTRIBUTING TO VULNERABILITY	
Factors	Probable implications
Discrimination in access to employment and equal wages	High levels of unemployment and inadequate standard of living
Inaccessibility to or inadequate level of public services or employment	Lower health levels and life expectancy, higher levels of child and maternal mortality, higher rates of unemployment, lower levels of education, less trust in government institutions
Less access to education and higher rates of illiteracy across generations	Low employment skills, less capability to access and participate in political affairs, inadequate standard of living, high levels of social insecurity
Unequal or unfair treatment before the law, and poor law enforcement	Weak rule of law, social insecurity, high crime rates, less trust in government institutions, heightened risk of third party human rights violations, weaker social cohesion, lower human capital. This may have an impact on decision-making capacity and participation.
Poor political representation and low participation in democratic processes	Undemocratic development decision-making, increased inequality, less trust in government and other institutions

Drawing on: UNDP (2010), *“Marginalised Minorities in Development Programming: A UNDP Resource Guide and Toolkit”*, New York: UNDP.

Vulnerable or marginalised individuals or groups may be illiterate, have physical disabilities or not be accustomed to certain modes of engagement (e.g. certain languages, workshop formats, virtual and remote consultation etc.) that

would typically be used in stakeholder engagement. While digital technologies can and should be used to reach more people in HRIA engagement activities, vulnerable and marginalised individuals or groups are less likely to have the capacity to engage in these processes due to e.g. limited digital literacy and a low trust in businesses, governments and institutions.

Local context and human rights experts can play an important role in designing appropriate engagement methods for these individuals and groups, which can include children, women, minorities and workers. It should be noted that engaging with vulnerable or marginalised individuals and groups may require more time and resources, when for example remote consultation is not possible or appropriate, which should be anticipated and taken into consideration in the design of HRIA.

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

TABLE C: ENGAGEMENT WITH SPECIFIC RIGHTSHOLDERS³⁴

Rightsholder group	E.g. discrimination or vulnerability	E.g. engagement considerations	E.g. treaty protections	E.g. tools and resources	E.g. organisations, experts or proxies
Children and young people	<ul style="list-style-type: none"> ● Spread of child sexual abuse materials ● Risks associated with in-game purchasing, and gaming or social media addiction ● Increased privacy concerns for children who do not comprehend potential negative impacts of sharing potentially sensitive personal data ● Increase of cyberbullying for children and teenagers 	<ul style="list-style-type: none"> ● Conduct consultation with children in coordination with child participation experts to facilitate participation respecting ethical standards ● Design the process so it is accessible, inclusive and meaningful for children ● Ensure voluntary participation in child-friendly environment ● Conduct consultations both <u>with</u> and <u>about</u> children and young people ● Consider engagement with parents and caregivers, teachers, community leaders, youth organisations and other with children’s best interests in mind 	<ul style="list-style-type: none"> ● Convention on the Rights of the Child (CRC) 	<ul style="list-style-type: none"> ● United Nations Children’s Fund (UNICEF) (2014), Engaging stakeholders on Children’s Rights: A Tool for Companies, Geneva: UNICEF. ● UNICEF, Children’s rights and information and communication technology ● UNICEF and DIHR, “Children’s Rights in Impact Assessments”, 2013 	<ul style="list-style-type: none"> ● UN Committee on the Rights of the Child (2013), <i>General Comment No.16 on State obligations regarding the impact of the business sector on children’s rights</i> ● Parents/carers ● Professionals in contact with children (e.g., teachers, doctors, health workers, lawyers, child protection and/or social workers) ● Child protection experts
Women and girls	<ul style="list-style-type: none"> ● Often victims of legal, societal or cultural discrimination, 	<ul style="list-style-type: none"> ● Consult women separately in a gender-sensitive manner 	<ul style="list-style-type: none"> ● Convention on the Elimination of All Forms of 	<ul style="list-style-type: none"> ● UN Women ● UN Global Compact, Women’s 	<ul style="list-style-type: none"> ● UN Women ● Women’s rights NGOs (incl. those

TABLE C: ENGAGEMENT WITH SPECIFIC RIGHTSHOLDERS³⁴

	<p>marginalisation and exclusion</p> <ul style="list-style-type: none"> • Women and girls are often disproportionately adversely affected in the context of digital projects, products and services • Disproportionately affected by digital business projects due to lack of availability and access to digital education opportunities for women in many traditional societies • Lesser access to Internet and cell phones and barriers to access in many societies which can limit women's and girls' ability to participate in remote consultation processes • There is a global gender digital divide, which in some regions amount to 70% 	<ul style="list-style-type: none"> • Meaningfully include women HRIA team members • Include HRIA team members with knowledge of the particular rights and experiences of women and girls, particularly in relation to digital projects, products and services • Exclude male team members from certain interviews • Provide safe and comfortable space for interviews • Include particularly vulnerable sub-groups (e.g. female human rights defenders, young girls, trans women etc.) • Consider proactive and innovative approaches to lower the barrier for women to engage (e.g. providing childcare during meetings) 	<p>Discrimination Against Women (CEDAW) + Optional Protocol</p> <ul style="list-style-type: none"> • Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) • Council of Europe, Istanbul Convention on Action against violence against women and domestic violence • Beijing Declaration and Platform for Action • Discrimination based on sex is prohibited under almost every human rights treaty - including the International Covenant on Civil 	<p>Empowerment Principles</p> <ul style="list-style-type: none"> • The gender gap in internet access: using a women-centred method • UNDP and UN Working Group on Business and Human Rights, Gender dimensions of the Guiding Principles on Business and Human Rights • BHRC; Gender, Business & Human Rights • Oxfam, "A Guide to Gender Analysis Frameworks" • European Institute for Gender Equality, "Gender Mainstreaming: Gender Audit" and "Gender Impact Assessment: Gender 	<p>focused on the gender dimension of the digital transition)</p> <ul style="list-style-type: none"> • Women's associations (incl. grass-roots organisations and those specifically focusing on digital transition)
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TABLE C: ENGAGEMENT WITH SPECIFIC RIGHTSHOLDERS³⁴

	<ul style="list-style-type: none"> ● Health and security impacts due to online harassment and sexual intimidation of women are significant, and may increase as access to Internet and smartphones increase, and may lead to offline violence ● Lack of consultation and participation of women and girls related to the gender digital divide 		<p>and Political Rights and the International Covenant on Economic, Social and Cultural Rights</p>	<p>Mainstreaming Toolkit</p> <ul style="list-style-type: none"> ● Council of Europe, “Gender Mainstreaming Toolkit for Co-operation Projects” 	
<p>Indigenous peoples</p>	<ul style="list-style-type: none"> ● The indigenous peoples digital divide reflects that the group has lower levels of connectivity and access to digital technology, which is exacerbated for many by geographical remoteness. ● Indigenous peoples in many countries are often some of the poorest and most vulnerable. ● The expanding information society may 	<ul style="list-style-type: none"> ● Include indigenous experts as HRIA team members, or individuals with knowledge of indigenous peoples’ rights and local context ● Respect indigenous peoples’ representative institutions, be sure to understand the cultural and organisational characteristics of indigenous peoples and hierarchy of authorities in order to engage with the 	<ul style="list-style-type: none"> ● UN Declaration on the Rights of Indigenous Peoples (UNDRIP) ● ILO Convention No. 169 ● Indigenous peoples’ rights under customary law (e.g. intellectual property rights and rights of indigenous peoples) 	<ul style="list-style-type: none"> ● International Work Group for Indigenous Affairs ● International Work Group for Indigenous Affairs (IWGIA) (2014), Interpreting the UN Guiding Principles for Indigenous 	<ul style="list-style-type: none"> ● UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples ● Regional, national and local indigenous peoples’ organisations

TABLE C: ENGAGEMENT WITH SPECIFIC RIGHTSHOLDERS³⁴

	<p>have negative impacts on indigenous heritage and cultural legacy³⁵</p> <ul style="list-style-type: none"> Traditional forms of conflict resolution can be ‘sidestepped’ by digital technologies, such as social media³⁶, thereby causing harm to the community Development of racism and discrimination in the cyberspace, especially on social media 	<p>right people in the right order and manner</p> <ul style="list-style-type: none"> Use appropriate language for the context For projects targeting or otherwise impacting indigenous peoples, ensure that para and per-indigenous methodologies are the basis for their development, when possible There is a risk of imposing unwanted processes or structures upon indigenous recipients Requirements for consultation, participation and consent 		<p>Peoples, Copenhagen: IWGIA.</p> <ul style="list-style-type: none"> Borrero, “Indigenous Peoples and the Information Society: Emerging uses of ICTs”, 2016 	<p>International, regional and local support organisations working on indigenous peoples’ rights, e.g.:</p> <ul style="list-style-type: none"> International Working Group for Indigenous Affairs (IWGIA) Minority Rights Group International Cultural Survival
<p>Workers and trade unions</p>	<ul style="list-style-type: none"> Workplace monitoring may impact on the rights to privacy and the just and favourable conditions of work Workplace surveillance may also impact negatively on the freedom of 	<ul style="list-style-type: none"> Make sure to meet different categories of workers and trade union leaders (e.g. by gender, position, unionised vs. non-unionised, etc.) Include ‘informal workers’ in HRIA 	<ul style="list-style-type: none"> ILO Core Conventions (Nos. 87, 98, 39, 105, 138, 182, 100, 111) 	<ul style="list-style-type: none"> Business and Human Rights Resource Centre - Labour Rights ILO Code of Practice: Protection of 	<ul style="list-style-type: none"> UN Special Rapporteur on the rights to freedom of peaceful assembly and of association International Labour Organisation

TABLE C: ENGAGEMENT WITH SPECIFIC RIGHTSHOLDERS³⁴

	<p>association, increasing the vulnerability of workers</p> <ul style="list-style-type: none"> Workers may be discriminated against in recruitment, promotion, and other forms of decision-making, due to flawed 'algorithmic management' Increased vulnerability of migrant workers and undocumented workers Discrimination towards workers who try to organise themselves and towards trade union members 	<ul style="list-style-type: none"> Fix a time that suits their work schedule Consider interviewing workers outside of company premises and outside working hours 		<p>workers' personal data</p>	<ul style="list-style-type: none"> Trade union confederations Labour rights groups
<p>Minorities (national, racial, ethnic, linguistic, religious or political)</p>	<ul style="list-style-type: none"> Often victims of legal, societal or cultural discrimination and exclusion Often vulnerable to violence and harassment 	<ul style="list-style-type: none"> Minorities may speak another language than the national language; engagement with minority groups should be conducted in a language they understand and feel most comfortable communicating in 	<ul style="list-style-type: none"> International Covenant on Civil and Political Rights (Article 27) International Convention on the Elimination of All Forms of Racial Discrimination 	<ul style="list-style-type: none"> UNDP Marginalised Minorities in Development Programming: A UNDP Resource Guide and Toolkit 	<ul style="list-style-type: none"> UN Special Rapporteur on minority issues NGOs such as Minority Rights Group International or Society for Threatened Peoples International

TABLE C: ENGAGEMENT WITH SPECIFIC RIGHTSHOLDERS³⁴

		<ul style="list-style-type: none"> ● Engagement should be culturally appropriate ● Given the different characteristics of specific minority groups, it can be useful to include an anthropologist in the team who has expertise in engaging with the minority group in question ● Ensure wide participation from within the minority community during engagement rather than only dealing with select community leaders who may not represent the community as a whole ● Include HRIA team members with knowledge of relevant minorities' situation within the national and/or local context 	<ul style="list-style-type: none"> ● United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 		<ul style="list-style-type: none"> ● UN independent expert on minority issues ● NGOs focusing on specific minority groups ● Associations of people from specific minorities
Persons with disabilities	<ul style="list-style-type: none"> ● Often victims of legal, societal or cultural discrimination 	<ul style="list-style-type: none"> ● When engaging with persons with particular physical or psychological 	<ul style="list-style-type: none"> ● Convention on the Rights of Persons with Disabilities 	<ul style="list-style-type: none"> ● OHCHR and the rights of persons with disabilities 	<ul style="list-style-type: none"> ● UN Special Rapporteur on the

TABLE C: ENGAGEMENT WITH SPECIFIC RIGHTSHOLDERS³⁴

	<ul style="list-style-type: none"> • Often face a lack of accessibility to digital products and services • Engagement can be challenging as persons with disabilities may be ‘invisible’ due to social taboos • Their physical and/or psychological conditions may require specific engagement methods 	<p>disabilities, ensure that the location for meetings and/or the way of engaging is accessible and measures are taken to make engagement meaningful (e.g. ensuring sign language interpretation, information available in braille)</p>		<ul style="list-style-type: none"> • AI Now, “Disability, Bias and AI” 	<p>rights of persons with disabilities</p> <ul style="list-style-type: none"> • NGOs such as International Disability Alliance and Handicap International • UN Committee on the rights of persons with disabilities • ILO Global Business and Disability Network • Caregivers
<p>Older persons</p>	<ul style="list-style-type: none"> • Their physical and/or psychological conditions may require specific engagement methods • Lower levels of digital literacy among older persons may require capacity-building activities as part of the engagement activities 	<ul style="list-style-type: none"> • When engaging with older persons, ensure that the location for the meetings and mode of engaging is accessible, bearing in mind the greater likelihood of particular needs (e.g. wheelchair-friendly access and simple and user-friendly digital solutions) 	<ul style="list-style-type: none"> • United Nations Principles for Older Persons 	<ul style="list-style-type: none"> • UN OHCHR- Human rights of older persons • Independent Expert on the enjoyment of all human rights by older persons 	<ul style="list-style-type: none"> • NGOs such as HelpAge International • Caregivers • Older persons associations

TABLE C: ENGAGEMENT WITH SPECIFIC RIGHTSHOLDERS³⁴

<p>Migrants, refugees, stateless and displaced persons</p>	<ul style="list-style-type: none"> ● Insecure legal status ● Often at risk of abuse and discrimination ● Due to their status, they might face difficulties in accessing basic services ● The access to digital platform is often the only remaining link with relatives and country of origins ● Use of digital platforms for storing of important documents 	<ul style="list-style-type: none"> ● Due to their insecure legal status, individuals belonging to this rightsholder group, especially those without a residence permit, may be hesitant to speak openly, fearing that they may face repercussions; it is important to provide a safe space when engaging with migrants, refugees, stateless and/or displaced persons ● While for engagement with rightsholders is in general imperative to keep identities of interviewees confidential, for this group confidentiality requires extra special attention ● Consider remote or virtual engagement via encrypted communication channels to protect their safety and privacy 	<ul style="list-style-type: none"> ● International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 18 December 1990 ● ILO, Migration for Employment Convention (Revised), 1949 ● ILO, Recommendation No. 86 concerning Migration for Employment (Revised 1949) ● ILO, Convention No. 143 concerning Migrant Workers ● ILO, Recommendation No 151 concerning Migrant Workers (1975) 	<ul style="list-style-type: none"> ● UNHCR – The UN Refugee Agency ● OHCHR, Migration and Human Rights 	<ul style="list-style-type: none"> ● UN Special Rapporteur on the human rights of migrants ● NGOs working on migrant issues such as Migrants Rights International, Internal Displacement Monitoring Centre, ● Office of the UN High Commissioner for Refugees (UNHCR) - the UN Refugee Agency ● UN Office for the Coordination of Humanitarian Affairs (OCHA) ● International Organization for Migration (IOM) ● International Committee of the Red Cross (ICRC)
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TABLE C: ENGAGEMENT WITH SPECIFIC RIGHTSHOLDERS³⁴

			<ul style="list-style-type: none"> • Convention relating to the Status of Refugees 		<ul style="list-style-type: none"> • UN Committee on Migrant Workers
<p>Lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals</p>	<ul style="list-style-type: none"> • Often victims of legal, societal or cultural discrimination and exclusion • Often vulnerable to violence and harassment both online and offline • Particularly vulnerable to misuse of personal data due to the hidden nature of sexual orientation and gender identity as personal characteristics 	<ul style="list-style-type: none"> • Assessors should be appropriately trained on LGBTI issues when engaging with them • If the HRIA is conducted in a context where it would be dangerous for LGBTI individuals to engage, extra caution and measures to protect their safety must be adopted • Ensure that LGBTI people feel comfortable to provide information by ensuring that the collected data remains confidential • Consider the possibility of anonymised forms of engagement • When designing engagement plans ensure that the communities 	<ul style="list-style-type: none"> • The Yogyakarta Principles 	<ul style="list-style-type: none"> • UN OHCHR - Combating discrimination based on sexual orientation and gender identity • Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Data collection and management as a means to create heightened 	<ul style="list-style-type: none"> • UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity • UN Independent Expert on sexual orientation and gender identity • Regional, national and local LGBTI organisations, • International NGOs such as Amnesty International, Human Rights Watch • The International Gay and Lesbian Human Rights Commission

TABLE C: ENGAGEMENT WITH SPECIFIC RIGHTSHOLDERS³⁴

		concerned are represented in their full diversity		awareness of violence and discrimination based on sexual orientation and gender identity	<ul style="list-style-type: none">• ILGA World – The International Lesbian, Gay, Bisexual, Trans and Intersex Association
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1.4 ENGAGEMENT WITH DUTY-BEARERS

The human rights framework places particular emphasis on accountability, including through the recognition of rightsholders’ rights and the corresponding obligations of duty-bearers to uphold these rights. It is therefore **important that duty-bearers and their obligations are identified in HRIA stakeholder analysis and engagement**. This includes recognising and differentiating between the expectation that businesses respect human rights, and state duty-bearers’ obligations to respect, protect and fulfil human rights.

Table D, below, provides an illustrative list of the different types of duty-bearers that should be engaged in HRIA, including points for consideration when engaging with them.

TABLE D: EXAMPLES OF DUTY-BEARERS AND ENGAGEMENT CONSIDERATIONS IN HRIA	
Duty-bearers	Considerations for engagement
<p>Host-government actors</p> <p>These could include national and municipal authorities, local government representatives of specific government agencies or departments, policymakers and regulators.</p>	<ul style="list-style-type: none"> ● In certain contexts, negative impacts arise through relationships with government actors. Therefore, it is important to identify such relationships. For example, the company in question could be developing a digital product or service for a government or state agency, such as an e-health platform or an algorithm that is supposed to help with needs assessment of social security; and public security forces may use a digital product or service (e.g. digital surveillance technology) in discriminatory ways. ● Engagement with host-government actors can take place at various stages in the impact assessment and can have advantages as well as disadvantages. ● Government actors and state agencies can be useful to consult as they have access to documents, contracts, plans, relevant statistics, which may be relevant for the impact assessment. ● Access to government actors might be difficult, especially when the government is not favourable on the topic of human rights. In such cases, it can be helpful to ask UN agencies like the ILO, UNDP,

TABLE D: EXAMPLES OF DUTY-BEARERS AND ENGAGEMENT CONSIDERATIONS IN HRIA

Duty-bearers	Considerations for engagement
	<p>OHCHR and UNICEF to facilitate contact in order to get access.</p>
<p>Company representatives</p> <p>These include company representatives at the head office and in focus countries, including top management, middle-management, various business unit managers, department representatives and subject matter experts.</p>	<ul style="list-style-type: none"> • Dialogue with internal stakeholders from the company can provide an essential understanding of the nature of the digital project, product or service, which can help the HRIA team understand and potentially predict human rights consequences. • Engagement with internal company staff is also an opportunity to gain buy-in for changes that may be needed as an outcome of the HRIA. HRIA teams should make sure to include staff members from different departments and provide anonymity, where relevant. • Local management should be involved to ensure ownership, capacity and resources for follow-up at the project- or country-level.
<p>Business partners, including suppliers and subcontractors</p>	<ul style="list-style-type: none"> • It is important to identify any business partners involved in or linked to the digital project, product or service through business relationships, as well as the key people within these businesses, in order to understand how they might contribute to or be directly linked to human rights impacts. HRIA teams should also consider business partners' processes for identifying and managing impacts. • Engagement with business partners may be particularly relevant when e.g. a company developing a digital product needs to assess the potential impacts related to the use or application of the product or service. • Similarly, suppliers and contractors hired by the business to perform certain jobs (e.g. develop an algorithm), should also be engaged.

TABLE D: EXAMPLES OF DUTY-BEARERS AND ENGAGEMENT CONSIDERATIONS IN HRIA

Duty-bearers	Considerations for engagement
<p>Investors and shareholders³⁷</p>	<ul style="list-style-type: none"> • Investors and shareholders in companies should also be considered duty-bearers.³⁸ • Investors have the responsibility to respect human rights and undertake appropriate human rights due diligence. The UN Guiding Principles and the OECD Guidelines for Multinational Enterprises both consider investors as entities that can contribute or be directly linked to adverse impacts of companies they invest in. • Investors and shareholders have an interest in the human rights track record of the businesses they invest in. Therefore, it may be important to consult them and hear their views. They may also have gathered data with regard to the digital project, product or service in question, which can be useful information for the assessment team.

Box 8, below, elaborates on engagement with company representatives and engagement with host-government representatives in HRIA.

BOX 8: ENGAGING WITH COMPANY REPRESENTATIVES AND GOVERNMENT ACTORS

Engaging with company representatives

Company representatives should be consulted at the headquarters, as well as at the local level, as relevant. When conducting stakeholder interviews in a particular region or country, it can be beneficial to consult with relevant company representatives early in the process in order to get a better understanding of the company’s plans and the country context. This may include questions such as:

- Who are the intended users?
- Who is developing/buying the digital product or services?
- What is the intended purpose of the project, product or service?
- What have happened to similar ventures in the country in the past?

- Have any prior assessments of negative impacts been made (and published)?
- Have the impacts of the same or similar product or service been assessed elsewhere?
- What are your main concerns with launching this product or service, with regards to impacts on individuals?

Asking such questions may be helpful for predicting potential impacts before speaking to affected rightsholders and other stakeholders from the country in question. On the other hand, it can also be beneficial to engage with company representatives after having consulted with affected rightsholders. In such scenarios, the assessment team is in the position to ask more targeted questions related to specific priority issues based on the findings from interviews with rightsholders. It should be noted that these options are not mutually exclusive, and it might, for example, be appropriate to first interview company representatives, followed by rightsholder interviews and a final feedback session with company representatives where rightsholder concerns are raised.

As opinions can vary within a company, it is also important to meet with people from various departments, business units and functions. The person in charge of business development will have a different perspective from the sustainability manager, while the technical and engineering staff may have yet another view. The assessment team should provide company representatives with the opportunity to speak privately so that they may express their opinion freely, without fear of retaliation.

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

Engaging with government actors

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

- HRIA practitioners must carefully consider how the impact assessment and its purpose are presented to government authorities. In some countries, local permits or local visas are required to enter as a foreigner.

- In some countries, local permits or local visas are required to enter as a foreigner. The host-government may not appreciate foreign assessors traveling to certain high-risk areas, which could lead to denial of local visa permits. In such cases, the possibilities of virtual engagement should be assessed.
- Engagement with national and local government entities also takes place at other stages of the assessment. Government officers may possess specific subject matter expertise and other relevant information. Government officers also have access to specific regulations and policies, municipal development plans (in relation to e.g. smart cities) and so forth.
- In certain contexts and cultures, it is necessary to meet with national-level government actors or local government officers as part of an impact assessment, as a matter of courtesy.

1.5 ENGAGEMENT WITH OTHER RELEVANT PARTIES

In addition to the above rightsholders and duty-bearers, there are several other relevant parties who can inform HRIA assessment teams, and as such, should be engaged in the process. **These stakeholders may include individuals whose rights are not impacted by the digital product, project, or service, but who may nevertheless usefully inform the HRIA** (e.g. representatives from civil society, children’s safety groups or journalists) and organisations that hold relevant and important information for the HRIA. **It is particularly important to engage human rights actors as part of the HRIA.** These could include: NGOs and CSOs working on specific human rights issues (such as freedom of expression, right to privacy, non-discrimination, digital divide, ICT for development); intergovernmental agencies such as the Office of the High Commissioner for Human Rights (OHCHR) in the specific country, as well as other agencies working on specific rights issues (e.g. UN Women on women’s rights or UNICEF on children’s rights); National Human Rights Institutions (NHRIs)³⁹; and independent human rights experts. Involving such actors in HRIA can help to ensure that essential human rights information and analysis from different perspectives are included in the assessment. It should be noted that some CSOs and other organisations might not consider themselves as human rights actors, while they work on issues that would be considered to be related to human rights. This may include: community organisers, religious leaders and media groups.

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

TABLE E: EXAMPLES OF OTHER RELEVANT PARTIES AND ENGAGEMENT CONSIDERATIONS IN HRIA

Stakeholder group	Considerations for engagement
<p>Civil society organisations (CSOs)</p> <p>These can include international and local non-governmental organisations (NGOs), community-based organisations, faith-based organisations, trade unions, etc.</p>	<ul style="list-style-type: none"> ● Engaging with CSOs can help to understand the legal and human rights framework and landscape relevant for the project, product or service. ● They can provide insights on specific human rights topics (e.g. online hate speech, internet shutdowns, use of algorithms in public service delivery), or the situation and challenges that particular communities and groups face. ● They can facilitate contact with potentially affected rightsholders. ● CSOs can sometimes act as proxies for certain groups of rightsholders (see Box 5 above).
<p>International organisations</p> <p>These can include UN agencies such as UN Women, United Nations Development Programme (UNDP) and UNICEF. Other relevant organisations include regional bodies such as the European Union, African Union and Association of Southeast Asian Nations, as well as development banks, such as the World Bank.</p>	<ul style="list-style-type: none"> ● International organisations can provide insights on specific topics relevant for the impact assessment (e.g. UNICEF on children’s rights or UN Women on women’s rights). ● The ILO might be useful for helping to connect with local governments and/or trade unions in the case of the ILO tripartite structure (e.g. in relation to potential impacts related to workplace monitoring and ‘manual’ content moderation). ● These organisations might be able to provide data in the scoping phase and for baseline development, as well as facilitate contact with local CSOs.
<p>Home-government actors</p>	<ul style="list-style-type: none"> ● Embassies of the home-country of the company in question can provide useful

TABLE E: EXAMPLES OF OTHER RELEVANT PARTIES AND ENGAGEMENT CONSIDERATIONS IN HRIA

Stakeholder group	Considerations for engagement
<p>These could include home-government embassies in the host-country.</p>	<p>information, as they may e.g. have existing networks for engagement.</p>
<p>National human rights institutions (NHRIs)</p> <p>An NHRI is an autonomous body established by the State with a constitutional or legislative mandate to promote and protect human rights. Common institutional forms include commissions, advisory institutes, ombudsman offices and public defenders’ offices. NHRIs have different accreditation levels based on their adherence to the Paris Principles which include independence of government.⁴⁰</p>	<ul style="list-style-type: none"> ● The NHRI of the country of operation may provide valuable information on the general human rights situation in the country, as well as on specific regions, sectors or potentially impacted rightsholder groups, vulnerable groups in particular. ● NHRIs may also be able to provide support in identifying and getting in touch with affected rightsholders, in particular vulnerable or marginalised individuals and groups.
<p>Experts and journalists</p> <p>These could include subject matter experts, including academics and journalists versed on specific human rights issues, as well as experts engaged in the business sector or technical issues.</p>	<ul style="list-style-type: none"> ● Engaging with experts can help provide insights on specific topics relevant to the sector, country or assessment in general (e.g., cybersecurity experts, data protection and privacy experts, experts on internet freedom). ● Journalists can serve as an important source of information on issues related to the digital project, product or service in question. They can also be helpful in identifying other stakeholders. When engaging with journalists, clear agreements have to be made between the assessment

TABLE E: EXAMPLES OF OTHER RELEVANT PARTIES AND ENGAGEMENT CONSIDERATIONS IN HRIA

Stakeholder group	Considerations for engagement
	<p>team and the journalist on the purpose of the engagement (e.g. whether the journalist may publish something, or whether they are only being consulted for information gathering purposes).</p>
<p>Industry These include industry peers, competitors, and industry associations.</p>	<ul style="list-style-type: none"> ● Other companies in the sector and industry associations can be consulted in order to better understand the sector, as well as human rights issues associated with the sector in the relevant country or region.⁴¹ ● It is worth mentioning sector-wide impact assessments (SWIA), which look at the impacts of a sector as a whole rather than the impacts of one company. Such assessment reports can be a useful reference for a project-level HRIA (see Introduction section for more on SWIAs). ● In order to have a bigger impact in mitigating systemic impacts, collective action by the sector may be necessary. Therefore, it is important to involve industry peers at an early stage. ● Industry associations sometimes also provide detailed guidance and good practices.

1.6 VIRTUAL AND REMOTE STAKEHOLDER ENGAGEMENT

In circumstances where direct in-person engagement is difficult or not possible, **it might, however, be possible to engage virtually instead.**

BOX 9: VIRTUAL AND REMOTE STAKEHOLDER ENGAGEMENT

While stakeholder engagement and consultation for a HRIA through in-person meetings might be important, and sometimes necessary, in order to obtain

high quality data, there are also **a lot of engagement that can be done virtually and remotely**. Consultations, meetings, surveys and interviews with a wide range of stakeholders can be done virtually, and in some cases it may even be preferred by some rightsholders and other stakeholder groups since it may allow for encrypted communication, making it safer for them to participate.

By conducting virtual and remote stakeholder engagement the HRIA team may also be **able to engage with stakeholders from a wider geographic area than what would otherwise have been possible**. Further, virtual engagement can be a better option than in-person consultations that are held far away from the stakeholders in question, rendering them inaccessible due to the cost and time related to travelling to the consultation. A virtual meeting may therefore, in some cases, be more accessible.

Virtual stakeholder engagement might work particularly well with well-established and well-functioning advocacy groups and other CSOs, who are used to speaking out on issues related to the groups they represent as well as to engage in similar processes via the internet. **It might, however, work less well with grassroots organisations that conduct much of their work on the ground, potentially in areas with poor internet connection. It is likely to be even less of an option for rightsholders from vulnerable and marginalised communities.** It may also be of limited use in cases where there is a lack of trust in relation to the specific company in question, the overall sector or general distrust within society.

In sum, **while virtual engagement can be a necessary and important part of stakeholder engagement, it may not help with the trust-building and high-quality engagement that in-person engagement can.**

Considerations:

- Are the relevant stakeholders interested and willing to participate in virtual and remote consultation? This should be the first question, since meaningful consultation cannot take place in case the stakeholders do not want to participate.
- Have the (potential) risks with virtual engagement been duly considered? For example, how are workers selected for interviews? How does the HRIA team know that the interviewees are who they say they are? How would the HRIA team know that there is no manager present in the room during the virtual engagement?
- How will the information gathered during a virtual engagement be recorded and/or kept safe and secure? Is the communication end-to-end encrypted? How can be ensured that no spyware has been installed on

either end of the communication? How is the data from the engagement later used on individual computers?

- Do the relevant stakeholders have stable Internet connection and the appropriate hardware to be able to participate remotely?
- Do the stakeholders have access to the appropriate software and platforms? If access to the Internet or the virtual platforms and digital tools themselves is limited, it will be difficult, if not impossible, to conduct virtual stakeholder engagement.
- Do the stakeholders have sufficient capacity to participate remotely? This concerns both the capacity to engage via the virtual engagement platforms, but also whether the stakeholders have sufficient knowledge of the digital project, product or service and its use or application, in order to be able to articulate the concerns about corresponding impacts.
- Importantly, what form of virtual engagement would the specific stakeholders prefer? Simply because the stakeholders have Internet access and smartphones, and the capacity to engage, it does not mean that they will engage through all platforms, or engage remotely at all.
- Finally, who are the stakeholders that are more challenging to engage with virtually given these considerations? Those stakeholders, often direct rightsholders, will require other forms of engagement, including in-person engagement.

END NOTES

¹ Ibid.

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

³ OECD (2018), *OECD Due Diligence Guidance for Responsible Business Conduct*; and, Shift, Oxfam and Global Compact Network Netherlands (2016), *Doing Business with Respect for Human Rights: A Guidance Tool for Companies*.

⁴ Ibid.

⁵ See in particular: The UN Committee on Economic, Social and Cultural Rights, General Comments No. 4 and 7 on the right to housing; General Comment No. 14 on the right to health; and General Comment No.15 on the right to water.

⁶ See in particular: UN Special Rapporteur on Freedom of Expression's report (A/73/348) on Artificial Intelligence; and Report of the Secretary-General to the Human Rights Council (2020), *Question of the realization of economic, social and cultural rights in all countries: the role of new technologies for the realization of economic, social and cultural rights*, A/HRC/43/29.

⁷ Permanent Forum on Indigenous Issues (2004), *Report of the Workshop on Data Collection and Disaggregation for Indigenous Peoples*, E/C.19/2004/2.

⁸ For more details, see DIHR (2013), *The Right to Public Participation: A Human Rights Law Update*, Issue Paper, Copenhagen: Danish Institute for Human Rights.

⁹ See e.g. Committee on the Elimination of Discrimination Against Women, *General Recommendation 23*.

¹⁰ UN Guiding Principle 18 and related commentary.

¹¹ OECD (2011), *OECD Guidelines for Multinational Enterprises*, Paris: OECD Publishing, Part I, Chapter II General Policies, para A.14.

¹² OECD (2018), *OECD Due Diligence Guidance for Responsible Business Conduct*: <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>

¹³ For more on the empowerment of rightsholders, see: Report of the Secretary-General to the Human Rights Council (2020), *Question of the realization of economic, social and cultural rights in all countries: the role of new technologies for the realization of economic, social and cultural rights*, A/HRC/43/29.

¹⁴ Rights & Democracy (2011), *Getting it Right: Human Rights Impact Assessment Guide*: <http://hria.equalit.ie/en/index.html> [Accessed July 31, 2020].

- ¹⁵ See e.g. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/73/348, para. 68.
- ¹⁶ BSR & Center for Democracy and Technology (CDT), *“Legitimate and Meaningful: Stakeholder Engagement in Human Rights Due Diligence: Challenges and Solutions for ICT Companies”*: https://www.bsr.org/reports/BSR_Rights_Holder_Engagement.pdf
- ¹⁷ BSR & Center for Democracy and Technology (CDT), *“Legitimate and Meaningful: Stakeholder Engagement in Human Rights Due Diligence: Challenges and Solutions for ICT Companies”*: https://www.bsr.org/reports/BSR_Rights_Holder_Engagement.pdf
- ¹⁸ GIIRS Ratings and Analytics for impact investing, *“GIIRS Emerging Market Assessment Resource Guide: Stakeholder Engagement”*, p.3.
- ¹⁹ Shift (2013), *“Bringing a Human Rights Lens to Stakeholder Engagement”*, Shift Workshop Report No.3, New York: Shift, p.6.
- ²⁰ Rights & Democracy (2011), *“Getting it Right: Human Rights Impact Assessment Guide”*: <http://hria.equalit.ie/en/index.html> [Accessed July 1, 2020].
- ²¹ BSR & Center for Democracy and Technology (CDT), *“Legitimate and Meaningful: Stakeholder Engagement in Human Rights Due Diligence: Challenges and Solutions for ICT Companies”*: https://www.bsr.org/reports/BSR_Rights_Holder_Engagement.pdf; DIHR and IPIECA (2013), *“Integrating human rights into environmental, social and health impact assessments: A practical guide for the oil and gas industry”*, IPIECA and DIHR.
- ²² For more, see: UNICEF and DIHR (2013), *“Children’s rights in impact assessments”*; and UNDP and UN Working Group on Business and Human Rights (2019), *“Gender dimensions of the Guiding Principles on Business and Human Rights”*.
- ²³ In this version of the Guidance we are not explicitly including workers in the gig economy, which may be severely impacted by business models of digital platforms facilitating such work and should thus also be considered by companies as they assess their human rights impacts. For more, see e.g. Business & Human Rights Resource Centre (March 2019), *“The Future of Work: Litigating Labour Relationships in the Gig Economy”*, Corporate Legal Accountability Annual Briefing: https://media.business-humanrights.org/media/documents/files/documents/CLA_Annual_Briefing-FINAL.pdf [Accessed Nov 23, 2020].
- ²⁴ See for example: Reuters (October 10, 2018), *“Amazon scraps secret AI recruiting tool that showed bias against women”*: <https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G> [Accessed July 15, 2020].
- ²⁵ See e.g. iXtenso (June 29, 2017), *“In-store tracking: customer buying behavior analysis ever more precise ... but keep it anonymous and compliant with data protection legislation”*.

²⁶ See e.g. UNICEF (2019), *“Child rights and online gaming: opportunities & challenges for children and the industry”*, Discussion paper series: Children’s rights and business in a digital work: https://www.unicef-irc.org/files/upload/documents/UNICEF_CRBDigitalWorldSeriesOnline_Gaming.pdf [Accessed July 15, 2020].

²⁷ Ibid.

²⁸ See commentary to UN Guiding Principle 18, which clarifies that in situations when it is not possible to engage directly with potentially affected stakeholders, “business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society”.

²⁹ European Investment Bank (2013), *“Environmental and Social Handbook”*, Volume I: EIB Environmental and Social Standards, Standard 7: Rights and Interests of Vulnerable Groups, Luxembourg: European Investment Bank.

³⁰ UNESCO (2010), *“EFA Global Monitoring Report 2010: Reaching the marginalized”*, UNESCO and Oxford University Press, p.135.

³¹ Ibid, p.136.

³² Human Rights Committee (1989), *“CCPR General Comment 18 on Non-discrimination”*, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.1 (1994), para. 6.

³³ See Human Rights Council (2020), *“Question of the realization of economic, social and cultural rights in all countries: the role of new technologies for the realization of economic, social and cultural rights”*, A/HRC/43/29.

³⁴ Adapted from The Global Compact Network Germany and TwentyFifty Ltd. (2014), *“Stakeholder Engagement in Human Rights Due Diligence: A Business Guide”*, The Global Compact Network Germany and TwentyFifty Ltd., pp. 36-38.

³⁵ Borrero (2013), *“Innovation and technology for indigenous peoples”*.

³⁶ Rice et.al. (2016), *“Social media and digital technology use among indigenous young people in Australia: a literature review”*, *Int J Equity Health*.

³⁷ For more on investor responsibilities, see: Investor Alliance for Human Rights, *“Engaging the ICT Sector on Human Rights”*: <https://investorsforhumanrights.org/ict-salient-issue-briefings-investors> [Accessed July 2, 2020].

³⁸ B-Tech Project (2020), *“A B-Tech Foundational Paper: Addressing Business Model Related Human Rights Risks”*: <https://www.ohchr.org/Documents/Issues/Business/B-Tech/taking-action-address-human-rights-risks.pdf> [Accessed October 29, 2020].

³⁹ For more on NHRI’s work on digital tech and human rights, see: Australian Human Rights Commission, *“Human rights & technology”*: <https://tech.humanrights.gov.au/> [Accessed July 2,

2020]; and Ebert, Busch, Wettstein (2020), *“Business and human rights in the data economy: A mapping and research study”*, German Institute for Human Rights.

⁴⁰ It can be relevant to assess the independence of the NHRI prior to the engagement. This can partly be assessed through the Global Alliance of National Human Rights Institutions (GANHRI) accreditation system, see: <https://ganhri.org/membership/> [Accessed July 2, 2020].

⁴¹ Though it is a multi-stakeholder platform, rather than an industry association, the Global Network Initiative could be engaged in order to engage with peer companies. See <https://globalnetworkinitiative.org/> [Accessed July 2, 2020].

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