

A large, dimly lit garment factory with many workers at sewing machines. The workers are seen from behind, focused on their tasks. The room is filled with rows of sewing machines and workers, creating a sense of a busy industrial environment. The lighting is soft and even, highlighting the repetitive nature of the work.

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PHASE 1: PLANNING AND SCOPING

HUMAN RIGHTS
IMPACT
ASSESSMENT
GUIDANCE AND
TOOLBOX

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PHASE 1: PLANNING AND SCOPING

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In this document you will find the Guidance text for Phase 1: Planning and Scoping.

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



What Happens in Phase 1?

Good planning and scoping will go a long way to ensuring that a HRIA is effectively conducted and that it achieves the desired results.

The purpose of scoping is to define the parameters for the assessment by considering: (i) the type of business project or activities; (ii) the human rights context; and (iii) who the relevant stakeholders are.

This information is then used to inform the development of the terms of reference (TOR), a written document that presents the scope and purpose of the HRIA. A well-constructed TOR can be critical for ensuring that the subsequent assessment is conducted according to the expected standards and principles.

The company and practitioners then build the HRIA team, which should be independent from the company in order to ensure legitimacy.

Scoping and TOR should always provide some flexibility to allow increased time and attention to topics and issues that are most relevant, as well as inclusion of unanticipated human rights impacts. While in the scoping phase most information is collected through desktop research, a short and targeted scoping trip by the assessment team to the assessment site(s) to gain an initial on-the-ground overview can be extremely beneficial. It should be included if appropriate based on the complexity of the HRIA context and the scale of the assessment.



Key Questions Addressed in This Section

- What kind of information is necessary for scoping of the business project or activities, human rights context and relevant stakeholders?
- Who should be on the assessment team for a HRIA?
- What should be included in the terms of reference for a HRIA?

1.1 SCOPING FOR HRIA

The purpose of scoping is to define the parameters for the HRIA through gathering preliminary information on the area of impact of the business project or activities. HRIA scoping should include consideration of the:

- Business project or activities
- Human rights context; and
- Relevant stakeholders for the HRIA.

Most of the information gathered as part of the scoping will be found through desktop research. However, depending on the context of the business project or activities, it may be desirable to undertake preliminary field research as part of the scoping. For example, a three-to-five day visit to the operations can provide an on-the-ground introduction to the business operations and human rights context. This visit may include a select set of interviews with key stakeholders.

This information is then used to inform the development of the terms of reference (TOR) for the assessment, baseline data collection and subsequent impact analysis. Scoping and TOR should always provide some flexibility to allow increased time and attention to topics and issues that are most relevant, as well as inclusion of unanticipated human rights impacts.

Sufficient time should be allotted after scoping to allow the HRIA team to make best use of the information gathered and plan strategies for subsequent fieldwork and data collection.



Figure 1.a, below, provides an overview of the areas for consideration for the scoping process. In the [Scoping Practitioner Supplement](#), you can find example questions and resources for the scoping of the business project or activities and the scoping of the human rights context.

In section B.2 of [Stakeholder Engagement](#) and section 1.4 of the [Stakeholder Engagement Practitioner Supplement](#), further information is provided on the relevant stakeholders to include in the HRIA.



Figure 1.a: Scoping of the business project or activities, scoping of the human rights context and preliminary identification of relevant stakeholders



1.1.1 SCOPING OF THE BUSINESS PROJECT OR ACTIVITIES

In the scoping phase, some initial considerations and characteristics are identified which the HRIA team will investigate and verify throughout the HRIA process. The UN Guiding Principles establish corporate responsibility for human rights impacts based on “the company’s web of activities and relationships”.¹

Scoping of the business project or activities will largely focus on impacts that the business **causes, contributes to** or is **directly linked to**. (More information on categorising impacts is provided in [Phase 3](#).) The UN Guiding Principles suggest

assessing both actual and potential impacts, with special consideration to severity of the impact.

Identifying the geographical, environmental, and social characteristics of the project or activity is key to the scoping process. For example, human rights impacts are not necessarily defined by geographical boundaries. If a company is polluting a river, a community located twenty miles downstream may be more adversely impacted than a community located three miles upstream.

Furthermore, HRIA considers some areas of business activity that are not commonly addressed in SIA, EIA or ESHIA, such as: inclusion of the consideration of the labour rights of employees, workers and contractors; security and human rights related issues, including impacts on women; and human rights impacts associated with revenue, benefit agreements and/or state-investor contracting. (For more information on differences and similarities between HRIA and ESHIA, see Introduction section A.4.7.) The scoping of business activities for a HRIA should take care to include these aspects. When the company's other impact assessments uncover data on human rights (e.g., labour standards), this information should be provided to those responsible for the HRIA as part of the scoping process.

Scoping of the business project or activities should include consideration of different impact areas and right-holder groups, such as:

- Communities (noting that communities are not homogenous and not always located at the project site)
- Environment
- Security
- Workers and contractors
- Consumers
- Suppliers and procurement; and
- Government relations and legal affairs.

Reflection on the industry in question, including through comparative analysis of impact assessments for similar business projects or activities, will also be useful. Depending on the industry of the business project or activities (e.g., mining, agriculture, manufacturing), relevant industry standards and frameworks should be included in the scoping analysis.

See section 1.1 of the [Scoping Practitioner Supplement](#) for further details on scoping of the business project or activities.



1.1.2 SCOPING OF THE HUMAN RIGHTS CONTEXT

The purpose of scoping the human rights context is to understand the level of protection and enjoyment of human rights in the given context; in particular, by analysing the implementation of international human rights in national legislation, policies, regulation and adjudication, as well as considering their implementation and effectiveness in practice.

Scoping of the human rights context should include not only a legal analysis, but also more practical information that provides insight into actual human rights enjoyment on the ground. In addition to legal analysis, the human development profile of the country and region can provide essential information. For example, the scoping should include an analysis of the ability of human rights defenders, trade unions, and NGOs and CSOs to engage in human rights work and comment on the adverse impacts of business projects and activities. This can be done by analysing space for engagement, safety of these actors and ability of community members to participate without fear of reprisal. Other characteristics to consider include the local geographic and physical characteristics; history; and socio-economic and demographic characteristics.²

Factors to consider in scoping of the human rights context include:

- Status of ratification and implementation of international human rights law and gaps at the national level
- Level of implementation of national laws and regulations resulting in human rights enjoyment in practice
- Whether laws applicable to business projects and activities enable or constrain respect for human rights
- Effectiveness of judicial remedies and other grievance mechanisms
- Barriers to access to justice
- Percentage of the population below the national poverty rate and absolute poverty rate
- Demographics in the region of operations (e.g., ethnic groups, languages, religious groups)
- History of conflict or human rights abuses
- Level of press freedom and freedom of expression; and
- Human rights record of government officials and political parties.

Sources can include:

- National laws, policies, regulation and jurisprudence
- Reports by local and international NGOs and CSOs
- Reports by national human rights institutions

- UN treaty bodies concluding observations; and
- Recommendations and reports by UN special procedures (e.g., UN special rapporteurs or representatives) and regional human rights bodies.

Data on the human conditions covering economy, inequality, poverty, food, water, health, education, freedoms and corruption should also be considered. Sources can include the Human Development Index of the UN Development Programme, as well as national and regional census and development data.

See section 1.2 of the [Scoping Practitioner Supplement](#) for further details on scoping of the human rights context.



Box 1.1: Scoping for HRIA in conflict-affected settings

‘Conflict-affected setting’ is a broad term that applies to countries engaged in armed conflict, such as war and insurgency, as well as regions experiencing social unrest and political violence. The term also encompasses ‘post-conflict’ countries that have reached a peace settlement, but which are still experiencing the lasting effects of the conflict.

In conflict-affected settings, there is higher risk for businesses to become involved in human rights violations. This is due to factors such as a high overall rate of human rights abuses, weakened regulatory systems for enforcing human rights, increased likelihood of business partners (such as state actors or contractors) engaging in conflict or abuse, and complexity of the local context. In these settings, human rights violations are often more severe, and businesses run a greater risk of unintended consequences from their activities. Practitioners conducting HRIA in conflict-affected settings must pay special attention to considerations such as the legacy of conflict, conflict dynamics, conflicting parties and their objectives, geographic areas of the conflict, and grievances and drivers of conflict.

International Alert’s guidance on human rights due diligence in conflict-affected settings provides in-depth information on conflict sensitivity principles, including considerations for scoping the local human rights context. During the scoping phase, assessors should conduct desktop research on issues related to the conflict, including: discrimination or marginalisation of certain groups; tensions related to ethnicity, religion, or identity; resettlement to or from the operating area; conflict around resources such as land and water; and high levels of endemic violence. Assessors should also anticipate challenges related to the conflict and barriers to stakeholder engagement, including risks

Box 1.1: Scoping for HRIA in conflict-affected settings

related to illegal armed groups and criminal groups, and plan methods for addressing these challenges.

Sources: Roper Cleland (2019), 'Understanding conflict for HRIA' in Nora Götzmann (Ed), *Handbook on Human Rights Impact Assessment*, Cheltenham: Edward Elgar; Yadaira Orsini and Roper Cleland (2018), *Human Rights Due Diligence in Conflict-Affected Settings: Guidance for Extractives Industries*, London: International Alert; Ashley Nancy Reynolds, 'Human Rights Impact Assessment in Conflict-Affected Societies: From Avoiding Harm to Doing Good' (master's thesis, Global Campus of Human Rights, 2019).

1.1.3 IDENTIFYING RELEVANT STAKEHOLDERS

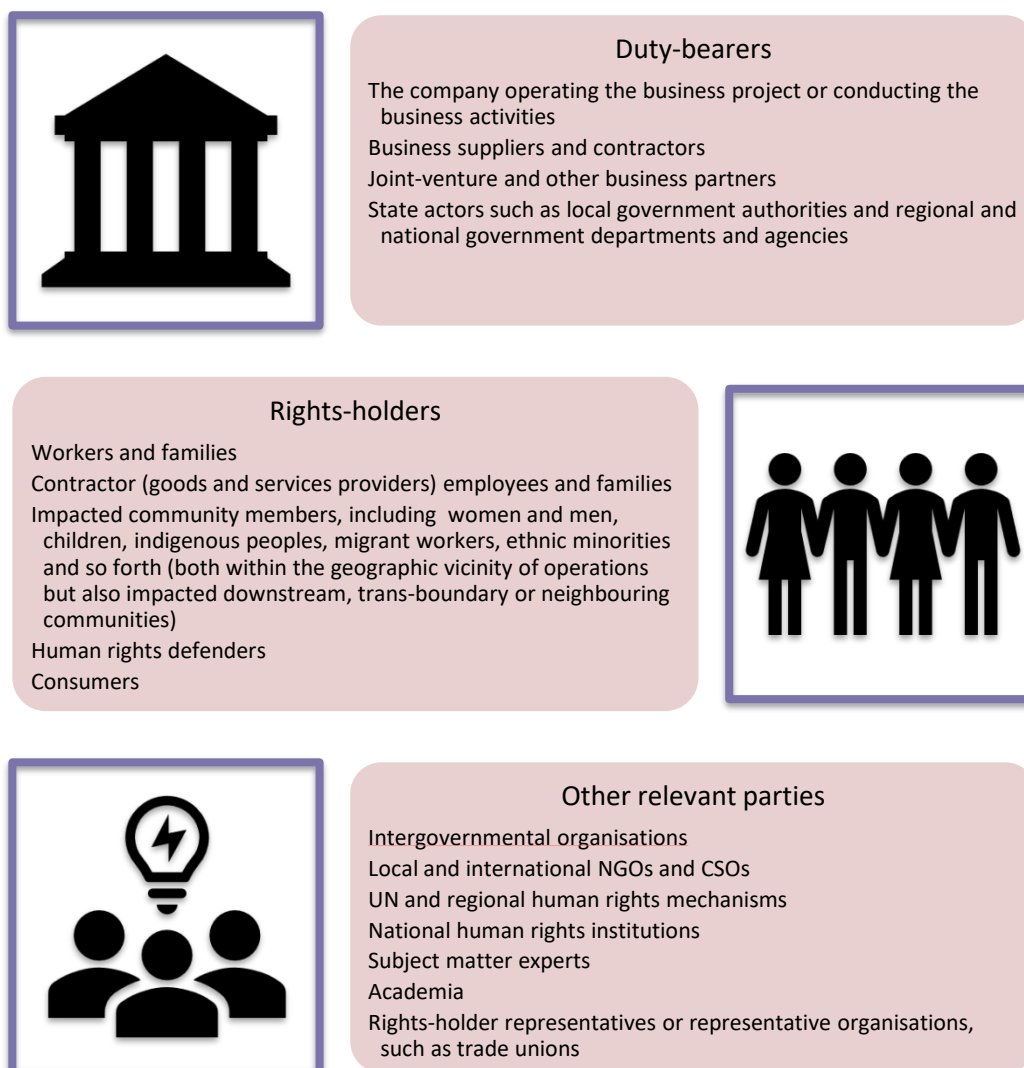
During the scoping process, it is important to identify and conduct a mapping of the relevant stakeholders in the given context, including analysing what type of stakeholder they are, their level of influence and if/how they may be impacted by the business project or activities. Stakeholder mapping should pay particular attention to rights-holders and include gender analysis and consideration of vulnerability factors in the given context.



In section 1.1 of the [Stakeholder Engagement Practitioner Supplement](#), you can find a suggested format for stakeholder mapping for the scoping process, and in section B.2 of [Stakeholder Engagement](#), you can find additional information about the different types of stakeholders to include in the HRIA.

Figure 1.b, below, provides an overview of the types of stakeholders to consider in the initial stakeholder mapping.

Figure 1.b: The different types of stakeholders to engage in HRIA



1.2 TERMS OF REFERENCE FOR HRIA

The TOR is a written document that presents the scope and purpose of the HRIA. A well-constructed TOR can be critical for ensuring that the subsequent assessment is conducted according to the expected standards and principles.

Both the company commissioning the assessment and impact assessment practitioners have a role to play: the company in drafting a TOR that clearly requires the application of international human rights standards and principles,

and impact assessment practitioners in proposing a responsive methodology and an assessment team that is tailored to the particular context, taking account of specifics such as the location, industry and envisaged timeframe for the HRIA.

In short, the TOR should provide a clear description of:³

- The rationale for undertaking the assignment
- The expected methodology and work plan (activities), including timing and duration
- The anticipated resource requirements, particularly in terms of personnel; and
- The reporting requirements.

The TOR serve as a tool for:⁴

- Identifying and selecting the most qualified and suitable HRIA team
- Communication between the company commissioning the assessment and those undertaking the HRIA
- Following up and monitoring the contract during the impact assessment implementation; and
- Evaluation (i.e., because the TOR is part of the contract between the company and those undertaking the assessment, it can be used to evaluate the performance of the HRIA team upon completion of the assessment).

In the [Terms of Reference Practitioner Supplement](#) you can find example questions to guide the development of the TOR for a HRIA.



Some additional aspects to keep in mind when developing the TOR are:

- The TOR may cover both the scoping and the actual assessment phases of the HRIA. However, depending on the scale of the business project or activities and the HRIA, it may be desirable to separate these two stages so that the scoping is conducted before the development of the TOR for the remainder of the HRIA phases, allowing the information and analysis gained to feed into the TOR for the remainder of the assessment. This will provide increased opportunities to include the views of rights-holders in the drafting of the TOR for the HRIA. It is also likely to allow for a better estimation of the necessary budget to conduct the HRIA.
- While it may be difficult to anticipate exactly what time and resources will be required for the implementation of mitigation measures, it is a good idea to include at least the development of a concrete impact management plan in the TOR. This avoids the HRIA process ending with a report that includes

recommendations without a concrete follow-up plan for their implementation.

- To the greatest extent possible, it is desirable to involve rights-holders and their representatives in the development of the TOR for the assessment. For example, the TOR may emphasise consultation and engagement with rights-holders or key interlocutors to verify key information and priorities.

1.3 THE HRIA TEAM

It is critical to ensure that the people on the HRIA team have the requisite skills and expertise to ensure that the process is professional, effective and built on a human rights-based approach.

In order to ensure the independence and legitimacy of the process, the HRIA should be conducted by an assessment team that is independent from the company. Practice shows that in human rights assessment of business projects or activities, businesses often choose to compose assessment teams entirely of their own in-house personnel or to include both in-house experts and external experts. This can limit the independence of the assessment and be problematic in terms of factors such as ensuring the legitimacy of findings and building trust between the impact assessment team and rights-holders. Rather than having company representatives on the assessment team, it may be desirable to form a steering or governance group for the HRIA that comprises HRIA team members, company representatives and other relevant stakeholders.

If insufficient resources are allocated for the HRIA, this is also likely to limit the composition of the HRIA team.

Table 1.A, below, highlights key factors to consider when putting together a HRIA team. The examples listed in Box 1.2 below, illustrate the role that a steering committee or advisory group can play in complementing the HRIA team.

Table 1.A: Factors to consider in composing a HRIA team	
Factors	Steps to take
Skill-set of HRIA team	<ul style="list-style-type: none"> • Make sure to include team members who have the following skills: human rights expertise and experience in field research; local context knowledge; the right language skills; and knowledge of the particular industry and understanding of how it relates to human rights. • Consider including technical experts who can measure certain impacts (e.g., environmental and health impacts)

Table 1.A: Factors to consider in composing a HRIA team	
Factors	Steps to take
	<p>and assess the technical and financial feasibility of mitigating measures.</p> <ul style="list-style-type: none"> • Ideally, the team should be diverse and interdisciplinary, with members from different cultural and educational backgrounds and sensitivity to the local context. This could include lawyers, sociologists, anthropologists and other relevant experts.
Neutrality	<ul style="list-style-type: none"> • Pay attention to the neutrality of the persons who are conducting the assessment. They should be considered neutral and trustworthy by the rights-holders and other stakeholders engaged as part of the HRIA process.
Gender	<ul style="list-style-type: none"> • Make sure to include a balance of women and men on the HRIA team. The HRIA team should also have sufficient gender expertise to conduct gender analysis, recognise and respond to power dynamics and systemic gender discrimination, and implement the HRIA in a gender-responsive manner that accounts for the rights of women, girls and LGBT+ persons.
Local outreach	<ul style="list-style-type: none"> • Make sure to include local team members, including women, who are from the country/region/location where the business project or activities are taking place. This is extremely important, as these people will be critical in building trust with the rights-holders and can help with understanding the dynamics within the communities and the cultural context in which the HRIA is taking place. The local team members should have a pre-existing network to support the identification and mapping of stakeholders and to help with reaching out to the rights-holders. • Consider including persons from the affected communities, both women and men, in the HRIA team, bearing in mind implications regarding the neutrality of the team. • Consider making use of a local person who knows and can provide access to local stakeholders. In certain situations, such as when operating in a specific region in

Table 1.A: Factors to consider in composing a HRIA team	
Factors	Steps to take
	the country or consulting vulnerable and marginalised groups, such a local person who has a broad network, knows various stakeholders with different opinions and can facilitate setting up meetings, is required.
Local language and cultural aspects	<ul style="list-style-type: none"> • Include person(s) in the team who speak the local language of rights-holders and other stakeholders and understand the local cultural context. • Consider hiring an interpreter if only part of the team speaks the local language(s). The person conducting the interview cannot be constantly playing that role. In some contexts, it can be difficult to find a professional interpreter. If it is not possible to hire a professional interpreter, the HRIA team may consider using local language experts. Regardless of whether the interpreter is a professional or not, preparation with the person so that they understand the key concepts and terms of the HRIA and human rights issues is necessary. The interpreter should also understand their own role as a neutral party to the process who should strive to accurately interpret everything that is said and not give their personal interpretation of what a person is saying. To ensure neutrality and impartiality, interpreters should be independent.
Reference group/steering committee	<ul style="list-style-type: none"> • Consider forming a reference group/steering committee which advises and supervises the HRIA team on methodological and ethical questions. Especially in the context of bigger and more difficult business projects, this might be necessary. However, the reference group/steering committee should take care not to infringe on the independence and impartiality of the HRIA team. The reference group could also provide a space where people can direct any questions or grievances that they might have about the HRIA process. See further Box 1.2, below, for some examples of the role that a steering committee or advisory group can play.

Box 1.2: Steering committees and advisory groups in HRIA

Kuoni Kenya and India HRIAs

The Kuoni group is a global travel service company that conducted HRIAs in Kenya in 2012 and in India in 2014. Both assessments had a stakeholder advisory group to accompany the team and process. The projects' HRIA teams were led by the Kuoni Corporate Responsibility Team. In the case of the Kenya pilot project, the advisory group included the management consultancy TwentyFifty Ltd., Tourism Concern (an NGO that acted as an independent advisor), and a business partner. The core HRIA team was supported by independent advisors who made up the international stakeholder advisory group. Advisors came from some of the following organisations: Arbeitskreis für Tourismus und Entwicklung, Fair Trade in Tourism South Africa, Tourism Concern, UNICEF, and the Swiss Centre for Expertise in Human Rights. It should be noted that some advisors remained on for the subsequent India HRIA. The advisory group's role included:

- Advising on stakeholder identification, including who to engage with prior to and during the assessment
- Providing the HRIA team with local context knowledge on tourism and human rights impacts (including past impacts)
- Utilising the group's network of CSOs to have meaningful consultations with rights-holders and their representatives; and
- Providing feedback on the design and the methodology of the HRIA as well as the final report.

Marlin Mine Human Rights Assessment

In 2008, Goldcorp Inc. established a steering committee consisting of a member of Guatemalan civil society, a shareholder group representative, and a Goldcorp representative to oversee and direct the human rights assessment concerning the company's operations around the Marlin Mine (Guatemala). The steering committee was responsible for overseeing the assessment process, setting the scope and timeline of the assessment and selecting the assessment team. The steering committee selected On Common Ground Consultants as the team to conduct the assessment. While conducting the assessment, the consultants reported regularly to the steering committee and discussed the challenges encountered in implementing the assessment methodology on the ground (e.g., the limited possibilities to engage with certain stakeholder groups due to security and conflict risks). The steering committee supported the assessment team by adjusting the scope and timelines to permit additional efforts and approaches to stakeholder engagement. This model of a steering committee could be replicated and

Box 1.2: Steering committees and advisory groups in HRIA

expanded to provide a mechanism for the participation of stakeholders in the assessment process and to support further transparency and accountability of HRIAs. It has been cited by Oxfam America as ‘nearing a hybrid approach’ for collaborative HRIAs that involve both company and community representatives.

Sources: Kuoni Travel Holding Ltd., TwentyFifty Ltd., and Tourism Concern (2012), *Assessing Human Rights Impacts: Kenya Pilot Project Report*, Zurich: Kuoni Travel Holding Ltd; Kuoni Travel Holding Ltd. (2014), *Assessing Human Rights Impacts: India Project Report*, Zurich: Kuoni Travel Holding Ltd; On Common Ground Consultants Inc. commissioned on behalf of Goldcorp by the Steering Committee for the Human Rights Assessment of the Marlin Mine (2010), *Human Rights Assessment of Goldcorp’s Marlin Mine*, Canada: On Common Ground Consultants Inc.

ENDNOTES

¹ United Nations Human Rights Council (2008), *Clarifying the Concepts of 'Sphere of Influence' and 'Complicity': Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie*, A/HRC/8/16.

² Yadaira Orsini and Roper Cleland (2018), *Human Rights Due Diligence in Conflict-Affected Settings: Guidance for Extractives Industries*, London: International Alert.

³ Drawing on: European Integration Office (2011), *Manual for Preparing Terms of Reference*, Belgrade: Republic of Serbia Government and European Integration Office, p.6.

⁴ Ibid.

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