THE DANISH INSTITUTE FOR HUMAN RIGHTS

PHASE 1: PLANNING AND SCOPING

HUMAN RIGHTS IMPACT ASSESSMENT GUIDANCE AND TOOLBOX

ROAD-TESTING VERSION
PHASE 1

PLANNING AND SCOPING

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

### 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.

Key steps in planning include drafting or responding to terms of reference for the assessment and deciding on who should be on the assessment team. Both the company commissioning the assessment and impact assessment practitioners have a role to play; the company in drafting a terms of reference that clearly requires the application of international human rights standards and principles, and impact assessment practitioners by 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.

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. While in the scoping phase most of this information is collected through desk-top 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, and 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 to determine 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 desk-top 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, through a three-five day visit to the operations to get an on-the-ground introduction to the business operations and human rights context through 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 for the subsequent exclusion of topics and issues that are not relevant, as well as the inclusion of unanticipated human rights impacts.

Sufficient time should be allowed between the scoping and subsequent fieldwork as part of the data collection and baseline development phase, to allow the HRIA team to make best use of the information gathered through the scoping to plan the field work and data collection.

Figure 2, 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 Stakeholder Engagement further information is provided on the relevant stakeholders to include in HRIA.
Figure 2: Scoping of the business project or activities, human rights context and the preliminary identification of stakeholders

1.1.1 SCOPING OF THE BUSINESS PROJECT OR ACTIVITIES

The scoping of the business project or activities to be considered by the HRIA will largely focus on understanding the *sphere of impact* of the project or activities.

It is important to note that the scoping of business activities to be considered for HRIA should proceed from a *sphere of impact* rather than *sphere of influence* basis. In short, impacts that the business contributes to or that are directly linked to business activities through business relationships must be included (not only those that the business causes); and the impacts to be considered are not necessarily strictly defined by geographical boundaries.
To explain, the ‘sphere of influence’ concept has been used to attribute responsibility of business actors for their human rights impacts, but the UN Guiding Principles suggest focusing on impact instead. According to a sphere of influence analysis, those impacts which are the most proximate would be those that are deemed most relevant for the business to address (e.g. impacts on employees or environmental damage on company lands caused by company operations), whereas more remote impacts imply a lower level of company responsibility (e.g. impacts in the supply chain or on downstream communities). Instead, a UN Guiding Principles approach establishes responsibility based on “the company’s web of activities and relationships”.¹ This clear inclusion of impacts that the business contributes to and that are directly linked, and assessing and addressing these impacts based on their severity (as opposed to including and addressing impacts based on considerations of proximity and control), is a critical feature of HRIA.

Furthermore, HRIA considers some areas of business activity that are not commonly addressed in SIA, EIA or ESHIA. For example: 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. The scoping of business activities for a HRIA should take care to include these aspects, or provide clear and sound reasons as to why they have not been included (e.g. they are adequately addressed in another due diligence process of the company).

Scoping of the business project or activities should therefore include consideration of the different impact areas, such as:

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

Reflection on the industry in question, including through comparative analysis such as by considering impact assessments of similar business projects or activities, and consideration of any industry-specific standards and frameworks, will also be useful. Depending on whether the business project or activities are in

mining, agriculture, manufacturing or another industry, relevant industry-standards should be included in the scoping analysis.

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, and considering their implementation and effectiveness in practice.

In addition to legal analysis, the human development profile of the country and region can provide essential information. That is, 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. For example, the scoping should include an analysis of the space and safety for human rights defenders, NGOs and CSOs and trade unions more broadly to engage in human rights work and comment on the adverse impacts of business projects and activities.

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

- Status of ratification and implementation of international human rights law 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; and
- Barriers to access to justice.

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. 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 Group, as well as national and regional census and development data.

See the Scoping Practitioner Supplement for further details on scoping of the human rights context.
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.

Figure 3, below, provides an overview of the types of stakeholders to consider in the initial stakeholder mapping. In the Stakeholder Engagement Practitioner Supplement you can find a suggested format for stakeholder mapping for the scoping process, and in Stakeholder Engagement you can find additional information about the different types of stakeholders to be included in HRIA.

Figure 3: The different types of stakeholders to engage in HRIA

- **Duty-bearers**: The company operating the business project or conducting the business activities; business suppliers and contractors; joint-venture and other business partners; government actors such as local government authorities, regional and national government departments and agencies

- **Rights-holders**: Workers and families; contractor (goods and services providers) employees and families; impacted community members, including women and men, children, indigenous peoples, migrant workers, ethnic minorities and so forth (both within the geographic vicinity of operations but also impacted downstream, trans-boundary or neighbouring communities); human rights defenders; consumers

- **Other relevant parties**: Intergovernmental organisations; local and international NGOs and CSOs; UN and regional human rights mechanisms; national human rights institutions; subject matter experts; academia; rights-holder representatives or representative organisations, such as trade unions
1.2 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 applies a human rights-based approach.

In order to ensure 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 HRIA of business projects or activities, businesses often choose to compose HRIA teams entirely of their own in-house personnel or by including 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 HRIA team, it may be desirable to form a steering or governance group for the HRIA that comprises HRIA team members, company representatives and other stakeholders as relevant.

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

Table C, below, highlights key factors to consider when putting together a HRIA team. The examples listed in Box 7, below, illustrate the role that a steering committee or advisory group can play in complementing the HRIA team.

<table>
<thead>
<tr>
<th>Table C: Factors to consider in composing a HRIA team</th>
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<tbody>
<tr>
<td>Factors</td>
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<td>Skill-set of HRIA team</td>
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<td>Neutrality</td>
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### Table C: Factors to consider in composing a HRIA team

<table>
<thead>
<tr>
<th>Factors</th>
<th>Steps to take</th>
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<tbody>
<tr>
<td><strong>Neutral and trustworthy by the rights-holders and other stakeholders who are engaged as part of the HRIA process.</strong></td>
<td></td>
</tr>
<tr>
<td>Gender</td>
<td>• Make sure to include women on the HRIA team, including in leadership positions.</td>
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| Local outreach  | • 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 to include persons from the affected communities, women and men, in the HRIA team, bearing in mind implications regarding the neutrality of the team.  
• Consider to make use of a local ‘fixer’. In certain situations, for example when operating in a specific region in the country, a so-called local ‘fixer’ may be required, who has a broad network, knows various stakeholders with different opinions and can facilitate setting up meetings. |
| Local language  | • Include person(s) in the team who speak the local language of rights-holders and other stakeholders.  
• Consider to hire 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, preparation with the person so that he/she understands the key concepts and terms as well as his/her own role – as a neutral party to the process who should strive to interpret everything that is said and not give his/her personal interpretation of what a person is saying. |
Table C: Factors to consider in composing a HRIA team

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<tr>
<th>Factors</th>
<th>Steps to take</th>
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<tr>
<td>Interpreters should be independent and not have any connections to the party who has commissioned the HRIA to ensure neutrality and impartiality.</td>
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Reference group/steering committee

- Consider to form 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. The reference group could also be the place where people can direct any questions or grievances that they might have about the HRIA process. See further Box 7, below, for some examples of the role that a steering committee or advisory group can play.

Box 7: Steering committees and advisory groups in HRIA

Kuoni Kenya and India HRIAs

The Kuoni group is a global travel service company that has conducted a HRIA in Kenya in 2012, and in India in 2014. Both assessments had a stakeholder advisory group to accompany the team and process. The projects’ team itself were led by the Kuoni Corporate Responsibility Team, and in the case of the Kenya pilot project it included the management consultancy TwentyFifty Ltd., Tourism Concern (an NGO, who acted as in independent advisor), and a business partner. The core HRIA team was supported by independent advisers who made up the international stakeholder advisory group. Advisers 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 advisers remained on for the subsequent India HRIA. The advisory groups role included:

- Advising on stakeholder identification, on 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.
Marline Mine Human Rights Assessment

In 2008, Goldcorp Inc. established a steering committee consisting of a member of the 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 HRIA team. The steering committee mandated On Common Ground Consultants as the HRIA team to conduct the assessment. While conducting the HRIA, the consultants reported regularly to the steering committee and discussed the challenges encountered in implementing the HRIA 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 HRIA team by adjusting the scope and timelines of the assessment to permit additional efforts and approaches to stakeholder engagement. This model of a steering committee could be replicated and 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.


1.3 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.

In short, TOR should provide a clear description of:²

- 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.

TOR serve as a tool for:

- 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 TOR for a HRIA.

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

- A TOR may cover both the scoping as well as the actual assessment phases of 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 these. This will provide increased opportunities to include the views of rights-holders in the drafting of the TOR for the assessment, as the information gathered during the scoping can be applied in the TOR. It is also likely to allow for a better estimation of the necessary budget to conduct the HRIA.
- Whilst 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/or their representatives in the development of the TOR for the assessment. For example, through consultation and engagement with rights-holders or key interlocutors during the scoping phase, to verify key information and priorities.

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3 Ibid.
A NOTE ON THIS ROAD-TESTING VERSION

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

Please send comments, questions and suggestions to:
Nora Götzmann nog@humanrights.dk and Tulika Bansal tuba@humanrights.dk

Authors: Nora Götzmann, Tulika Bansal, Elin Wrzoncki, Cathrine Poulsen-Hansen, Jacqueline Tedaldi and Roya Høvsgaard

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Denmark’s National Human Rights Institution
Wilders Plads 8K
DK-1403 Copenhagen K
Phone +45 3269 8888
www.humanrights.dk

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