GEOTHERMAL RISK MITIGATION FACILITY FOR EASTERN AFRICA (GRMF)

KFW
Bank aus Verantwortung

Human Rights Assessment Guidance

Guidance Note for Geothermal Risk Mitigation Facility (GRMF) Project Development

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Human Rights Assessment Guidance

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Acronyms and Abbreviations

AOI	Area of Influence
ESAP	Environmental and Social Action Plan
ESDD	Environmental and Social Due Diligence
ESIA	Environmental and Social Impact Assessment
ESMP	Environmental and Social Management Plan
FPIC	Free, Prior and Informed Consent
GRMF	Geothermal Risk Management Facility
HRIA	Human Rights Impact Assessment
HRMP	Human Rights Management Plan
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant for Economic, Social and Cultural Rights
IESC	Independent Environmental and Social Consultant
IFC	International Finance Corporation
PS	Performance Standard

1. INTRODUCTION

The Geothermal Risk Mitigation Facility (GRMF) is a grant program designed to share the cost of geothermal exploration work including surface studies, exploratory drilling, and well testing. The GRMF was established in 2012 by KfW Development Bank (KfW), the German Federal Ministry for Economic Cooperation and Development, the EU-Africa Infrastructure Trust Fund, and the African Union Commission. The assistance provided through the GRMF is intended to encourage public and private sector development of geothermal power generation projects in East African countries.

KfW recognizes that, as with any development project, projects funded through the GRMF have the potential to infringe on the rights of workers, community members and other stakeholders, and that these potential risks must be considered, evaluated, and managed. This document provides structured guidance for the systematic identification, assessment, and management of potential human rights risks and impacts, with specific relevance to GRMF-funded projects.

Box 1-1

What are Human Rights?

Human rights are universal values and basic freedoms that people are entitled to, regardless of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status.

Human rights are generally divided into two categories: "civil and political rights" and "economic, social and cultural rights". **Civil and political rights** protect the individual from unwarranted infringement by government and private organizations and guarantee the individual the ability to participate in civil and political life without discrimination or repression. **Economic, social and cultural rights** are founded on the belief that people can enjoy rights, freedoms and economic justice all at the same time.

According to the Universal Declaration of Human Rights:

- Human rights are *universal*, meaning that all people are equally entitled to the same basic rights. Furthermore, human rights are not granted by any state; we are entitled to them by default simply through our existence as human beings.
- Human rights are also *inalienable*, meaning that they must not be taken away except in specific circumstances (for example, restrictions on the right to liberty for individuals found to be guilty of a crime by a court of law).
- Another principle of human rights is that they are *indivisible and interdependent,* meaning that one set of rights cannot be fully enjoyed without the other. For example, respect for civil and political rights will facilitate the exercise of economic, social and cultural rights.

The most widely accepted human rights standards are the United Nations' International Bill of Human Rights (comprising the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; and the International Covenant on Civil and Political Rights) and the International Labour Organization's (ILO) Declaration on Fundamental Principles and Rights at Work.

1.1 Purpose and Scope of this Guidance Note

This guidance note has been developed to support a consistent approach and set of standards for assessing human rights risks across all GRMF projects. Since projects vary in nature and scale, and are associated with different types and levels of human rights risk, each assessment will be unique; however, they must be subject to the same set of criteria to ensure an assessment that is proportional to the project's level of risk.

This guidance is based on the requirements of the United Nations (UN) Guiding Principles on Business and Human Rights (UNGPs), which defines the duty of the state to protect human rights, and the responsibility of business enterprises to respect human rights. This responsibility to respect human rights begins with a process of human rights due diligence, whereby companies identify and address human rights risks associated with their operations and then take action as appropriate.

This guidance is also aligned with the Equator Principles Guidance Note on Implementation of Human Rights Assessments[1], developed to aid participating financial institutions and their clients to comply with the new human rights requirements in the updated Equator Principles (EP4). Both the EP4 requirements and the guidance note are informed by the UNGPs.

Box 1-2
Equator Principles 4 and Human Rights

The latest edition of the Equator Principles (EP4), which came into effect in October 2020, adds potential human rights risks and impacts to the project review and categorization process. In particular, projects that require an environmental and social impact assessment (ESIA) must include "consideration of actual or potential adverse Human Rights impacts and if none were identified, an explanation of how the determination of the absence of Human Rights risks was reached, including which stakeholder groups and vulnerable populations (if present) were considered in their analysis."

1.2 Human Rights Due Diligence Process

The UNGPs describe human rights due diligence as an ongoing risk management process that must be followed in order to identify, prevent, and mitigate human rights impacts, as well as report on how adverse impacts have been addressed.

The first step in the due diligence process is to identify and assess actual and potential human rights impacts. This step always begins with screening to evaluate if and where potential impacts may occur. Depending on the nature of the project and its actual and potential impacts to human rights, the consideration of human rights may subsequently proceed through a more robust assessment including a human rights impact assessment (HRIA).

In cases where uniquely complex human rights issues are identified—for example, in cases involving property rights or allegations of criminal activity—the practitioner should consider whether outside legal or other specialist expertise may be necessary to ensure a sufficient understanding and assessment of potential impacts.

1.3 Alignment with GRMF Funding Process

Figure 1-1 maps the steps and deliverables in the human rights due diligence process to the typical phases of the GRMF's funding process. These steps are also aligned with the GRMF's broader environmental and social (E&S) assessment requirements. As the GRMF's portfolio is limited to geothermal projects, the E&S requirements at each stage are relatively prescriptive. However, there may be exceptional cases whereby significant impacts or risks are identified during the initial screening and scoping activities; this could affect both project categorization and the level of assessment needed.

From a human rights perspective, issues related to physical or economic displacement,[2] and/or Indigenous populations[3] and the requirement for Free, Prior and Informed Consent (FPIC), may require the human rights assessment process to advance earlier than shown in Figure 1-1.

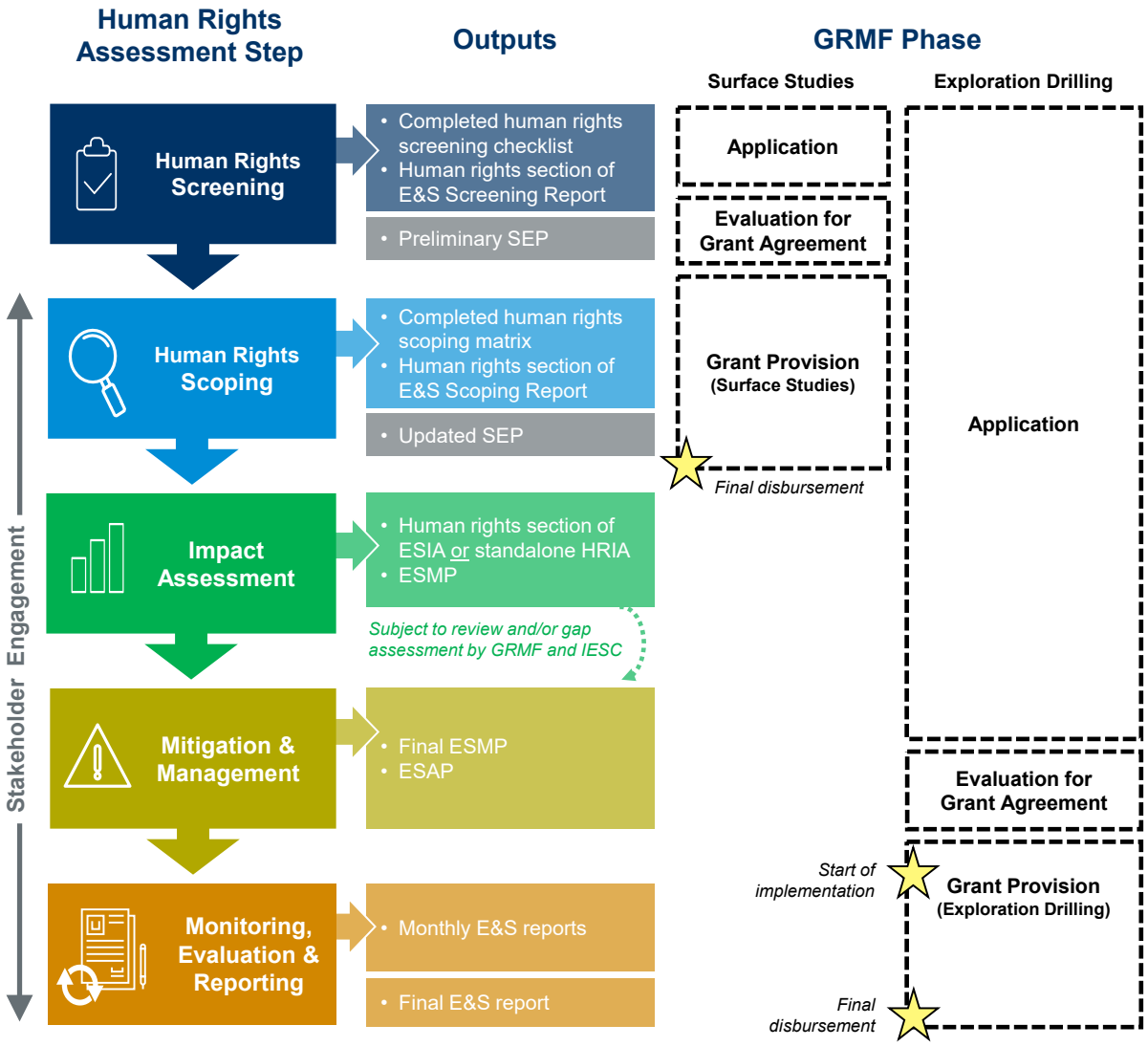
The screening and scoping activities required for surface studies should inform the screening and scoping requirements for exploration drilling, and included in the grant application package. Where relevant, these outputs should be updated based on new or improved information. If surface studies have not been subject to the GRMF funding process, screening and scoping activities will need to be completed and included as part of the grant application package.

[1] *Guidance Note on Implementation of Human Rights Assessments under the Equator Principles*. Equator Principles Association. September 2020.

[2] Including impacts triggering IFC Performance Standard 5 (Land Acquisition and Involuntary Resettlement)

[3] Including impacts triggering IFC Performance Standard 7 (Indigenous Peoples)

Figure 1-1: Human Rights Due Diligence through GRMF Funding Process



1.4 Integrated vs. Standalone Assessments

In many cases, human rights assessment can be conducted as part of a broader ESIA. This approach may be more efficient particularly if an ESIA process is required as part of national regulatory, international lender, or internal corporate standards. In other scenarios, for example where very severe and/or complex human rights impacts are anticipated, it may be advisable to conduct a standalone HRIA. Both approaches have different advantages, as outlined in Table 1-1.

In addition to timing, budget and other logistical considerations, the context of the Project area and its human rights environment are important considerations in determining which approach is more appropriate. For example, in areas where enforcement of human rights may be more of a challenge, particularly by the local government, separate reporting of human rights impacts may be necessary to protect rights-holders and ensure that the information does not enter the public domain.

Table 1-1: Benefits of Integrated and Standalone HRIA

Benefits of Integration with ESIA	Benefits of Standalone HRIA
■ Ability to apply a human rights lens to environmental and social baseline data collection ■ Ability to better understand and analyse interrelationships between environmental, social and human rights impacts ■ Avoidance of stakeholder fatigue ■ Time, effort and cost efficiencies ■ Use of existing impact management structures and roles	■ Focus on human rights; avoids side-lining of human rights issues ■ Draws upon specialist human rights expertise with in-depth analysis of human rights issues ■ Allows for prioritization of engagement on potentially affected rights-holders, including vulnerable and marginalized groups ■ Allows for assessment of human rights topics that may be considered too sensitive for ESHIA disclosure in the public domain

1.5 Roles and Responsibilities

Table 1-2 summarizes the deliverables, actions, and decision points that are generally required as part of the human rights due diligence process, and the responsibilities of the project proponent (and their consultants) and the Lenders.

Table 1-2: Typical Roles and Responsibilities in the GRMF Human Rights Due Diligence Process

Phase	Project Proponent	Lenders	
	Associated deliverable(s)	Action	Outcome(s)
Human Rights Screening	■ Completed human rights screening checklist ■ Human rights section of E&S Screening report with: ○ Summary of administrative framework ○ High-level baseline characterization ○ Either: i) a summary of screened-in impacts for further scoping and assessment or ii) justification as to how and why risks were determined to be insignificant	■ Review and determine whether sufficient information is provided to identify human rights risks present in the project area	■ Grant approval or rejection (surface studies).
Human Rights Scoping	■ Completed scoping matrix ■ Human rights section of the E&S scoping report, including description of the AOI for human rights, identification of potentially affected rights and rights-holders, and summary of baseline conditions	■ Review human rights scoping documentation, and incorporation into grant approval and project categorization decision-making ■ Participate in defining mitigation and management measures and developing ESAP if required	■ Grant approval or rejection (exploration drilling)
Impact Assessment	■ Impact Assessment Report (as standalone HRIA or part of a wider ESIA)		■ Determination of acceptance or requirement for additional information. ■ Gap assessment and ESAP (if required)
Mitigation and Management Planning	■ Human rights mitigation and management planning incorporated into an ESMP (or HRMP as a sub-plan to project ESMP)		

Phase	Project Proponent	Lenders	
	Associated deliverable(s)	Action	Outcome(s)
Monitoring, Evaluation and Reporting	■ Human rights performance data as part of monthly Project Status Reports ■ Outline and documentation of human rights performance reporting to external stakeholders included as part of SEP ■ Final E&S Report	■ Ongoing review of human rights performance and related stakeholder engagement in monthly reports ■ Independent review of Final E&S Report	■ Determination of "No Objection" or request for additional information

Beyond the impact assessment process and throughout project implementation, all parties involved in the project have the responsibility to uphold the human rights commitments made by the Developer and the project. It is the responsibility of the Developer to ensure appropriate mechanisms are in place (including policies, contract language, certifications, relevant training, etc.) that: make clear the expectations and obligations of their workforce, contractors, and all other personnel involved in the project as duty-bearers with respect to human rights; and equip people with sufficient knowledge and resources to effectively understand and address actual and potential human rights impacts.

1.6 Structure and Contents

This document is organized based on the sequence of events within the human rights due diligence process, noting that stakeholder engagement should occur across multiple phases (beginning with the scoping phase).[4] Aligning with the human rights assessment steps outlined in Figure 1-1, this document includes:

- Chapter 2: Human Rights Screening
- Chapter 3: Human Rights Scoping
- Chapter 4: Stakeholder Engagement
- Chapter 5: Impact Assessment
- Chapter 6: Mitigation and Management
- Chapter 7: Monitoring, Evaluation and Reporting

This document focuses primarily on the role of project proponents and their consultants, who are responsible for the execution of human rights due diligence assessments and production of assessment documentation. Specific guidance for KfW and the GRMF—as the lending agencies responsible for reviewing the assessments' relevance, quality and comprehensiveness, requesting further information and assessment (if required to adequately understand project risks), and incorporating results into grant approval and project categorization decisions—is provided in **Appendix D**.

[4] The points it time at which stakeholder engagement begins and ends will vary from project to project depending on level of anticipated impact and level of interest/concern from stakeholders.

2. HUMAN RIGHTS SCREENING

2.1 Purpose and Objectives

The purpose of the screening step is two-fold: to understand the human rights context in which the project is situated, without going into detail regarding specific impacts of the proposed project; and to establish a high-level understanding of the project and its activities.

All GRMF projects must complete this step as part of the broader E&S risk screening. The E&S risk screening report including screening of human rights impacts must be submitted to GRMF as part of the grant application.

2.2 Process and Methods

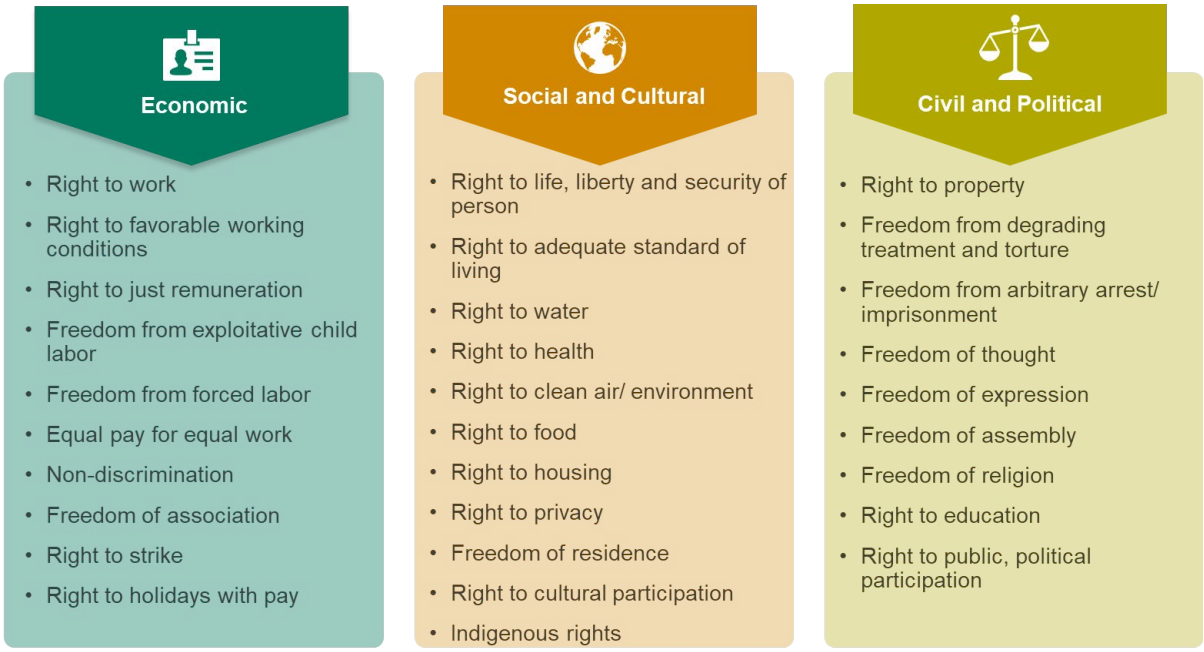
2.2.1 Understanding the Context

Administrative Framework

Understanding the human rights context for a project requires review of the regulatory, legal, institutional and policy framework in the host country and—more specifically—in the project area. This is a key step in the screening process.

The UNGPs state that the applicable standards for human rights due diligence begins with International Bill of Human Rights [5] and the ILO Declaration on Fundamental Principles and Rights at Work. An illustrative list of rights from these sources is shown in Figure 2-1; this is not considered exhaustive. The first step is to identify at a high level the applicable country's commitment to international human rights treaties and conventions, and/or alignment of national laws with such standards. The project's internal commitments, financing requirements, and industry standards are also relevant.

Figure 2-1: Examples of Human Rights to be Considered during Human Rights Screening



[5] Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (ICCPR), and International Covenant for Economic, Social and Cultural Rights (ICESCR)

An administrative framework summary should clearly state which laws, policies or standards constitute drivers of the human rights assessment, or are otherwise mandatory, versus those that are applied as best practice guidance[6]. Project developers' commitments and/or the conditions of financing may require a stronger commitment to human rights than local laws in the host country. This is important to consider throughout the human rights impact assessment process and when predicting impacts, particularly if impacted rights and rights-holders are not adequately protected by the state.

During later phases—including Impact Assessment (Chapter 5)—discussion of the administrative framework is typically included as its own chapter in an impact assessment document, whether as a standalone HRIA or as part of an ESIA. The understanding of the administrative framework gained during the screening phase will benefit these later phases (Box 2-1).

Box 2-1

Information to be Included in an Administrative Framework Summary

- **Country Human Rights Framework.** Identify international human rights conventions and treaties that have been signed and ratified by the host country and review if they have been implemented into national law.[1] All other national laws pertaining to human rights, such as the constitution, labour laws, and environmental regulations, should also be identified and their applicability or relevance to human rights clearly described.
- **International financing requirements.** The majority of host countries do not explicitly require a human rights impact assessment. However, funding provided by Equator Principles Financial Institutions (including KfW) require either an integrated or standalone human rights assessment in line with the UNGPs, or a written justification as to why such an assessment is not needed, as a condition of financing. The UNGPs in turn require that the assessment account for all human rights contained in the International Bill of Human Rights and the eight ILO Core Labour Standards.
- **Internal Commitments.** Companies' commitments to human rights, and how they fit into their overall sustainability and social performance expectations, varies. Some companies have committed to 'respecting' human rights as articulated within the UNGPs, while other have committed to the UN Global Compact, which includes principles to support and respect human rights and uphold international labour standards. Some have clearly articulated human rights policies or more general business ethics policies which should be included in the administrative framework chapter.

Baseline Context

Collection of baseline data should be initiated during the screening step at a level sufficient to understand the inherent human rights risks associated with the project. This requires collecting country-level and, if possible, more local-level information on social and environmental conditions, and on the country's human rights record. Some useful sources of country-level human rights records include the U.S. Secretary of State, the U.S. Department of Labor, the African Commission on Human and Peoples' Rights, and the NGOs Amnesty International, Human Rights Watch and Transparency International. A non-exhaustive list of useful information sources for baseline development is provided in **Appendix A**. At this stage, baseline information is typically collected through a desktop exercise; however, in some cases a site reconnaissance mission may be useful to verify important factors such as presence of residences or agricultural activities on or adjacent to the project site.

Collection of initial baseline information during the screening stage should also allow for determination of whether the project area represents a high-risk operating environment that could contribute to elevated human rights risks (Box 2-2). As for the administrative context, the collection of baseline data will also inform later stages of the human rights assessment.

[6] An administrative framework summary or chapter does not serve as a replacement for a project legal register.

The information collected to support screening will be expanded upon during the scoping step (Chapter 3), and will in fact represent a large part of the scoping effort since more detail is required at this step. A fulsome baseline summary will also inform the impact assessment stage, provide the basis for the development of mitigation and management measures, and act as a benchmark for future monitoring efforts.

Box 2-2
What are High-Risk Operating Areas?

Operating areas are considered to be high risk where conditions exist for the severity of human rights impacts to be heightened. These areas are often characterized by one or more of the following:

- **Conflict zones**. Conflict situations present a range of challenges, often including weak or limited protection of human rights;
- **Weak governance**. This includes allegations of past or present of bribery, corruption, and gross human rights violations. The corrupt management of public resources compromises the government's ability to deliver services, including health, educational and welfare services, which are essential for the realization of economic, social and cultural rights.
- **Socio-cultural practices**. Mismatch between local practices and international human rights standards, including local cultural practices that contravene human rights standards; and
- **Legacy issues**. This includes past or present allegations of human rights violations by industry located near or adjacent to the operation, as well as allegations of local human rights violations committed by organizations with a relationship to the operation (e.g. business partners, suppliers, contractors).

2.2.2 Screening Project Activities and Risks

When sufficient information on the project area's human rights protections, risks, and applicable administrative framework have been collected, a screening checklist should be used to identify the human rights risks that may be associated with the project. An example screening checklist is provided in **Appendix B**. In this tool, the two right-hand columns can be used to assess project-specific human rights risks. Prior to use, the "Human Rights" column should be reviewed to determine whether any additions or updates are required based on changing human rights standards or guidance.

It is important to note that a human rights due diligence (including screening) is an iterative process. Although the screening step is the first step of a due diligence process, the screening of specific human rights risks may need to be revisited if new information is uncovered (or circumstances change) during later steps of the assessment process, or as the practitioner's understanding of risks evolves throughout the process.

2.3 Deliverables

Outputs of the screening phase will consist of:

- Completed human rights screening checklist, and
- Human rights section of the E&S screening report.

The E&S Screening Report will identify and describe human rights risks with the potential to occur in the project area and that would be subject to subsequent scoping and assessment in later phases. In the absence of such risks, the E&S Screening Report must provide a statement as to how and why such risks were considered, and a rationale for why they were determined to be absent.

2.4 Timing in GRMF Process

Human rights screening should occur prior to the Application phase. The E&S Screening Report, including consideration of human rights risks, must be included as part of the grant application package. Screening is a requirement for surface study applications and exploration drilling applications. Where relevant, screening conducted for surface studies can support and inform exploration drilling applications, subject to any updates based on new or improved information.

3. HUMAN RIGHTS SCOPING

3.1 Purpose and Objectives

The purpose of the scoping stage is to gain an understanding of how the human rights identified in the screening stage may specifically be impacted as a result of the proposed project. This step will require a more detailed understanding of both the project description (including proposed project components and activities) and the baseline context. The goal is not to collect exhaustive details about the Project area, but to develop the knowledge that is required to identify all potential rights-holders and potential human rights at risk as a result of the project. Engagement with rights-holders, and potentially other stakeholders holding relevant information, is essential at this step of the process to validate, qualify and contextualize desktop information (see Chapter 4 for more information about stakeholder engagement as part of the human rights assessment process).

The practitioner's primary aim in collecting this information is to develop justifications for the inclusion of rights-holders and human rights issues to be analyzed during the impact assessment (Chapter 5). It is also important to understand the interconnectedness of different human rights during this process as impacts to one right can implicate others.

3.2 Process and Methods

3.2.1 Defining the Area of Influence

An important step during scoping is establishing the human rights area of influence (AOI). The AOI is generally defined as the spatial area(s) within which rights-holders with potential to be impacted by the project are located, taking into account the general characteristics of the project and planned activities.[7] As the human rights assessment focuses on "rights-holders", these individuals may be in areas that are not considered in a traditional ESIA (Box 3-1). Potential impacted rights-holders include project workers, workers in the project's supply chain, residents along supply routes, or constituents of municipal governments.

Once the AOI is determined, baseline data collection should primarily be targeted at understanding the human rights context in the AOI. However, it will often be necessary to collect baseline data for a wider area than the AOI in order to provide context to specific AOI conditions; for example, demographic and economic data is frequently collected at national or regional levels and may not be available at the level of the AOI.

Box 3-1
Who is a Rights-Holder?

Broadly speaking, all human beings are rights-holders under the Universal Declaration of Human Rights. In particular contexts, such as in the context of a project, there are specific individuals or groups who are at risk of their human rights not being fully realized, respected or protected. All such individuals and groups should be identified as rights-holders in the project's human rights assessment, and considered as key stakeholders whose input is essential to a robust assessment.

3.2.2 Baseline Development

The human rights baseline (to support the human rights impact assessment in Chapter 5) provides an evidence-based description of the human rights enjoyment in practice at a specific point in time, and compared against international human rights norms. As described above, baseline data collection should begin during the screening step (Chapter 2) and become more targeted and detailed throughout scoping to better understand possible impacts to human rights and rights-holders. The baseline study (typically included as a chapter in the ESIA or HRIA document, as described in

[7] IFC Performance Standard 1 provides more information about the AOI and how to define it.

Chapter 5) should be largely completed during the scoping phase, though it may be updated as needed throughout the process.

It is important to note that the human rights baseline should not aim to catalog the entire human rights baseline of the country. The baseline should be fit-for-purpose and focused on the rights-holders and rights that may be impacted by the project, within in the AOI defined in Section 3.2.1. Box 3-2 provides examples of baseline conditions that should be characterized at this stage through targeted baseline research. Box 3-3 describes some specific considerations related to the rights of Indigenous Peoples.

Box 3-3

Developing a Baseline Understanding of Human Rights Impacts

The following are examples of conditions that baseline research should seek to characterize during the scoping phase:

- Labour and working conditions in the project AOI and industry
- Vulnerability of local communities to worker influx and presence, including security personnel
- Presence of and potential vulnerabilities of Indigenous Peoples and resources upon which they depend in the project AOI
- Unique vulnerabilities of women and other vulnerable or marginalized groups in the project AOI
- Baseline condition of the physical environment in the AOI, along with any ongoing environmental health related concerns or conflicts
- Local governments' relationship and dynamics with industry
- Baseline condition of local resources and infrastructure including healthcare, food/water supply, and education

Box 3-2

Indigenous Peoples

Over the course of the screening and scoping phases, the Developer must determine whether Indigenous Peoples are present in the project AOI (including settlements, livelihoods, cultural practices, or other use of lands and resources), and to what extent they may be adversely affected by the proposed project and its activities. This information will establish whether IFC Performance Standard 7 (Indigenous Peoples) or World Bank Environmental and Social Standard 7 (Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities) should be triggered, which in turn may influence project categorization and the level of engagement and assessment documentation required. For example, projects with anticipated significant impacts to Indigenous Peoples will require an Indigenous Peoples Plan and be subject to free, prior and informed consent (FPIC) principles.

It should be noted that definition of Indigenous communities may be unclear, contradictory and/or contentious in many countries of sub-Saharan Africa. Some groups may meet the criteria of an Indigenous or traditional community under international standards, but not be afforded legal recognition by governments. To meet GRMF requirements, the Developer must look beyond country-specific legal definitions and conduct an assessment against international standards (IFC PS7, ILO Convention 169, and the World Bank Environmental and Social Standard 7) in order to determine the presence or absence of Indigenous or traditional communities.

In addition to this Human Rights Guidance, the GRMF provides specific guidance related to the consideration of Indigenous Peoples and related requirements for free, prior and informed consent.

Sources of Information

As for other E&S topics, human rights baseline data collection will rely on a range of sources including (but not limited to) databases, summary reports and publications from reliable secondary sources; results of social and environmental studies completed as part of an ESIA or other permitting processes; events-based data such as witness statements; news articles and NGO reports; data from experts and human rights actors; and—perhaps most importantly—information provided by rights-holders. Approaches and methods for collecting information from rights-holders and other stakeholders are described in Chapter 4. In designing data collection plans, care should be taken to

include disaggregated data to account for differential impacts on women, Indigenous peoples, minority populations, and other vulnerable or marginalized groups.

With respect to secondary sources (i.e., existing data sources including statistics, government reports, academic literature, etc.), it is important to find sources that are reliable, and ideally are updated at regular intervals. Sources may include international institutions, national and local government agencies, civil organizations, and labour unions.

Data Limitations

As noted above, human rights are not equally protected in all countries. This can include the lack of protection for specific human rights or the failure to protect the rights of particular rights-holders within the country. In circumstances where countries fail to protect human rights, the official records needed to develop a human rights baseline may not be available or reliable. As a result, practitioners may need to rely on reports from other sources, including NGOs that focus on human rights (e.g., Amnesty International, Human Rights Watch, and Transparency International). While these organizations are involved in advocacy activities, they are also recognized as human rights resources that provide objective reports on human rights issues. These should be considered valid resources, especially in countries that have demonstrated a failure to protect human rights.

Aligning National and International Requirements

Discretion may be required where an ESIA is being developed to meet national requirements, as well as GRMF requirements. In such cases it may be prudent to extract the human rights sections from versions issued for government and/or public review. In particular, care should be taken to avoid public disclosure of baseline information or engagement records that could adversely implicate stakeholders, even at a group level.

3.2.3 Identifying Project Interactions with Human Rights

When a sufficient level of information is available about both the project characteristics and potential human rights issues in the project area, an interactions matrix provides a systematic way of identifying potential human rights impacts resulting from the project. An interactions matrix plots project activities and components against the potential human rights impacts identified in the screening phase. An example matrix is provided in **Appendix C**, and line items should be tailored to the specific project activities and to the screened-in human rights impacts.

Development of the baseline and the interactions matrix should not be considered as sequential; the two should be developed in parallel, with each serving as indicators of what gaps may remain for the robust and comprehensive completion of the other. As for screening, the scoping process is iterative and requires flexibility as new information is uncovered. Both the identified rights-holders and the potential human rights issues may need to be revisited throughout the scoping phase, and throughout the impact assessment process.

3.3 Deliverables

Outputs of the scoping phase will consist of:

- Completed human rights scoping matrix, and
- Human rights section of the E&S scoping report, including description of the AOI for human rights, identification of potentially affected rights and rights-holders, and summary of baseline conditions.

3.4 Timing in GRMF Process

An E&S Scoping Report, including identification of potential human rights impacts, is required for all GRMF-funded drilling projects. For projects that begin with surface studies and progress to drilling,

the E&S Scoping Report must be submitted by the completion of the surface studies. In the case of projects that obtain a GRMF grant for drilling only, the E&S Scoping Report must be submitted as part of the project's grant application package. The human rights scoping activity should be completed alongside the E&S scoping phase.

4. STAKEHOLDER ENGAGEMENT

4.1 Purpose and Objectives

A core principle of human rights assessment is that impacts be assessed from the perspective of harm they could cause to rights-holders. As such, engagement with rights-holders that could potentially be affected by the project is necessary to understand the nature and severity of potential impacts.

Failing to engage potentially affected rights-holders can undermine the legitimacy of the human rights due diligence or impact assessment process, and as such every attempt should be made to consult directly with these groups. If direct engagement is not practical or poses a risk to rights-holders, consultation should take place with reasonable alternative stakeholders such as human rights defenders and civil society organizations that can provide the required information.

In addition to engaging rights-holders and/or individuals representing their interests, other stakeholders may also be engaged to obtain baseline information on the human rights context that may not be available from published sources. This includes but is not limited to community leaders, local service providers, government agencies, and NGOs.

4.2 Process and Methods

4.2.1 Stakeholder Engagement Plan

As per the GRMF Developer Manual, all GRMF projects are required to submit a Stakeholder Engagement Plan (SEP) describing the overall approach and planned activities for engaging local communities and other stakeholders. Engagement with potentially impacted rights-holders and other stakeholders with information about human rights issues, should be included as part of this overall SEP. Where appropriate, human rights-related engagements may be combined with engagements on a broader range of E&S topics, with due consideration for protection of participant confidentiality where sensitive topics are involved.

4.2.2 Rights-Respectful Engagement

In general, stakeholder engagement conducted for the purposes of collecting information for a human rights assessment should be conducted in line with international good practice (i.e. IFC's PS 1 and Good Practice Handbook), as well as any applicable local laws. However, considering the sensitivities associated with human rights impacts in particular, special consideration should be given to avoid potential harm to rights-holders. Among a number of important considerations is the need to ensure proper understanding of the rights-holder landscape and promote inclusivity, as engagement of some groups and not others can lead to local tensions. It is also important to understand legacy human rights issues (i.e., pre-existing issues that may be unrelated to the project) and the potential sensitivities surrounding them. Bringing these issues to the fore without proper understanding can potentially cause more harm than good. Additional considerations for rights-respectful engagement is shown in Box 4-1.

4.2.3 Identifying Rights-Holders and Other Stakeholders

Stakeholders impacted by a project are often made up of diverse groups and individuals, some of whom may be vulnerable or marginalized by virtue of linguistic isolation, low socioeconomic status, or cultural practices differing from the mainstream. Box 4-2 lists groups that are frequently considered vulnerable or marginalized, and provides guidance for engaging with these subpopulations.

Rights-holders include workers involved with the project, such as project employees, contractors and subcontractors, day-labourers, and non-local hires. They also include people who reside and work in surrounding communities, use lands and natural resources that may be affected by the project, and those who may be affected by changes to infrastructure, services, water supply, access, and other

Box 4-2

Ensuring Rights-Respectful Engagement with Rights-holders

To ensure that engagement processes uphold human rights, it should be conducted in accordance with the following principles and considerations:

- **Transparency:** The practitioner should explain which organization they represent, the purpose of the study, and the nature of the relationship between the HRIA practitioner and the project. If the practitioner's objectivity is questioned by rights-holders due to the nature of the relationship with the client, partnering with an NGO may be considered to facilitate meaningful engagement.
- **Voluntary Participation:** Practitioners must obtain consent of rights-holders prior to participation. Participation must be voluntary and based on sufficient information of the HRIA process.
- **Respect for Privacy:** Practitioners should receive express permission before disclosing participants' names and provide rights-holders the option of a private interview instead of a group setting. Practitioners should not insist that rights-holders disclose information if they are reluctant.
- **Safety and Security:** Practitioners should take all reasonable measures uphold the 'do no harm' principle. Security issues should be discussed honestly and practitioners should stop the interview if the rights-holders express that they do not feel safe. It is essential that rights-holders' participation should not present any risk for retribution or reprisals.
- **Respectful Communication:** Communication should be conducted in a culturally appropriate manner. Practitioners should respect local traditions and customs, allow participants to end the interview if requested, and respect participants' time.

Box 4-1

Engaging with Vulnerable or Marginalized Stakeholders

Vulnerability or marginalization of different subpopulations will depend on the local context, and it is not feasible to list all possible examples. However, groups that are frequently subject to social, political and economic disadvantages include:

- Minorities (e.g. national, ethnic, linguistic, religious, political)
- Women, particularly widows
- Children and youth
- Single heads of household
- People with physical or mental disabilities
- Persons living with HIV/AIDS or other marginalizing diseases
- Landless people and/or land users lacking formal title
- Nomadic people
- Migrants, illegal settlers, refugees and displaced persons
- Informal, casual and migrant workers
- Indigenous peoples
- LGBTQ individuals
- Elderly people
- Human rights and labour rights defenders or trade union activists
- People of low socioeconomic status and/or low educational attainment
- Unemployed individuals

Engaging with these groups generally requires additional steps and consideration to ensure their full participation and inclusion in the stakeholder engagement process. These considerations could include ensuring that translated materials and interpretation services are available; tailoring materials and presentations to the group's level of formal education or understanding; scheduling meetings at times or days that accommodate non-traditional work schedules; and convening discrete focus groups to ensure participants are comfortable expressing their opinions.

Where a specific group is known to be extremely vulnerable to possible retribution, it may be more prudent to forego direct engagement, instead identifying reliable sources of information such as human rights defenders.

In cases where impacts to Indigenous Peoples are anticipated, an Indigenous Peoples Plan and adherence to the principles of FPIC will be required as per IFC PS7 and the World Bank ESS7. The GRMF provides specific guidance related to the consideration of Indigenous Peoples and related FPIC requirements.

Source: Adapted from The Danish Institute for Human Rights, 2016.

factors. Community members who live near project sites, or those who lose possession of their land, or those who lose access to lands they depend on for livelihoods, are all rights-holders, as are Indigenous people with ties to land in the project area. Constituents of the local government, opponents to a project (or industry), and numerous other groups may also be rights-holders.

Many rights-holders live in the vicinity of a project, but there are rights-holders that may be more removed from the immediate project area. These include employees and workers in the project's supply chain; farmers and tradesmen who may lose their livelihood due to the project; residents who live near supply routes for the project; users of downstream waters; individuals impacted by increased demand for essential supplies (food, water, medicines, etc.); and press covering local issues and project development.

Identification of rights-holders should occur throughout the screening and scoping process; it is particularly useful to consider which individuals and groups could potentially be affected while systematically working through the scoping matrix (**Appendix C**). However, identification of rights-holders is an ongoing process whereby additional rights-holders may become known as stakeholder engagements unfold, or as more details of the socio-economic baseline characteristics are developed.

4.3 Deliverables

Stakeholder engagement should occur across multiple phases of the GRMF funding process. Deliverables in relation to the human rights assessment will include:

- Analysis, prioritization, and engagement planning for human rights-related stakeholders in the project SEP,
- Integration of human rights-related baseline information into E&S Scoping Report,
- Integration of human rights-related information into the impact assessment and management plans, and
- Integration of monitoring data on project human rights performance, as well as any human rights-related engagement required, in monthly monitoring reports and the Final E&S Report.

4.4 Timing in GRMF Process

Stakeholder engagement is an ongoing process that typically begins in the scoping phase and should continue throughout the project. The GRMF requires a SEP for all projects, and this must be submitted as part of the project's grant application package. In the case of surface studies progressing to drilling, an updated SEP must be submitted by the completion of surface studies. Potentially affected rights-holders should be considered in the SEP, and engagement to understand relevant human rights risks and impacts should be included in the planning process.

5. IMPACT ASSESSMENT

5.1 Purpose and Objectives

The impact assessment phase of the human rights due diligence process is aimed at characterizing and evaluating the severity of the potential human rights impacts identified in the scoping phase. The transparent and systematic impact assessment process may be achieved through a standalone Human Rights Impact Assessment (HRIA), or by integrating the assessment of human rights risks and impacts into an ESIA. In both cases, a similar HRIA methodology is used (as described in this chapter).

5.2 Process and Methods

5.2.1 Types of Human Rights Impacts – Causation, Contribution and Link

With respect to human rights impacts arising from project development (or business activity), all actual or potential human rights impacts can be considered as being either **caused** by the project/business, **contributed to** by the project/business, or **directly linked to** the project/business through contractual or non-contractual relationships. Key to understanding a company's role in a given human rights impact is the concept of complicity (Box 5-1).

Box 5-1
Complicity

Complicity occurs when a business is implicated in a human rights violation that another company, government, group etc. has caused. This means that business is responsible for activities or actions that extend beyond its own direct business activities. Generally speaking, there are three types of complicity:

- *Direct complicity* which occurs when a company assists another party in violating human rights. For example, if a company transfers equipment to government security forces when it knows (or should have known) that it could be used to violate human rights.
- *Beneficial complicity* occurs when a company benefits directly from human rights violations committed by other parties. For example, when the government takes land without providing appropriate compensation, and the land is then used by a company for its operations.
- *Silent complicity* which occurs when a company fails to challenge systemic human rights violations – whether or not these relate directly to the company and its operations.

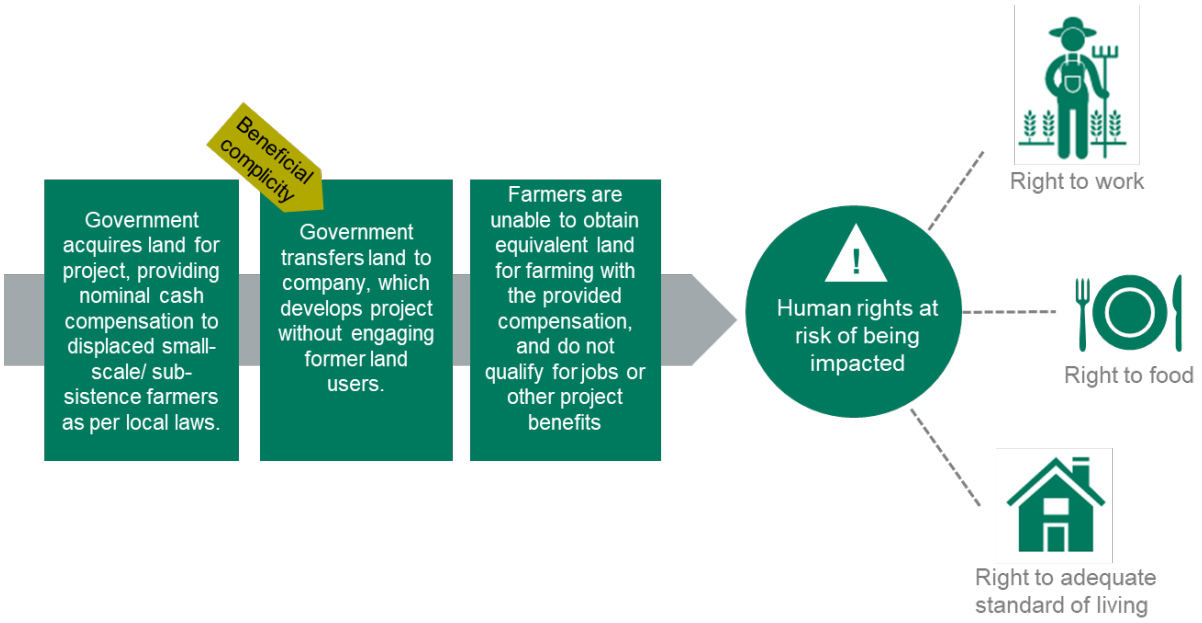
5.2.2 Articulating Impacts

A clear articulation of the impact pathway and its potential consequences for rights-holders is critical to ensure accurate assessment, as well as avoidance of gaps and/or overlap. As with any type of impact assessment, it is important to:

- clearly specify the source of the impact with respect to project activities;
- summarize the baseline context and identify impacted rights-holders; and
- state any assumptions built into the assessment.

Specific to HRIA, the specific human right(s) that are at risk of being impacted must also be identified, as should conditions of complicity, if any. An illustrative example of a clearly articulated impact pathway is provided in Figure 5-1.

Figure 5-1: Example Human Rights Impact Pathway



5.2.3 Assessing Human Rights Impacts in a Standalone HRIA

The preferred approach for HRIA is to use the assessment methodology outlined in the UNGPs in order to determine the **impact severity**. While all human rights impacts and risks must be addressed as part of a company's responsibility to respect human rights, establishing a severity designation can help to prioritize remedial actions in the event that it is not possible to implement all actions immediately or simultaneously. Table 5-1 summarizes the constituent parameters of severity, including scope and scale of the impact, and whether it can be repaired.

Table 5-1: Components of Impact Severity

Parameter	Description	Ratings
Scale	Seriousness of impact; includes consideration of the vulnerability of affected rights-holders	Negligible, Small, Medium, Large
Scope	Number of people affected	Small, Medium, Large
Irremediability	Degree to which the harm caused is irreparable	Low, Medium, High
Severity[1,2]	**Comprehensive assessment of impact severity**	**Low, Medium, High**

Note: (1) The likelihood or probability of an impact occurring is typically not factored into severity. (2) Where the assessment is integrated into a broader ESIA process, the assessment may determine the human rights impacts' significance, rather than severity, to better align with the rest of the ESIA. There are a number of different approaches to determining significance; whatever the methodology, it is important that the same considerations of scale, scope and irremediability be factored into the determination, even if these parameters are defined by different names.

Source: Adapted from the UN Guiding Principles on Business and Human Rights, 2011.

No pre-defined numerical criteria or ranges are provided for small, medium or large (or low, medium or high) ratings for the different parameters. These should be defined on a case-by-case basis as part of the assessment and as appropriate to the scale and nature of the project.

While severity should be determined on the basis of these constituent characteristics, it is important to note that professional judgement and input from rights-holders is essential in the establishment of severity. If possible, engagement with rights-holders should be a part of the assessment step to ensure impact severity is understood from their perspectives.

5.2.4 Assessing Human Rights Impacts in an Integrated Impact Assessment

While use of the UNGP approach (described in Section 5.2.3) is preferable for HRIA, when the human rights assessment is integrated into a broader ESIA it is often practical to make use of the same methodology, parameters and rating criteria used for environmental and social impacts. This alignment can help to avoid confusion and promote consistency. In any case, it is important that the assessment be conducted by an experienced human rights assessor to ensure that the assessment captures the equivalent information required to accurately assess human rights impacts in line with the UNGP methodology.

ESIA methodologies differ by organization and practitioner. Many approaches rest on the determination of **impact significance** (rather than severity, as noted in Table 5-1), though the constituent parameters used to arrive at the significance ranking can vary widely. An example of one set of parameters to determine impact significance is shown in Table 5-2.

Table 5-2: Example Components of Impact Significance

Parameter	Sub-Parameter	Description	Ratings[1]
Magnitude	-	The degree of the impact when accounting for its spatial and temporal characteristics as well as the qualitative nature of the change.	Negligible, Small, Medium, Large
	Scale	The degree and nature of change experienced by rights-holders.	Negligible, Small, Medium, Large
	Frequency	The periodicity with which an impact occurs.	Remote, Rare, Occasional, Frequent, Constant
	Duration	The timeframe over which an impact will be experienced.	Temporary, Short-term, Medium-term, Long-term
	Extent	The spatial 'reach' of the impact.	Limited, Local, Regional, Super-Regional, National
Vulnerability	-	Sensitivity of the individual or group to the impact, by virtue of baseline vulnerability characteristics.	Low, Medium, High
Significance	**-**	**Comprehensive assessment of the impact's significance**	**Negligible, Minor, Moderate, Major**

Note: (1) Ratings for scale, duration and extent should be adjusted as appropriate to align with the characteristics of the project.

A key distinction between the assessment of human rights impacts compared to other socio-economic impacts lies in the definition of **vulnerability**. Contrary to the definition of vulnerability for socio-economic impacts, the vulnerability designation for rights-holders should not include consideration of the rights-holders' ability to adapt to the adverse impact, since human rights violations should never be accepted and adapted to, and therefore must be avoided and/or remediated.[8]

Table 5-3 provides general definitions of vulnerability level, with illustrative examples.

[8] While factors determining the vulnerability of rights-holders will vary depending on the context, higher levels of vulnerability will frequently be underpinned by one or more of the characteristics listed above in **Box 4-2: Engaging with Vulnerable or Marginalized Stakeholders** in Section 4.2.3.

Table 5-3: Vulnerability Level Definitions and Examples

Level of Vulnerability	Definition
Low	Good ability to anticipate, cope with or resist project-related impacts, such that the impact may be less severe or less likely to become a human rights violation. An example could include a landowner whose land is only a secondary source of income, who has access to legal resources, and is accustomed to negotiating easement agreements with oil and gas companies.
Medium	Some risk of being unable to anticipate, cope with, resist and recover from Project-related impacts to human rights. An example could be a small-scale commercial fisherperson who operates near the site of a proposed new port, but has access to alternative areas for fishing and also conducts some secondary income-earning activities other than fishing.
High	High risk of being unable to anticipate, cope with, resist and recover from Project-related impacts to human rights, and/or high risk of experiencing human rights impacts more severely. An example could be members of an indigenous community that is highly dependent on natural resources for subsistence and cultural activities, and is not well integrated into the mainstream cash economy, located in close proximity to a large mining project.

When using the integrated ESIA approach, a significance matrix like that shown in Table 5-4 may be used to ensure systematic assessment of human rights impacts. However, as with the standalone approach, the determination of significance should ultimately be subject to professional judgement. If conducted correctly and with appropriate human rights expertise, practitioners should arrive at the same impact determination as with the standalone approach, despite the different terminology and rating methodology.

Table 5-4: Example Significance Matrix

Magnitude of Impact	Vulnerability of Rights-holder: Low	Medium	High
Negligible	Minimal	Minimal	Minimal
Small	Minimal	Minor	Moderate
Medium	Minor	Moderate	Major
Large	Moderate	Major	Major

Box 5-2
Conducting HRIA after ESIA Development

Where HRIA is integrated into an ESIA, the assessments will ideally be conducted simultaneously. This allows for the integration of a human rights lens into all relevant environmental and social data collection and baseline assessments, which ultimately improves the quality and specificity of the HRIA. However, some circumstances can lead project proponents to initiate human rights assessment *after* initial completion of the ESIA. In such cases, the approach may be dependent on the quality of the social impact assessment and the extent to which human rights impacts have been addressed therein. If the social impact assessment addresses human rights risks, the existing assessment may be supplemented with a human rights-specific analysis. Any human rights impacts not identified in the ESIA should be comprehensively considered, identified and assessed.

Regardless of whether the HRIA is standalone or integrated into an ESIA, engagement with rights-holders should be conducted as part of the assessment wherever possible. As described previously, this is a key step and input to the HRIA process. In cases where rights-holder engagement is not possible, this limitation to the assessment should be clearly stated. It may be advisable to consider the assessment as a human rights risk assessment rather than an impact assessment, as rights-holder engagement is considered a critical component of an HRIA.

5.2.5 Cumulative Impacts

Cumulative impacts are the combined, contributed impacts from multiple projects or activities that may be negligible on their own, but significant in combination. Cumulative impacts can be challenging to predict and address, as companies may not consider themselves responsible if their singular contributions are within acceptable limits. However, in the case of cumulative impacts there is sometimes a "tipping point" at which the situation may be changed abruptly and an environmental or social response is triggered.

HRIA should assess the potential for a company's cumulative contributions to human rights impacts, and identify potential opportunities for collaboration with other contributors to the impact to effectively address it. The concept of **leverage** (Box 5-3) is often key to understanding what course of action may be effective in cases of cumulative impacts, and also sometimes in cases of complicity (refer to Box 5-1 in Section 5.1).

Box 5-3

Leverage

According to the UNGPs, leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm. Depending on the company's leverage over the other entities concerned in the impact, it may be able to exercise its influence to mitigate the impact. As an example of an instance of high leverage, a company could require its contractors to adhere to its corporate human rights standards, or risk termination of the contract if compliance is not achieved.

Where leverage is low or does not exist, impact mitigations may include actions to build or increase leverage. This could include collaborating with other actors and stakeholders to influence the behavior of other parties causing or contributing to the impact.

5.3 Deliverables

Outputs of the assessment phase will consist of:

- Human rights impact assessment chapter of an ESIA, or a standalone HRIA, identifying and characterizing all significant human rights impacts and proposing mitigation measures (described further in Chapter 6).

5.4 Timing in GRMF Process

The impact assessment and all other E&S documentation must be submitted as part of the application for a drilling project. The impact assessment may be completed during the surface studies phase in the case of projects that progress from surface study to exploration drilling.

6. MITIGATION AND MANAGEMENT (INCLUDING ACCESS TO REMEDY)

6.1 Purpose and Objectives

Mitigation really begins during the assessment phase, since the assessor will propose mitigation or management measures for impacts with the aim of reducing their severity or significance. The mitigation and management measures identified during the assessment step should be refined as needed and carried forward into management plans to allow for robust and effective planning, including an overview of timing, resources, personnel, specific procedures, duration, and the monitoring and evaluation that will be necessary.

It is important to note that, in most cases, mitigation measures for human rights impacts will not be standalone measures developed specifically to address human rights. Instead, they are likely to include measures designed to address potential environmental and social impacts that, if left unmitigated, could lead to human rights risks. For example, mitigation measures would be proposed by environmental practitioners to avoid contamination events that could ultimately lead to violations of nearby communities' rights to a clean environment and food security, among others.

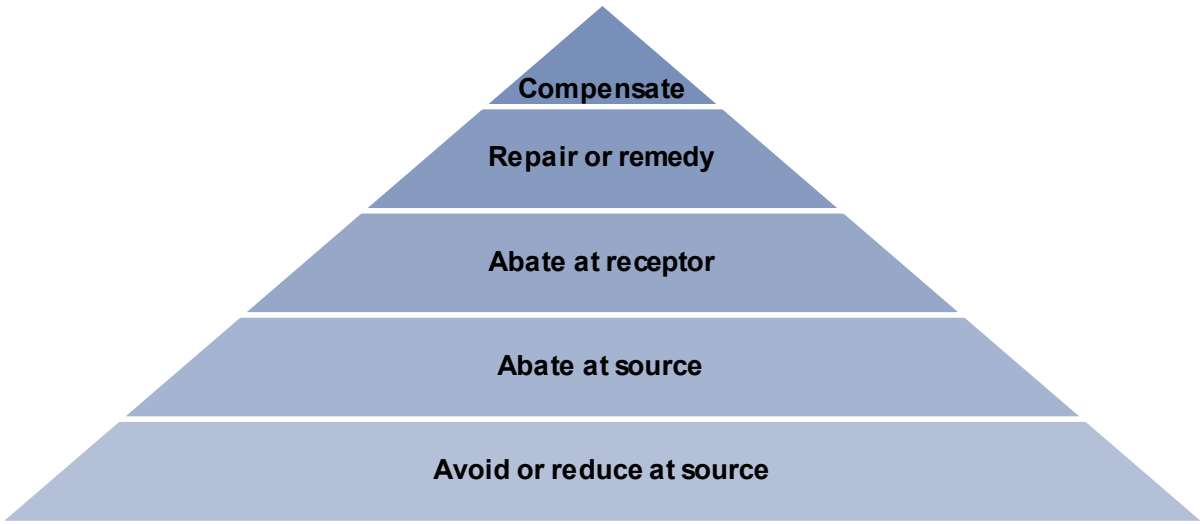
In some cases, additional human rights-related mitigations measures, or adaptation of environmental or social measures to ensure a human rights focus will be necessary and appropriate. Examples include establishment of appropriate mechanisms for access to remedy for rights-holders who have suffered human rights abuses, and specific language in Codes of Conduct or contractor management policies to reflect the Developer's human rights commitments.

Other considerations for developing mitigations with a human rights lens are discussed in Section 6.2. Development of the impact mitigation plan is an integral part of the human rights assessment process, and rights-holders should be meaningfully involved in the planning process.

6.2 Process and Methods

Whether standalone of integrated into an ESIA, mitigation and management for human rights impacts should follow a mitigation hierarchy to *(i) avoid* and *(ii) minimize* impacts, and only *(iii) compensate (or offset)* risks and adverse impacts when avoidance and minimization are not possible. Figure 6-1 shows the mitigation hierarchy, illustrating the ideal approach of avoiding or reducing impact to the extent possible with options of repair, remedy and compensation occurring infrequently and only when other options are not possible.

Figure 6-1: Impact Mitigation Hierarchy



Since human rights impacts are often inherently caused by environmental and social impacts, a human rights assessment developed as part of an integrated ESIA must ensure that mitigations proposed for any social and environmental-related impacts with potential to escalate to the level of human rights impacts are appropriately adapted to include the human rights perspective (Box 6-1).

The nature of the management and mitigation measures should reflect the scope and scale of the risks identified during the screening, scoping and assessment process. Examples of management measures are provided in Table 6-1; considering the diversity of possible human rights impacts, this list is illustrative only and far from being exhaustive.

Box 6-1

Adapting Mitigation and Management Measures to Include a Human Rights Perspective

When adapting mitigation measures traditionally designed as part of an ESIA, the following factors should be taken into consideration for the purposes of mitigating human rights impacts:

- Any mitigation and management measures must be compatible with international human rights standards as well as a human rights-based approach.
- Remediation should be explicitly included; this includes understanding and explaining that compensation and remediation are not synonymous, and that compensation should only be considered as a last resort; and
- Human rights impacts cannot be subject to 'offsetting' in the same manner as environmental impacts. Given that human rights are indivisible and interrelated, it is not considered appropriate to offset one human rights impact with a 'positive contribution' elsewhere. For example, if a business has caused an adverse impact on the adequate standard of living of communities through the pollution of groundwater that in turn reduces the ability of people to grow their food, such impacts cannot be offset by the business providing a community development project that provides educational and schooling material.

Source: Adapted from *Human Rights Impact Assessment: Guidance and Toolbox* (The Danish Institute for Human Rights)

Table 6-1: Examples of Management Measures

Human Right	Sources of Potential Risks	Example Management Measures
Right to life	■ Security and community / workforce interaction ■ Occupational and community health impacts associated with site activities ■ Government security / police force approach to workforce / affected community protests	■ Screening of security contractor prior to engagement and background checks of specific personnel to be engaged ■ Training of security personnel in human rights requirements, a company code of conduct or other relevant standards such as UN Code of Conduct for Law Enforcement Officials, and the Voluntary Principles on Security and Use of Force
Right to liberty and security (including freedom from arbitrary arrest, detention or exile)	■ Security and community / workforce interaction ■ Government security / police force approach to workforce / affected community protests	■ Training provided for all security personnel ■ Contracts with security provider reflect human rights requirements
Right not to be subjected to slavery, servitude or forced labour	■ Labour and working conditions of employed workforce ■ Labour and working conditions of contractors and sub-contractors ■ Labour and working conditions in the supply chain	■ Internal recruitment policies and procedures (which ensure that bonded/forced labour is not used) ■ Engagement with government (if government is providing labour) to ensure that the project/ operation's expectations on labour are clear

Human Right	Sources of Potential Risks	Example Management Measures
Right not to be subjected to torture, cruel, inhuman and/or degrading treatment or punishment	■ Security and community / workforce interaction ■ Security response measures relying on detention in prisons ■ Harsh or inhumane treatment of workers by supervisors or fellow employees	■ Screening of security contractor prior to engagement ■ Contracts with security provider reflect human rights requirements ■ Employee Code of Conduct ■ Grievance Mechanism, including means to present grievances anonymously
Right to recognition as a person before the law	■ Approach to recruitment processes for the operation/ project or by contractors ■ Approach to management and resolution of issues in the workplace (direct employees or contractors) ■ Participation of vulnerable groups in impact assessment / compensation processes	■ Internal grievance mechanism that is readily accessible by the workforce

6.2.1 Designing Appropriate Measures Based on Impact Type

In designing management and mitigation measures, a human rights assessment must take into consideration whether the operation has caused or contributed to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services through a business relationship. Generally, in the case of impacts that are due to contribution or link, the extent of a company's leverage (refer to Box 5-3 in Section 5.2) should be considered in the design of mitigation measures.[9]

Table 6-2 provides an overview of the three main types of impacts and how these affect the types of mitigation and management measures that are possible.

Table 6-2: Designing Appropriate Mitigation and Management Measures Based On the Type of Impact

Type of Impact	Considerations in the design of the mitigation/management measure
Impact *caused* by the operation	■ Take necessary steps to cease and prevent the impact (e.g. avoidance); and ■ Provide for, or collaborate in, remediation for actual impacts caused (e.g. mitigation, compensation or other remedy).
Impact to which the business *contributes*	■ Take necessary steps to cease or prevent contribution to the impact, using leverage to the extent possible; and ■ Provide for, or cooperate in, the remediation of adverse impacts
Impacts *directly linked* to a business's operations, products or services through contractual and non-contractual relationships	■ Exercise existing leverage to prevent or mitigate the impact ■ Increase and/or seek leverage if existing leverage is inadequate to prevent or mitigate the impact; ■ Where leverage cannot be increased consider ending the relationship, taking into account the potential adverse human rights impacts that could be involved in doing so and ■ Consider taking a role in remediation efforts where possible

Source: Adapted from *Human Rights Impact Assessment: Guidance and Toolbox* (The Danish Institute for Human Rights)

[9] "Guiding Principles on Business and Human Rights, Implementing the United Nations 'Protect, Respect and Remedy' Framework", Principle 19 (b), United Nations, 2011.

6.2.2 Access to Remedy

Access to remedy is a key principle required by the UNGPs as part of the human rights due diligence process. For business operations, this means providing an effective operational-level grievance mechanism for individuals and communities that are adversely impacted by its activities.[10] An operational-level grievance mechanism serves several purposes: i) to support the identification of adverse human rights impacts as a part of ongoing human rights due diligence by offering a channel to rights-holders to make their grievances known; ii) to allow the opportunity to analyze grievances with a view towards identifying any systemic issues or trends; and iii) to remediate any adverse impacts that are identified in a timely manner.

Where the human rights assessment identifies potential impacts for which remedy would be needed, grievance mechanisms must be provided to rights-holders (often specifically targeted at affected communities and workers). The mechanisms should be readily accessible and culturally appropriate. When designing the mechanism, particular attention should be given to vulnerable subpopulations such as Indigenous Peoples, migrants, and other marginalized groups. The UNGPs set out the following as effectiveness criteria that should be considered in the design of the grievance mechanism:

- **Legitimate:** enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- **Accessible:** being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- **Predictable:** providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- **Equitable:** seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- **Transparent:** keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- **Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognized human rights;
- **A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms; and
- **Based on engagement and dialogue:** consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.[11]

6.3 Deliverables

Outputs of the mitigation and management phase include the following:

- Human rights mitigation and management measures as part of the Environmental and Social Management Plan (ESMP) in the case of human rights assessments as part of an integrated ESIA. In the case of a standalone HRIA conducted after the ESIA, a Human Rights Management Plan (HRMP) may be created as a sub-plan to the ESMP.

[10] "Guiding Principles on Business and Human Rights, Implementing the United Nations 'Protect, Respect and Remedy' Framework", Principle 29, United Nations, 2011.

[11] "Guiding Principles on Business and Human Rights, Implementing the United Nations 'Protect, Respect and Remedy' Framework", Principle 31, United Nations, 2011.

- Environmental and Social Action Plan (ESAP), if required. The ESAP (Box 6-2) may be drafted by an independent consultant appointed by KfW or another party, but must be agreed upon and finalized jointly with GRMF and the Developer.

Box 6-2

Environmental and Social Action Plan

The E&S Assessment Documentation submitted by the Developer will be subject to an Environmental and Social Due Diligence (ESDD) review by an Independent Environmental and Social Consultant. The ESDD will include but not be limited to a gap assessment of the Assessment Documentation against the Equator Principles, IFC Standards, national laws, and/or other Applicable Standards. If found to be required, an Environmental and Social Action Plan (ESAP) will be developed and along with the ESMP will contain actions that the Developer must complete in line with a specified timeline to close any gaps identified.

6.4 Timing in GRMF Process

The ESMP (and HRMP as a sub-plan to the ESMP, if applicable) must be submitted along with all other E&S assessment documentation at the application stage for all drilling projects. For projects that progress from surface studies to exploration drilling, the ESMP/HRMP may therefore be developed while surface studies are underway.

7. MONITORING, EVALUATION AND REPORTING

7.1 Purpose and Objectives

A key aspect of managing the potential risks and impacts identified through a human rights assessment will be monitoring, evaluation and reporting, which are the responsibility of the Developer throughout project implementation. A human rights assessment should define high-level monitoring, evaluation and reporting objectives (for example, as part of relevant management plans). Monitoring, evaluation and reporting begin upon implementation of the project ESMP, SEP and ESAP, and represent an integral part of the ongoing human rights due diligence process.

7.2 Process and Methods

Monitoring of human rights performance should include the establishment of Key Performance Indicators (KPIs), which are quantifiable measurements can be used to assess the effectiveness of the management measures in managing the risk or impact as well as the performance of the team assigned to implement the management plans. SMART criteria[12] (Box 7-1) are a useful framework to design KPIs.

The Developer will collect monitoring data on an ongoing basis in order to provide E&S performance updates as part of the monthly status report required by GRMF throughout the drilling phase. In addition, the project will be subject to independent monitoring and evaluation by an Independent Environmental and Social Consultant (IESC), including review of E&S reports and site visits. If warranted, the third party evaluator may conduct an in-depth evaluation of human rights performance in project situations where there are severe human rights impacts or risks; where corruption, obfuscation, or distrust is high; or where there is significant focus on the operation from human rights NGOs or campaigners.

The Developer will be required to submit a final E&S Report that provides evidence and documentation of the full implementation of the ESMP and ESAP. With respect to reporting to external stakeholders, this can take place through two primary means:

- Sharing progress on the human rights assessment process, especially on key issues they may have been consulted on in the past and for which affected stakeholders have invested their time and energy in providing inputs (for example, baseline surveys, focus group discussions, etc.).
- Reporting on the operation's human rights impacts, including the human rights assessment: as a best practice, clients should disclose as much information as possible about how they have addressed any existing or potential human rights risks and impacts in their business activities. An

Box 7-1
Example SMART KPIs for Human Rights Performance Monitoring

- Percentage of all company staff that has received Code of Conduct training
- Percentage of contractor staff that has received Code of Conduct training
- Percentage of subcontracts and first-tier supplier relationships with equivalent contractual language related to human rights policies and procedures as the business entity
- Number of complaints (oral or written) received by the Grievance Mechanism from workers or contractors
- Percentage of worker or contractor complaints that were resolved within the designated resolution period as established by the Grievance Mechanism
- Percentage of security force staff or contractors who have received human rights training on escalation of force
- Number of disruptions to construction or operations as a result of community discontent
- Total number of incidents related to at least one of the following ILO conventions: child labour, forced labour, non-discrimination, freedom of association and collective bargaining or indigenous rights

[12] Specific, Measurable, Achievable, Relevant, and Time-bound

easy way to accomplish this is by publishing the HRIA or developing a summarized standalone report that might report on a more global level about a company's general approach to human rights impacts and management throughout its business operations.

Reporting to stakeholders should always consider the climate with respect to potential for reprisals to rights-holders and/or human rights activists/ civil society organizations in the country or regional context in which the operation is taking place. These parties are best placed to comment on the potential for such situations and provide input on the extent to which information should be reported. This type of information should be sought out during the process of Stakeholder Engagement.

7.3 Deliverables

Outputs of the monitoring, development and reporting phase include the following:

- Human rights performance monitoring included as part of the E&S updates of Developers' monthly status reports
- Plan for reporting to stakeholders as part of the SEP
- Final E&S Report

7.4 Timing in GRMF Process

Monitoring and submittal of monthly status reports will begin upon signing of the contract and start of project preparation (i.e. as soon as ESMP and ESAP implementation begins). The timing and frequency of independent monitoring by an IESC will be determined by GRMF and incorporated into the grant contract.[13] Submittal of the Final E&S Report is required upon completion of the drilling program.

[13] Under certain circumstances (e.g., early contracting activities), monthly reports may also be required in advance of grant contract signing.

APPENDIX A RESOURCES FOR HUMAN RIGHTS ASESSMENT PRACTITIONERS

Further Guidance on the Human Rights Due Diligence Process and HRIA Process:

UN Guiding Principles on Business and Human Rights:
https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

UN Guiding Principles Reporting Framework:
https://www.ungpreporting.org/

The Danish Institute for Human Rights – Human Rights Impact Assessment Guidance and Toolbox:
https://www.humanrights.dk/business/tools/human-rights-impact-assessment-guidance-toolbox

Information Sources for Human Rights Baseline Development:

African Commission on Human and Peoples' Rights: https://www.achpr.org/resources

Amnesty International Country Profiles: https://www.amnesty.org/en/countries/

Human Rights Watch Country Profiles: https://www.hrw.org/countries

International Labour Organization Country Profiles: https://ilostat.ilo.org/data/country-profiles/

International Trade Union Confederation Global Rights Index: https://www.ituc-csi.org/ituc-global-rights-index-2020

Transparency International Corruption Perceptions Index: https://www.transparency.org/en/cpi#

U.S. Department of Labor List of Goods Produced by Child Labor or Forced Labor:
https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods

U.S. Secretary of State Trafficking in Persons Report (with Country Profiles):
https://www.state.gov/reports/2020-trafficking-in-persons-report/

Walkfree Foundation Global Slavery Index:
https://www.globalslaveryindex.org/2018/data/maps/#prevalence

WeForum Global Gender Gap Report: http://www3.weforum.org/docs/WEF_GGGR_2020.pdf

World Justice Project Rule of Law Index: https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2020

APPENDIX B HUMAN RIGHTS SCREENING CHECKLIST (EXAMPLE)

Human Rights Screening Checklist (Example)

For each human right, the assessor should identify whether a potential impact has the potential to occur in the project AOI. At this stage (screening), the evaluation should be conservative; in other words, if a determination is unclear and further information is required, the assessor should answer "yes" for the purposes of screening. For any human rights that are "screened in", the assessor should also note the potential sources of human rights violation(s).

No.	Human Rights	Screened In (y/n)	Possible Human Rights Risks (for Screened-in Rights)
e.g.	*This column identifies the range of human rights that will need to be considered during the screening process, along with its reference standard(s).*	*Assessor to screen in (yes) or out (no)*	*For all "yes" responses: Assessor to identify/describe possible human rights risks based on understanding of the local human rights context.*
1	**Right to life** UDHR 3; ICCPR 6		
2	**Right to liberty and security (including freedom from arbitrary arrest, detention or exile)** UDHR 3 and 9; ICCPR 9		
3	**Right not to be subjected to slavery, servitude or forced labour** UDHR 4; ICCPR 8; ILO No.29; ILO No.105		
4	**Right not to be subjected to torture, cruel, inhuman and/or degrading treatment or punishment** UDHR 5; ICCPR 7		
5	**Right to recognition as a person before the law** UDHR 6; ICCPR 16		
6	**Right to equality before the law, equal protection of the law, non-discrimination** UDHR 7; ICCPR 26; ILO No.111		
7	**Right to freedom from war propaganda, and freedom from incitement to racial, religious or national hatred** UDHR 7; ICCPR 20		
8	**Right to access to effective remedies** UDHR 8; ICCPR 2		
9	**Right to a fair trial** UDHR 10; ICCPR 14		
10	**Right to be free from retroactive criminal law** UDHR 12 ; ICCPR 15		
11	**Right to privacy** UDHR 12; ICCPR 17		
12	**Right to freedom of movement and residence** UDHR 13; ICCPR 12		
13	**Right to seek asylum from prosecution in other countries** UDHR 14		

No.	Human Rights	Screened In (y/n)	Possible Human Rights Risks (for Screened-in Rights)
14	**Right to have a nationality** UDHR 15		
15	**Right to adequate standard of living** UDHR 25; ICCPR 24; ILO No.182		
16	**Right of protection for the child and mothers** UDHR 25; ICCPR 24; ILO No.182		
17	**Right to marry and form a family** UDHR 16; ICCPR 23; ICESCR 10		
18	**Right to own property** UDHR 17; ICESCR 15		
19	**Right to freedom of thought, conscience and religion** UDHR 18; ICCPR 18		
20	**Right to freedom of opinion, information and expression** UDHR 19; ICCPR 19		
21	**Right to freedom of assembly** UDHR 20; ICCPR 21		
22	**Right to freedom of association** UDHR 20; ICCPR 22; ILO No.87		
23	**Right to participate in public life** UDHR 21; ICCPR 25		
24	**Right to social security, including social insurance** UDHR 22; ICESCR 9		
25	**Right to work** UDHR 23; ICESCR 6		
26	**Right to enjoy just and favourable conditions of work (including rest and leisure) UDHR 23 and 24; ICESCR 7**		
27	**Right to form trade unions and join the trade unions, and the right to strike** UDHR 23; ICESCR 8; ILO No.98		
28	**Right to an adequate standard of living (housing, food, water and sanitation)** UDHR 25; ICESCR 11		
29	**Right to health**		

No.	Human Rights	Screened In (y/n)	Possible Human Rights Risks (for Screened-in Rights)
	UDHR 25; ICESCR 12		
30	**Right to education** UDHR 26; ICESCR 13 and 14		
31	**Right to take part in cultural life, benefit from scientific progress, material and moral rights of authors and inventors** UDHR 27; ICESCR 15		
32	**Right to self-determination and natural resources** UDHR 21; ICCPR 1; ICESCR 1		
33	**Right of detained persons to humane treatment** UN General Assembly adoption		
34	**Right not to be subjected to imprisonment for inability to fulfil a contract** ICCPR 11		
35	**Right of aliens to due process when facing expulsion** ICCPR 13		
36	**Rights of minorities** ICCPR 27		
37	**Right to clean water and sanitation** UN General Assembly adoption		

APPENDIX C HUMAN RIGHTS SCOPING MATRIX (EXAMPLE)

PROJECT PHASES AND ACTIVITIES	HUMAN RIGHTS																																
	Labor												Security						Health/Environment				Property/Economic						Education		Political	Indigenous		
	Right to Favorable Working Conditions	Right to Work	Freedom from Exploitive Child Labor	Nondiscrimination	Equal Pay for Equal Work	Freedom of Religion	Freedom of Association	Right to Belong to a Trade Union	Right to Strike	Right to Just Remuneration	Right to Holidays with Pay	Right to Adequate Standard of Living	Rights to: Life, Liberty, Security of Person	Freedom from Degrading Treatment/ Torture	Freedom from Arbitrary Arrest, Imprisonment	Freedom of Thought	Freedom of Expression	Freedom of Assembly	Right to Adequate Supply of Water	Right to Clean Air/Environment	Right to Std. of Living Adequate for Health	Right to Health	Freedom of Residence	Right to Housing	Right to an Adequate Standard of Living	Right to Property	Right to Privacy (Noninterference)	Right to Food, Freedom from Hunger	Right to Education	Rights of Children	Right to Public and Political Participation	Right of Self Determination	Right to Natural Resources / Subsistence	Right to Cultural Participation
ALL PHASES																																		
Local hiring policies																																		
Local sourcing policies																																		
Surface Study Preparation and Implementation																																		
Project purchases																																		
Project contracting																																		
Worker presence																																		
Working conditions																																		
Transportation of workers and equipment																																		
Drilling Preparation																																		
Project purchases																																		
Project contracting																																		
Worker influx and presence																																		
Working conditions																																		
Land acquisition																																		
Site clearing and grading																																		
Transportation of workers, materials and wastes																																		
Temporary access road/ site entrance construction																																		
Generation/ management of wastes																																		
Drilling Implementation																																		
Worker influx and presence																																		
Site clearing and grading																																		
Equipment mobilization																																		
Working conditions																																		
Drilling and associated noise, dust, vibration																																		
Use of hazardous materials																																		
Use of security personnel																																		
Management of wastes and emissions																																		
Transportation of workers, materials and wastes																																		

- Potential impact (scoped in)
- Potential impact of unplanned event (scoped in)
- More information required
- No potential interaction (scoped out)

APPENDIX D GRMF ROLE AND RESPONSIBILITIES IN THE HUMAN RIGHTS ASSESSMENT PROCESS

GRMF Role and Responsibilities in the Human Rights Assessment Process

Screening

Within the human rights assessment process, the role of the GRMF upon receipt of the E&S Screening report is to assess whether the level of information is sufficient to identify human rights impacts with the potential to occur in the project area, and to aid in determination of project categorization. In the case of drilling projects, additional Assessment Documentation including the SEP, scoping report, impact assessment and ESMP will also be required for categorization.

When reviewing the human rights information within the E&S Screening Report, the GRMF reviewer should pose the following questions:

- ✓ Is the project location and social/human rights context described and understood at a level sufficient to screen for possible human rights risks?
- ✓ Does the administrative framework chapter provide a comprehensive overview of the following laws, policies and standards applicable to the human rights performance of the project?
    - All applicable international good practices and standards (e.g. Equator Principles, IFC Performance Standards, UNGPs)
    - All applicable host country laws and regulations
    - All applicable Lender- or Company-required policies, standards and procedures
- ✓ Are human rights risks associated with the project screened against all relevant rights laid out in the International Bill of Human Rights and ILO Declaration on Fundamental Principles and Rights at Work?
- ✓ Is the high-level characterization of the environmental, socio-economic, and human rights context sufficient to allow for identification of baseline human rights risks?

If the answer to any of the above questions is NO, the reviewer should consider requesting additional information or clarification from the Developer.

Due to their largely non-intrusive nature, surface studies are typically considered by the GRMF to be Category B projects requiring limited E&S Assessment Documentation (typically an E&S Screening report and a work plan for further E&S scoping during study implementation, in anticipation of an ESIA should the project proceed to exploration drilling). However, in exceptional cases and where there is potential for unusually severe human rights impacts (for example, where involuntary resettlement will occur, or where Indigenous Peoples are affected), it may be appropriate for the GRMF to make the determination that the surface study project should be subject to a more robust level of E&S assessment at this stage, for example an ESIA or a standalone HRIA.

Scoping

All exploration drilling projects are required to undergo an impact scoping process and submit an E&S Scoping report as part of the grant application package. For projects that progress from surface studies to drilling, gathering of additional E&S baseline data for scoping occurs during surface study implementation, with the Scoping Report submitted at the conclusion of surface study implementation, before the final disbursement.

Within the human rights assessment process, the role of the GRMF upon receipt of the scoping report is to determine whether a comprehensive data-gathering and analysis effort has been conducted to ensure accurate and comprehensive identification of all potential human rights impacts. When reviewing the Scoping Report, the GRMF reviewer should consider the following questions:

- ✓ Does the baseline characterization of the environmental, socio-economic, and human rights context provide enough detail at a granular enough level to identify potential interactions with the project and its activities?

- ✓ Does the baseline characterization of the human rights context include information gathered from relevant stakeholders, including rights-holders and/or suitable representatives?

The GRMF will consider the Scoping Report along with the ESIA, ESMS, and SEP to determine whether the project has identified and appropriately planned for the management of project-related human rights impacts, and to determine project categorization.

Stakeholder Engagement

All GRMF projects are required to submit an SEP during the application phase, and to provide an updated SEP during the implementation phase, for final disbursement.

The SEP should outline the overall approach for stakeholder engagement and provide an overview of the engagement activities to be undertaken over the course of the project, including the proposed approach for informing local communities about the project. The SEP must also include a grievance mechanism which must be advertised to local communities and other potentially affected stakeholders.

Within the human rights assessment process, the role of the GRMF in reviewing the SEP is to determine whether the level and nature of proposed stakeholder engagement activities are sufficient to gain information on the project's potential human rights impacts, and whether the proposed activities are thoughtfully planned to be rights-respectful and to ensure rights-holder safety.

When reviewing the SEP, the GRMF reviewer should pose the following questions:

- ✓ Have potentially affected rights-holders for all potential human rights impacts identified in the scoping report, been identified as stakeholders to be engaged?
- ✓ Have the appropriate considerations been made, and accommodations proposed to ensure participation of marginalized or vulnerable populations that may exist among potentially affected rights-holders?
- ✓ Has the protection of rights-holder confidentiality and personal safety been considered in engagement planning? If found to be a concern, have accommodations and/or alternatives (e.g. interviews with community leaders, human rights defenders) been identified?
- ✓ Referencing the E&S screening report, are the local human rights context and local socio-political dynamics sufficiently understood by the Developer to ensure that engagement on human rights topics do not cause unrest or other harm?

If there is any doubt as to whether the engagement approach is safe for all parties, particularly vulnerable rights-holders, GRMF should either: i) request additional information, or ii) work with the Developer to revise the SEP such that any engagement activities that could pose a risk be postponed until such time that sufficient information has been gathered via scoping activities to appropriately assess the risk and propose a well-informed solution.

Assessment and Mitigation

Typically GRMF does not require an ESIA or ESMP for surface studies[14]. An ESIA and ESMP are required for all exploration drilling projects as part of the grant application package and along with other E&S Assessment Documentation, will undergo a comprehensive review against all Applicable Standards, including a gap assessment conducted by an Independent Environmental and Social Consultant (IESC)

As part of the human rights assessment process, questions for GRMF and the IESC to consider during review include:

[14] However, the GRMF requires as part of the grant application package any studies conducted to meet host country requirements, which may include an ESIA, ESMP or similar. It is also the prerogative of the GRMF to request a more robust E&S assessment in exceptional cases where such an assessment is found to be required to properly understand and/or manage risks.

- ✓ Are the characterizations and assessments of impact severity appropriate, and did they take into account rights-holder perspectives?
- ✓ Has the mitigation hierarchy been applied in a robust manner, with all efforts being made to avoid and reduce impacts before considering remedy or compensation?
- ✓ Could additional, practicable mitigation and management measures be implemented to further reduce the severity of impact?
- ✓ Does the ESMP contain sufficient information on timelines and responsible parties?

If found to be necessary, the IESC will propose an Environmental and Social Action Plan (ESAP) to close any gaps found in the Assessment Documentation. The ESAP will be agreed upon and finalized between the Developer and GRMF, with implementation to be part of the grant agreement.

Monitoring, Evaluation and Reporting

After signing of the grant contract, the Developer will be required to submit monthly status update reports which will include reporting on implementation of the SEP, and in the case of exploration drilling projects, the ESMP and ESAP. This will include reporting on any human rights-related monitoring indicators. Upon project completion, the Developer will submit a final E&S Report to GRMF.

As part of the human rights assessment process, GRMF will review the monthly reports to confirm that human rights mitigation and management measures, and any required stakeholder engagement related to human rights management, are being implemented as agreed in the grant contract.

During the monitoring and reporting period, the IESC will conduct independent evaluation of the project to ensure adherence to the Applicable Standards and the grant contract. Results of the evaluations may result in updates to the ESMP and ESAP as appropriate.

The Final E&S Report will also be subject to IESC review, the results of which will inform GRMF's decision to either issue a "No Objection", or to request further evidence/information.