

## HUMAN RIGHTS IMPACT ASSESSMENT OF BAFFINLAND’S MARY RIVER PROJECT

### What is an HRIA?

Human rights impact assessments (HRIAs) are tools that allow stakeholders of a proposed business operation and investment to understand the potential positive and negative impacts in terms of human rights. In the context of the Baffinland mine, the main focus will be on the potential impacts on the Inuit of Nunavut and other stakeholders as potential employees of the mine; as project-affected communities; and, as potential suppliers or business associates of the mine. The HRIA will assess the role and responsibilities of government agencies and the company to protect, respect and remedy potential impacts on human rights, as defined by international human rights law and compared with good practices for the extractive industry. The assessment will be undertaken through a participatory process where all stakeholders will be invited to present their views.

HRIAs are a relatively new field of impact assessment. They are the younger sibling of environmental and social impact assessment, but bring value-added through an explicit human rights focus and rights-based approach to the conduct of the assessment.<sup>1</sup> For instance, in the 5,000+ pages of the Mary River FEIS, “human rights” are mentioned only 3 times.<sup>2</sup> While it is agreed and understood that good-practice environmental and social impact assessments will cover many important human rights issues, they do so implicitly and often without adequate reference to the relevant international standards. There is value in making more explicit the linkages between human rights and the policies, commitments and measures contained in the FEIS—so that all stakeholders are informed of their rights and responsibilities.

As the Baffinland mine is currently in a review process before the Nunavut Impact Review Board, the assessment is forward-looking and will focus on the issues, potential impacts and mitigation measures contained in the Environmental Impact Statement (EIS), as well as the policies and procedures being put in place by Baffinland for the development of the Mary River project. It will focus on both the potential positive impacts (opportunities) and negative impact (risks) on human rights of the proposed mine.

Human rights impact assessments also have important capacity-building potential: through the conduct of a rights-based, transparent and participatory HRIA, stakeholders can learn about their rights and can express their concerns and expectations about a proposed business operation and investment. Furthermore, digital media, video and radio

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<sup>1</sup> For a further discussion of the complementarity of HRIA with ESIA processes, see Lloyd Lipsett and Susan Joyce: “Can Human Rights Contribute to Sustainability?” Paper prepared for Aachen conference on Sustainability and Mining, June 2011.

<sup>2</sup> An electronic search of the FEIS conducted on May 16, 2012 found the following 3 references to “human rights:” volume 1, part 6, page 11 in a discussion of human resources; volume 3, part 7. Page 37 in a discussion of workforce and human resources; and, in Volume 10, page 24 in Baffinland’s sustainable development policy.

will be used where appropriate in the conduct of the HRIA in order to respect the language, oral tradition and cultural rights of the Inuit.

### What is the methodology to conduct an HRIA?

In the conduct of the assessment, the key stages are as follows:

- Preparation: assembling the assessment team; review of project documentation, including the FEIS; contacting stakeholders to inform them of the HRIA objectives and methodology and potential areas of collaboration.
- Legal framework: review the legal and regulatory provisions in Canada and Nunavut governing the project; review the project's legal structure; and, identify potential gaps in terms of international human rights standards.
- Develop assessment criteria: using internationally-accepted HRIA tools (see below), develop a list of questions and indicators to guide interviews and research and to assess the compliance of government agencies and the company with international standards.
- Information-gathering: conduct individual and group interviews with all stakeholder groups and desk research in order to prioritize issues for the preliminary and final HRIA report; use radio show and media to elicit further commentary and discussion.
- Analysis and reporting: based on the assessment criteria developed previously, the assessment team will develop a series of preliminary findings and recommendations on the priority human rights issues; these preliminary findings and recommendations will be circulated to stakeholders for comments.
- Engagement and monitoring: after consultation on the findings and recommendations, a final HRIA report will be published and distributed; the assessment team will engage with all stakeholders to explain the report and to identify areas for monitoring and follow-up. All efforts will be made to propose follow-up measures that can be integrated into existing implementation and monitoring plans and processes.

It is anticipated that a preliminary report will be presented within the context of the NIRB review process. A final report will be published later (in late 2012 or early 2013) that still will be relevant to the construction, operation and monitoring of the mine, if it is approved.

## What standards and criteria will the HRIA apply?

### *International human rights law*

The overall normative framework for the HRIA is defined by the UN Guiding Principles on Business and Human Rights. This is the most authoritative international policy statement about business human rights, which was unanimously welcomed by the UN Human Rights Council in June 2011. It is built upon the “Protect, Respect and Remedy” framework that explains that: States have the primary responsibility to protect human rights, including in relation to the activities of business enterprises; companies have a responsibility to respect human rights through a process of on-going due diligence that is appropriate for each business’ operational context; and, a shared responsibility of States and companies to provide access to remedies for corporate abuses of human rights.

Additional information about the UN Guiding Principles on Business and Human Rights can be found at: <http://www.business-humanrights.org/Documents/UNGuidingPrinciples><sup>3</sup>

Furthermore, the HRIA will look at the various international human rights obligations of Canada<sup>4</sup> and their implementation in federal and territorial laws and regulations that are relevant to the mining industry, including labour and environmental laws and various government programmes and social protections. In the context of Nunavut, the Nunavut Lands Claim Agreement will be given significant attention as a modern lands claim agreement that has a number of important elements that contribute to the protection of the rights of Inuit.

### *Human rights compliance and impact assessment tools*

In assessing whether different duty-bearers (State and company) are meeting their obligations and responsibilities for human rights, the HRIA will use internationally-accepted questions and indicators to guide the assessment. Based on professional experience, the HRIA team will customize a list of the most relevant questions and indicators for the Mary River project from the following assessment tools:

- Danish Institute for Human Rights Human Rights Compliance Assessment (Quick Check Version) - [http://www.humanrightsbusiness.org/files/HRCA%20QC/quick\\_check\\_august\\_2006.pdf](http://www.humanrightsbusiness.org/files/HRCA%20QC/quick_check_august_2006.pdf)

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<sup>3</sup> This portal provides the text of the Guiding Principles; the official UN guidance; commentaries; implementation and uses of the Guiding Principles; events; history of Guiding Principles; and, additional materials.

<sup>4</sup> For an overview of Canada’s ratification and reporting on international human rights treaties, see the Canada home page on the UN Office of the High Commissioner for Human Rights website: <http://www.ohchr.org/EN/countries/ENACARegion/Pages/CAIndex.aspx>

- Rights & Democracy “Getting it Right: Human Rights Impact Assessment Guide” - <http://www.dd-rd.ca/hria/en/>
- International Finance Corporation, “Guide to Human Rights Impact Assessment and Management” - <http://www.guidetohriam.org/app/images/documents/Guide%20to%20HRIAM%20booklet%20English.pdf>

The questions and indicators, and assessment criteria in these guides, will assist the HRIA team to develop the interview guides and research agenda for the information-gathering stage of the assessment. They will also guide the analysis, findings and recommendations of the HRIA report.

### *Good practice policies and guidance for the mining industry*

To assist in making the human rights analysis as relevant and focused on the operational context of the mining industry, additional good practice policies and guidance will also be referenced to compare some of the things that leading companies are doing to address human rights. These include:

- International Council of Mining and Metals (ICMM)’s guidance and policies on business and human rights.<sup>5</sup>
- International multi-stakeholder initiatives related to human rights in the extractive industry, including the Voluntary Principles on Security and Human Rights<sup>6</sup> and the Extractive Industry Transparency Initiative.<sup>7</sup>
- International policies and standards related to corporate social responsibility and human rights, including the OECD Guidelines on Multinational Enterprises and the International Finance Corporation’s Performance Standards.
- Canadian policies and standards relevant to the mining sector, including the Mining Association of Canada’s “Towards Sustainable Mining”; the Prospector and Developer’s Association of Canada, “E3 Plus: A Framework for Responsible Exploration,” and the Government of Canada’s international CSR strategy, “Building

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<sup>5</sup> <http://www.icmm.com/page/225/business-and-human-rights>. See: ICMM, “Human Rights in the Mining and Metals Industry: Overview, Management Approach and Issues,” (2009); ICMM, “Human Rights in the Mining and Metals Industry: Resolving Local Level Concerns and Grievances,” (2010); ICMM, “Integrating Human Rights into Corporate Risk Management Processes,” (2012). The International Council on Mining and Metals (ICMM) was established in 2001 to improve sustainable development performance in the mining and metals industry. Today, it brings together 22 of the world’s biggest mining and metals companies as well as 34 national and regional mining associations and global commodity associations.

<sup>6</sup> <http://voluntaryprinciples.org/>

<sup>7</sup> <http://eiti.org/>

the Canadian Advantage: A Corporate Social Responsibility Strategy for the Canadian International Extractive Sector.”<sup>8</sup>

### Will the HRIA be balanced and fair?

The HRIA seeks to provide independent, balanced, credible and constructive information for all stakeholders. All persons that will contribute to the implementation of the HRIA agree to respect the following ethical and professional principles while implementing the HRIA:

#### 1) Principle of Transparency

We will provide stakeholders with relevant, adequate and reliable information about the objectives, methodology and activities of the HRIA on an on-going basis through a dedicated webpage and local radio programming. The HRIA’s findings and conclusions will be made available in a printed report and in digital video format. Special efforts will be undertaken to ensure that the HRIA is appropriately translated, communicated to and understood by the Inuit communities in the area of influence of the Mary River project.

#### 2) Principle of Independence and Balance

In the conduct of the HRIA and our research and analysis, we will be independent of government, political, business or other interests. The HRIA team will be solely responsible for the methodology, findings and conclusions of the assessment.

We will seek to engage with the full range of stakeholders of the Mary River project in order to elicit diverse opinions, concerns and expectations for the assessment—including from both proponents and opponents of the project. We recognize the right to fair, equal and respectful treatment of all stakeholders regardless of their positions and/or decision to participate in the HRIA.

We will maintain a balanced approach to potential positive and negative impacts in our information gathering, interviews, analysis, recommendations and reporting.

#### 3) Principle of Inclusion and Non-discrimination

In addition to actively seeking the participation of the full range of stakeholders, we will ensure that the process is open to any individuals or groups that self-identify as stakeholders and wish to communicate their concerns and expectations.

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<sup>8</sup> <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr-strategy-rse-strategie.aspx?view=d>. Although the Government’s CSR policy is a voluntary measure aimed at Canadian companies operating overseas, it stands to reason that similar policy expectations would be encouraged for foreign companies operating in Canada.

We seek to encourage diversity, and will be impartial and non-discriminatory in our assessment. In particular, we will promote gender equality and balance and will respect Inuit culture and custom, including their oral traditions, throughout the HRIA process.

4) Principle of Informed Consent and Confidentiality

We will provide full and accurate information about the HRIA process, in advance, to all individuals, groups, organizations and/or institutions to be interviewed so that they are able to make an informed decision concerning their participation, or not, in the assessment. We respect the right of individual or groups approached by us to decide voluntarily to participate or not in the assessment without fear of negative consequences or repercussions.

We will obtain the informed consent of all participants who agree to have their interviews filmed. Participants will also be provided with the option of being interviewed without being filmed. We will fully respect any requests for anonymity and confidentiality in the treatment of information and opinions shared by all participants.

5) Principle of Professionalism and Accuracy

We will conduct our professional activities with integrity, honesty, and will make every effort for our assessment to be free from misrepresentation or deliberate bias. We will adhere to the highest standards of accuracy and honesty in presenting, interpreting and referencing data and research.

6) Principle of Respect for Universal Principles

We will promote the international and national laws and principles with respect to human rights as the normative foundation of the HRIA. Where such laws do not exist or are not fully implemented, we will highlight these gaps. In the conduct of the HRIA, we will respect the equal rights and dignity of all human beings.

Who is conducting the HRIA?

The HRIA is being conducted by LKL International Consulting Inc. Its principal, Lloyd Lipsett, is an international human rights lawyer who has developed a niche in the field of human rights impact assessments. He has worked with leading Canadian and international mining companies, industry associations, Canadian government departments and agencies, United Nations agencies, investors and civil society organizations on HRIAs and other issues related to corporate social responsibilities. He has participated in HRIAs in Canada, the United States, Guatemala, Colombia, Peru, Argentina, Democratic Republic of Congo, the Philippines, China and Vanuatu.

A number of expert opinions will be commissioned and cited in or appended to the HRIA submission and/or final report.