

## **Human Rights Impact Assessments**

### Discussion Paper

This paper was prepared for the U.N. Special Representative to the Secretary-General on business and human rights, Professor John Ruggie. It does not necessarily reflect the views of the Special Representative, but has been written to invite input. Most helpful would be responses to the questions posed in the last section and additional best practices or initiatives not already mentioned, but any sort of feedback would be welcome. This paper and others will inform the Special Representative's ongoing work, and may also serve as a resource for business and human rights practitioners and observers.

Please send comments to [humanrightsandbusiness@ohchr.org](mailto:humanrightsandbusiness@ohchr.org) by 10 October 2006.

Additional papers and materials related to the U.N. Special Representative can be found at the Business and Human Rights Resource Centre: [www.business-humanrights.org](http://www.business-humanrights.org).

*Impact assessment, simply defined, is the process of identifying the future consequences of a current or proposed action.*

– International Association for Impact Assessment

### **The Issue**

1. The societal impacts of business activity are complex. Such impacts can be positive and negative, direct and indirect, singular and cumulative, highly specific to local circumstances, and have multiple interrelated factors.
2. It is important to understand how business activity impacts human rights so that those who are most directly involved and affected – local communities, governments, managers and employees – can intervene to enhance positive impacts, avoid or mitigate negative impacts and risks, and contribute to the fulfilment of human rights.
3. Such interventions are most effective and least costly when implemented early in the business lifecycle in *anticipation* of impacts, rather than in *reaction* to impacts that have occurred as a result of business activity.
4. This philosophy is well-developed in the area of environmental and social impact assessments (ESIAs), which are now commonly considered routine for projects with a significant physical footprint and are often required by national law or financing institutions.
5. ESIAs examine the business activity and its direct impacts. This often raises issues of human rights, for example the right to an adequate standard of living and the right to property where a company is using land previously inhabited by local residents or is operating near an indigenous population.

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6. However, the traditional ESIA approach can miss important human rights conditions that are embedded in a particular society, such as discrimination (for example, where the employment of women is discouraged by religious values or local contractors segregate their canteens by ethnicity), or restrictions on freedom of expression or collective bargaining. These issues will shape how the company operates, and may end up constituting the most significant – and most challenging – conflicts between international standards and local norms.
7. In light of this realization, and because of the growing salience of business and human rights issues generally, a number of organizations are experimenting with separate and distinct human rights impact assessments (HRIAs) for private sector projects. It is too early to offer a definitive evaluation because to date only the summary of one such assessment has ever been made public (for BP's Tangguh project in Indonesia<sup>1</sup>) – although other companies have commissioned private studies.
8. The intended distinction between HRIAs and ESIAs is that the former would use international human rights standards (the Universal Declaration of Human Rights and International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights) as their framework, and assess the state of realization of a broad spectrum of rights rather than only those obviously impacted by the proposed business activity.
9. In keeping with well-established methodological practices for ESIAs, human rights impact assessments should include the following components.
10. HRIAs should describe the proposed business activity, whether a new project or a change in plans (e.g. expansion, major changes in supply contracts, or a significant new policy). And they should consider an activity's full lifecycle – from construction through operations and closure.
11. HRIAs should catalogue the legal, regulatory and administrative frameworks to which the activity is subject. This should include the relevant national and local laws together with regulations of the home and host countries; requirements of project financiers; and internal company policies.
12. HRIAs should also catalogue the human rights frameworks that apply to the area where the business activity is to take place, such as international conventions to which the host country is signatory. [At least for internal purposes, they might also note major conventions the host country has not ratified.] Where there might be armed conflict, HRIAs should also consider international humanitarian law.
13. HRIAs should describe human rights conditions in the area surrounding the business activity – the geographic boundaries of which should be agreed through consultation and initial scoping – before significant activity begins.

14. After describing those baseline conditions, HRIAs should put forth a view of what is likely to change because of the business activity. This is a difficult and subjective exercise; some may devise multiple scenarios, while others may predict outcomes based on varying levels of intervention.
15. HRIAs should then prioritize the human rights challenges for the company and make recommendations to address those challenges. Such recommendations could include actions that can be taken by the company alone, such as modifying the project design, but also options for collaboration with governments, local communities, and other potentially helpful actors like civil society organizations and other companies in the area.
16. Those recommendations should be incorporated into a management plan, which also includes provisions for monitoring the baseline indicators and revisiting the issues raised during the HRIA process. This should include regular consultation with affected parties.
17. An experienced team with knowledge of relevant international standards and local culture should perform an HRIA. Each project must weigh the costs and benefits of using internal and/or external personnel in terms of expertise in the industry, international human rights standards, and local knowledge: Independent third parties may bring external credibility (which may in itself be challenged if the company pays for their work) but won't always have local connections and context, while internal staff may not be familiar with international best practice.
18. The process of carrying out an HRIA can be as important, or even more so, than the report itself. Genuine consultation is critical throughout. An impact assessment can serve as a convening mechanism to bring representatives of the company, community, and government together in dialogue.<sup>2</sup>
19. HRIAs and other assessment tools are not ends in themselves. It is how those involved use the findings and engagement of an HRIA that matters – little credit is given for simply going through the exercise.

### **Current activity, initiatives, tools, and good practice**

20. A number of HRIA tools for private sector projects are currently being developed. The IBLF and IFC are jointly writing a guide to HRIAs; International Alert has produced a “Conflict-Sensitive Business Practice: Guidance for Extractive Industries”, which they are currently piloting; and the Canadian Rights & Democracy Initiative is testing a tool for civil society groups and policymakers to assess the human rights impacts of foreign direct investment.<sup>3</sup>
21. Additional tools are being developed by companies or industry groups: BHP Billiton is piloting a Human Rights Self Assessment toolkit for managers; Anglo American has created a Socio-Economic Assessment Toolbox for application in its mature assets; and the ICMM’s Community Development Toolkit includes

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assessment tools. Additional examples of business tools and processes can be found in the Business Leaders Initiative on Human Rights' second report, "A Guide to Integrating Human Rights into Business Management."<sup>4</sup> All may prove helpful in different regions or sectors, and with different levels of expertise and management, but experimentation is still necessary and should be encouraged.

22. The Human Rights & Business Project of the Danish Institute for Human Rights has produced two tools to help companies manage their human rights impacts, although neither is an impact assessment tool *per se*. One is country risk assessment reports identifying areas where companies are at risk of committing human rights violations – directly or indirectly – due to ineffective laws or poor practices in the country of operation; the other is a comprehensive diagnostic tool identifying areas in which a company's policies and systems do and do not comply with international human rights standards. Shell has piloted both tools.<sup>5</sup>

### **Issues for discussion**

23. Is the **distinction** between ESIAAs and HRIAs drawn in paragraph 8 accurate and useful?
24. Must an HRIA be a **discrete** exercise, or can it be carried out as part of an ESIA or other similar exercise? Could critical issues be neglected in the absence of a rights-based approach, or will a company more effectively address human rights issues if they are incorporated into existing processes?
25. For many companies the question is not what should be in an HRIA once one is commissioned, but when it is necessary to perform one – especially if they have other assessment activities underway. What level of activity should trigger an HRIA, whether by internal company processes, financing (e.g. per the Equator Principles, export credit agencies or the IFC), or national law? Should a certain level of risk – to either business or citizens – trigger a full HRIA, whereas a lower level might merit a diagnostic tool or preliminary HRIA (comprising desktop research and a few expert opinions rather than extensive consultation) to determine whether further attention is necessary?
26. The extent of **disclosure** of an HRIA – whether it is published in full, in part, in summary, or not at all – can be variable depending on local circumstances. Where the human rights record of state security forces is poor, multinationals may be reticent to publish an HRIA out of concern that this could create political or legal risks for the company – or in extreme cases, endanger staff.<sup>6</sup> There should be a bias towards transparency wherever possible, but the difficulties of achieving full disclosure also must be recognized. Is it possible to define a minimum standard of transparency?
27. Some company lawyers are concerned that publicizing recommendations creates **liability** if the recommendations are not followed. But this concern must be tempered by a reasonableness standard. If an HRIA finds that a company is

benefiting from forced labour it could, indeed, be held liable for failing to act on the information – but presumably uncovering and redressing such issues is the purpose of the exercise in the first place. More routinely, not heeding a recommendation that the company create a “drop box” for anonymous comments from community members is hardly likely to raise legal liability issues.<sup>7</sup>

28. There are many **public sources** for human rights information. The Business and Human Rights Resource Centre is an excellent repository of information; many UN agencies release reports on human rights; Amnesty International, Human Rights Watch, and other NGOs release reports focused on particular regions, companies or issues. The Country Risk Assessment reports by the Danish Institute for Human Rights, Amnesty International and IBLF’s 2002 “Business & Human Rights: A Geography of Corporate Risk”, and the Maplecroft mapping tool are examples of how various sources are combined into global overviews.<sup>8</sup> Are there others? Would a single globally credible source for business and human rights be desirable and feasible?
29. The companies known to do HRIAs or similar exercises are generally prominent multinationals. Do state-owned enterprises or non-OECD national companies use these tools or have their own? Do smaller companies use these tools, or do they not have the requisite incentives and/or capacity?
30. HRIAs for private sector projects are currently most often discussed in the context of extractive industries. What other industries have experimented with HRIAs? What is applicable across sectors?
31. A number of human rights impact assessment tools exist for development programmes and policies, including a handbook by the Norwegian Agency for Development Cooperation. They can be found on the Human Rights Impact Resource Centre website, a project of the Dutch Humanist Committee on Human Rights.<sup>9</sup> What if any lessons can be learned from HRIAs carried out in the development field?

Additional resources:

- International Alert (C. Crossin and J. Banfield), *Conflict and Project Finance: Exploring Options for Better Management of Conflict Risk*. Background paper, January 2006.
- The Halifax Initiative, *Risk, Responsibility and Human Rights: Assessing the Human Rights Impacts of Trade and Project Finance*. Revised Discussion Paper, July 2004.
- OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones, 2006.
- International Association for Impact Assessment, *Social Impact Assessment: International Principles*. Special Publication Series No. 2, May 2003.
- International Finance Corporation, *Addressing Social Dimensions of Private Sector Projects*. December 2003.
- Todd Landman, *Studying Human Rights*, Routledge 2006.
- Paul Hunt (U.N. Special Rapporteur on the right to the highest attainable standard of health), Gillian MacNaughton, *Impact Assessments, Poverty and Human Rights: A Case Study Using The Right to the Highest Attainable Standard of Health*. Submitted to UNESCO 31 May 2006.

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<sup>1</sup> See <http://www.bp.com/tangguh>.

<sup>2</sup> There are many resources on stakeholder engagement; see, for example, “The Stakeholder Engagement Manual” by UNEP, AccountAbility and Stakeholder Research Associates Canada (<http://www.unep.fr/outreach/home.htm>), and The Collaborative for Development Action ([http://www.cdainc.com/publications/cep\\_issue\\_papers.php](http://www.cdainc.com/publications/cep_issue_papers.php)).

<sup>3</sup> The IBLF/IFC guide is expected to be released in December 2006. See International Alert, [http://www.international-alert.org/our\\_work/themes/extractive\\_industries.php](http://www.international-alert.org/our_work/themes/extractive_industries.php), and the Canadian Rights & Democracy Initiative, <http://www.dd-rd.ca/>.

<sup>4</sup> See BHP Billiton, <http://hsecreport.bhpbilliton.com/2005/repository/community/ourApproach/humanRights.asp>; Anglo American, <http://www.angloamerican.co.uk/corporateresponsibility/socialresponsibility/seat/>; ICMM, [http://www.icmm.com/library\\_pub\\_detail.php?rcd=183](http://www.icmm.com/library_pub_detail.php?rcd=183); and BLIHR, <http://www.blahr.org>.

<sup>5</sup> See The Danish Institute for Human Rights, <http://www.humanrightsbusiness.org/>; and <http://www.shell.com/humanrights>, “The Human Rights Compliance Tool.”

<sup>6</sup> Correspondence with Gare Smith of the law firm Foley Hoag in Washington, D.C.

<sup>7</sup> Correspondence with G. Smith.

<sup>8</sup> See the Business and Human Rights Resource Center, <http://business-humanrights.org>; Danish Institute *op cit.*; Amnesty International and IBLF , “Business & Human Rights: A Geography of Corporate Risk”, 2002, <http://iblf.org/resources/general.jsp?id=69>; Maplecroft maps, <http://maps.maplecroft.com>.

<sup>9</sup> See <http://www.humanrightsimpact.org/home/>.