

# Human Rights Impact Assessment (HRIA) Toolkit

## INTRODUCTION

The aim of toolkit is to introduce the theoretical background for HRIA in South Caucasus. The toolkit is envisaged for various civil society organizations to learn about HRIA, its advantages and forms. In addition to theoretical background, we try to emphasize on community based HRIA that could serve as potential guidance to carry out South Caucasus countries.

## WHAT IS HRIA?

A Human Rights Impact Assessment (HRIA) is an instrument for examining policies, legislation, programs and projects to identify and measure their effects on human rights. It provides a comprehensive response on how does the project, policy or intervention affect human rights. HRIA's essential purpose is to help prevent harmful effects of the action, while maximizing positive effects. It is crucial part to make human rights considerations operational in a wide range of legal and policy contexts, through a framework of systematic human rights methodology, that's crystalize the impact of the action on human rights in a broad spectrum of sectors and spheres. In practice, HRIAs analyzes the effects on a wide range of human rights, including political rights, as well as social-economic and cultural rights).

HRIAs can contribute to the process of formulating public policies by calling attention to overlooked human rights effects of a given policy or by projecting human rights into the decision-making process. They can help influence policy options, foster public participation in the formulation and monitoring of public policies and strengthen accountability about these policies, education policy initiatives aiming to equalize access across genders and/or socio-economic classes.

The majority of HRIA used during the preparation and/implementation of policies or projects, that directly not relates to human rights like, as increased trade flow, development assistance or dam construction - but which could have had unintended negative impacts on human rights. Therefore, HRIA can be useful, in cases where the where the human rights implications of a proposed policy or project are not clear at the beginning and enhance accountability for impacts on human rights.

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HRIA promotes accountability as they are based on human rights legal obligations, which are legally binding frameworks for the states. As a result, it considers project from “rights-holders” and “duty-bearers” perspective, that increase the significance of HRIA. It tends to offer a highly comprehensive appraisal of the impacts of an action from wide range rights perspective, emphasizing the interconnections of rights related concerns and obligations.

## WHAT'S NEW -THE ADDED VALUE OF HRIA

HRIAs have developed out of other types of impact assessments, such as environmental impact assessments (EIAs) and social impact assessments (SIAs), which constitute a well-established practice and are regularly carried out in many countries to evaluate proposed policies, programs and projects. Although EIAs and SIAs are typically ex ante assessments, the majority of HRIAs so far have been ex post assessments.

It should be underlined that HRIAs based on the normative framework of binding international human rights law to which governments around the world have voluntarily committed themselves through ratification of international treaties. The human rights framework requires measuring the extent to which the policy or project complies with human rights in terms of both substance and process. Using the framework of international human rights law as the objective standard of assessment contributes both moral legitimacy and legal accountability to the whole exercise, as human rights represent the major language for social justice. HRIA gives the recommendations a unique significance and force and may limit the extent to which trade-offs are acceptable.

HRIA refer to human rights, i.e. a legally binding framework. Human rights are based on a strong normative consensus and their principles are universally agreed due to a multitude of binding international agreements. Compared to existing softlaw-instruments, the power and universality of human rights is one of the main advantages of HRIA.

Fundamental human rights principles such as equality and non-discrimination require a disaggregation of data according to gender, ethnicity and region in order to fully assess the impact of a certain policy on particularly vulnerable persons. This focus is a distinctive feature of a human rights-based perspective and not commonly found in other approaches. Therefore, HRIA allow for a more in-depth analysis tailored to specific target groups.

The human rights perspective allows for a more comprehensive assessment. It includes rights that might be overlooked by other types of impact assessments (e.g. the freedom of expression). HRIA start broadly and evaluate the full range of internationally agreed human rights, narrowing them down in the screening process. Contrary to other specific impact assessment methodologies (Social and/or Environmental Impact Assessments, gender impact assessment) HRIA are not limited by a predetermined set of human rights, but adopt an open and more flexible methodology.

In undertaking HRIA, there is a focus on the empowerment and ownership of right holders. They are perceived not as passive subjects, but encouraged to fully participate in the assessment. Unlike Social Impact Assessment, HRIA concentrate on the voices of the powerless; to rely only on authority perspectives is not sufficient within a human rights framework.

HRIA favor the engagement of a broad range of human rights actors that might not become involved in other impact assessments. HRIA draw on transnational human rights networks, that include civil society activists,

intergovernmental bodies, judicial, quasi-judicial and expert mechanisms as well as tribunals, which provides a means to take the issue to a wider audience HRIA thus strengthen democratic accountability and inclusion.

HRIAs are universal and comprehensive, they typically consider economic, social and cultural aspects as well as civil and political ones since they are based on a legal framework that includes all these rights civil, political, economic, social and cultural. The human rights framework considers these rights as interrelated, that as a result strengthens a cross-sectoral approach in the assessment process, as well as promotes the coherence to international human rights law.

## WHICH HUMAN RIGHTS ARE ASSESSED?

The question of which human rights are potentially affected evidently depends on the nature of the policy that is being assessed. The effects of trade agreements on a country's human rights situation are most likely to be quite different from those of a peace-building project. The review of HRIA undertaken till now, has shown that economic, social and cultural (ESC) rights received special attention while civil and political (CP) rights played a less significant role. ESC rights include, inter alia, the right to health, water, education, food and work. Although they are explicitly foreseen in the ICESCR, they are often treated as second rate obligations by states as compared to CP rights.

The majority of HRIAs that have been carried out focused on policies or projects whose primary purpose is not directly related to human rights, such as those utilized to increase trade flow, provide development assistance or construct large infrastructure but that could have unintended impacts on human rights, particularly at the implementation stage. This focus is not surprising, as HRIAs are particularly useful in those cases when the human rights implications of a proposed policy or project are not obvious at the design stage

Different studies show that policies like energy development and free trade, on free trade policy and etc, may affect the situation of human rights : for example, the right to health is often considered to be threatened by the provisions on intellectual property included in the TRIPS agreement; the right to water and education could be affected by the GATS agreement; the right to food may be hampered by the Agreement on Agriculture and the right to work by trade liberalization in general .

**Table 1: Potentially Affected Human Rights (examples)**

| <b>Labor</b>                         | <b>Welfare /Social Environment/</b>  | <b>Political</b>                             |
|--------------------------------------|--------------------------------------|--|
| Right to Work                        | Right to Life                        | Right to Liberty                             |
| Right to Favorable Working           | Right to Health                      | Freedom from Arbitrary Arrest                |
| Right to Just Remuneration           | Right to Adequate Supply of Water    | Freedom from Degrading Treatment and Torture |
| Freedom from Exploitative            | Right to Clean Environment           | Freedom of Thought                           |
| Child Labor And list to be continued | Right to Adequate Standard of Living | Freedom of Religion                          |

|                                  |  |                             |
|----------------------------------|--|-----------------------------|
| Freedom from Involuntary Labor   | Right to Food  | Freedom of Expression       |
| Equal Pay for Equal Work         | Right to education   | Freedom of Assembly         |
|                                  | Right to Housing   | Right to Security of Person |
| Right to Belong to a Trade Union | Right to Participate in the Cultural Life of the Community | Freedom of Association      |
| Right to Strike                  | Freedom of Residence                                       | Nondiscrimination           |

## TYPES OF HRIAS

According to researchers there is no one type of HRIA. A wide variety of assessments have emerged, shaped by a number of factors, such as the type of measure being assessed, the nature of evaluation, its timing, what data is being assessed and who is undertaking the assessment.

Depending on the goal of the assessment, HRIA can be used to evaluate the impact of legislation, public policy, a business project or a program.

Assessment could examine only a certain type of human rights obligation triggered, or potential impact on a specific group (e.g. children, women, ethnic minorities) or a defined issue (the environment, health, education), or take in an overall picture of the human rights effects of a program. It is also important to recognize that the assessment process and its methodology will vary depending on the nature of the measure being assessed and the nature of the human rights obligation it triggers.

A key element of any impact assessment is the timing vis-à-vis the policy, program or project being evaluated. HRIAs can be undertaken either *ex ante* or *ex post*. *Ex ante* impact assessments occur before interventions take place and aim to measure the potential future effects of such interventions on human rights, the environment, social issues or health (depending on whether it is a HRIA, EIA, SIA or a health impact assessment). *Ex ante* HRIAs can enhance policy development, enabling policy-makers or business enterprises to adjust or change the policy, project or program in order to prevent human rights violations. They must be carried out at the earliest possible stage of the policy-making process, so that their findings and recommendations can be incorporated while the policy or intervention is still being shaped.

*Ex post* impact assessments measure the actual impact of implementing policies, programs or projects, when the current situation is compared with the situation before the intervention or policy was adopted. *Ex post* HRIAs could either be a stand-alone exercise or could constitute the evaluation phase of an *ex ante* HRIA.

Typically, EIAs and SIAs are *ex ante* assessments. In fact, the *ex-ante* component is included as an essential element of many definitions of impact assessments.<sup>14</sup> In contrast, the majority of HRIAs surveyed have been *ex post* assessments. One factor that could influence the timing of the assessment is the identity of the actor carrying it out. The overwhelming majority of HRIAs conducted by Civil Society Organizations (CSOs) have been so far *ex-post* assessments.<sup>15</sup> This may be due to the fact that CSOs encounter difficulties in accessing timely and comprehensive information on the policy or project from a government or corporation before that policy or project is approved. In turn, their ability to conduct *ex ante* HRIA can be significantly limited. CSOs are more adept at conducting

assessments of ongoing or past policies or projects as assessments are similar to the type of human rights monitoring and research that human rights NGOs have been carrying out for decades.

## HUMAN RIGHTS IMPACT ASSESSMENT (HRIA) STAGES

As many authors underline, compared to other assessment tools, HRIA is a relatively new instrument; it has been used by different actors for different purposes, and methodologies for conducting HRIA are still being developed. There is not yet well-established uniform model for conducting HRIA; nevertheless, from the review of various HRIA toolkits it is possible to identify the major phases (or steps) in HRIA. These methodological phases are described in brief below.

### 1. SCREENING

This is the first stage of HRIA during which the assessor makes preliminary evaluation of project, policy, programme, legal act or any other type of intervention (hereinafter - intervention) to decide if it is appropriate or necessary to conduct HRIA.

There are usually not enough resources to assess human rights impacts for every single intervention. Therefore, this stage is especially important to determine whether intervention will potentially have an impact on the enjoyment of human rights and therefore, requires an HRIA and if so, at what level of detail. The screening is also important when the focus area of the impact assessment is not clear.

### 2. SCOPING

This phase is to draft a Terms of Reference (ToR), i.e. a roadmap for the assessment and usually involves definition of information to be gathered during the assessment. At this stage, preliminary baseline assessment of the current human rights situation is carried out, and options and scenarios are outlined.

The impact assessment researchers and practitioners suggest<sup>1</sup> that at scoping stage particular attention is paid to:

- Understanding of the intervention to be assessed. This include identification of the type, location and phase of the intervention, relevant frameworks, policies, procedures and/or standards in place, and impact areas;
- Understanding the human rights context. This should include both analysis of formal context, i.e. applicable national regulations, policies and adjudication, as well as data and insights into actual human rights enjoyment;
- Identification and mapping of stakeholders. It is important to identify not only the types of stakeholders, but also their influence power and how they might be affected by the intervention.

As in case of other types of impact assessments, ToR for the HRIA should be flexible enough to allow for changes in the scope of the research as unpredicted human rights impacts emerge during assessment, or the topics selected

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<sup>1</sup> The Danish Institute for Human Rights, 2016

earlier appear irrelevant. Furthermore, scoping is usually a desk-top exercise, but depending on the type of intervention, it can also involve field research to get a better understanding of human rights context.

### 3. DATA COLLECTION

This phase involves gathering evidence about the potential or actual impacts of the intervention (depending on whether HRIA is ex ante or ex post) by using various sources and tools.

This stage is to investigate further and to better understand the issues identified at the scoping stage, primarily through fieldwork and stakeholder engagement. Evidence gathering may involve collection of political, socio-economic, environmental and other type of data to understand the status of human rights enjoyment and to define impacts that may occur as a result of the intervention (or have occurred – in case of ex post HRIA).

The HRIA practitioners suggest that using targeted quantitative and qualitative human rights indicators can be helpful in data collection, analysis of baseline situation, and measuring and comparing impacts of different options, as well as at the later stages of HRIA, e.g. in defining mitigation measures and monitoring the implementation of the intervention<sup>2</sup>. The checklists with questions on human rights conditions could also be used for the same purposes<sup>3</sup>.

### 4. ANALYSIS

Drawing from the information gathered at the earlier stages, this phase is to actually assess, analyze actual (ex post HRIA) or potential (ex-ante HRIA) human rights impacts of the intervention, articulate the results of the HRIA, and propose measures to prevent or mitigate negative human rights impacts of the intervention and enhance positive ones.

HRIA analysts and practitioners highlight three important points to consider during impact analysis. First is that the impacts should be assessed in reference to applicable human rights norms and standards, e.g. relative to legal obligations to respect, protect and fulfill human rights. This is essential and distinctive feature of HRIA (when compared to other types of impact assessments).

Second important issue at this stage is that analysis should address both substantive and procedural aspects of intervention, meaning that HRIA should not only examine the human rights impacts of intervention, but whether the process of formulation, approval and implementation of the intervention itself was conducted in accordance with human rights principles and standards.

Finally, as the analysis measures the likelihood of various impacts, following should be kept in mind in respect to types of impacts:

- In the context of business and human rights, The UN Guiding Principles on Business and Human Rights suggest to consider “adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships”; i.e. impacts caused by, contributed to or directly linked to business.
- Different interventions or different phases of the intervention may contribute incremental impacts to other existing, planned or future interventions, leading to accumulation of impacts; Therefore, it is

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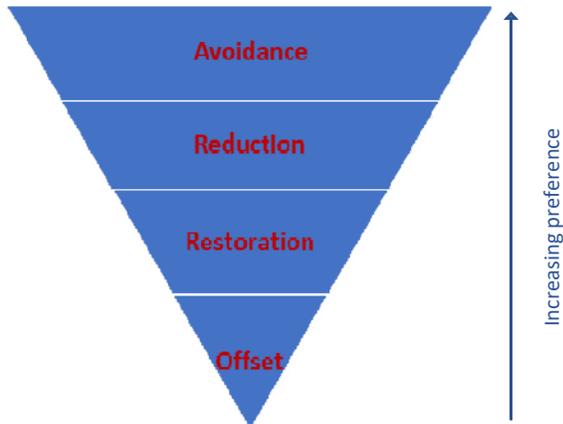
<sup>2</sup> The Danish Institute for Human Rights, 2016

<sup>3</sup> The Nordic Trust Fund, 2013

important that HRIA includes consideration of such cumulative impacts (cumulative impacts are effects which are caused by the combined results of past, current and reasonably foreseeable future interventions).

- Positive results of the intervention might be noted, however, identification of positive human rights impacts is not a primary objective of HRIA. HRIA should first and foremost focus on identifying and addressing negative impacts and not on positive contributions that do not relate to addressing such impacts. Positive contributions (such as, for instance, job creation, governmental revenues, etc.) can be considered separately and should not be used to legitimize the intervention.
- All human rights are equal and there is no priority human right; however, for HRIA it is important to establish impact severity. This is to determine the order of priority in which the identified impacts should be addressed. UN Guiding Principles on Business and Human Rights request first to seek to prevent and mitigate those adverse human rights impacts that are most severe or where delayed response would make them irremediable.

Identification and analysis of different types of impacts is followed by the design of measures to address those impacts. In developing the actions to address human rights impacts, one should apply so called mitigation hierarchy which is basically the mitigation hierarchy usually used in other types of impact assessments (e.g. in EIA). This approach prioritizes avoidance over reduction of impacts, reduction over restoration, and restoration over compensation of impacts, i.e. it suggests preferential approach from most beneficial to least beneficial method of mitigation (see figure ... below). HRIA analyst warn, however, that from the context of human rights mitigation hierarchy should be used with caution and following three aspects should be kept in mind<sup>4</sup>:



- (a) Mitigation measures must be compatible with international human rights standards and principles;
- (b) Remediation should be considered, but it should not be confused with compensation. Offsetting should be considered only as a last resort;
- (c) Human rights impacts cannot be compensated in the same way as environmental impacts, meaning that it is inappropriate to compensate specific human rights impact with a positive contribution somewhere else.

Figure ... Mitigation hierarchy

## 5. REPORT PUBLICATION

Upon completion of the steps described above, the report is published outlining HRIA process, results of the assessment and the recommendations for mitigation of the impacts. The report also includes plan for future monitoring and evaluation.

<sup>4</sup> The Danish Institute for Human Rights, 2016

There are different views (and consequently, practice) on what should be published as a result of the assessment, HRIA analysts assert. In general, since transparency and accountability are critical aspects of HRIA, publication of “full” HRIA report is encouraged and considered as a good practice. However, it is also considered reasonable to examine alternatives to full disclosure of HRIA findings (e.g. publication of summary report) whenever full disclosure could be harmful to right-holders (e.g. through the disclosure of sensitive information) or it could be “counterproductive for engagement on human rights with business partners or the government”<sup>5</sup>. Analysts also point out specific aspects to be carefully considered to ensure access to the HRIA report, and to make reporting and communication meaningful; those aspects are: language, literacy of target groups, information complexity, physical accessibility and timing.

## **6. MONITORING & EVALUATION**

This phase involves gathering of information on actual impacts of intervention and checking if and to what extent HRIA recommendations were met during implementation of the intervention. This phase also enables identification of unexpected impacts if they emerge.

Once impacts and mitigation measures are identified it is important to monitor implementation of those measures and evaluate if they are effectively addressing the impacts. Monitoring of mitigation measures is usually an integral part of HRIA impact management plan. For the monitoring to be effective it is important that the plan clearly states what should be monitored, when, by whom and how frequently. Since the human rights situation is dynamic, it is important that the effectiveness and the outcomes of the intervention are evaluated periodically (every 3-5 years is considered optimal, depending on the scale and scope of the intervention).

Typically, the initiator of the intervention undertakes the monitoring; however, HRIA analysts suggest that HRIA process could greatly benefit from the participatory monitoring<sup>6</sup>; meaning that wide range of stakeholders, first and foremost – those affected by the intervention, could be involved in monitoring. If properly designed, participatory monitoring can contribute to strengthening accountability and building the trust among different stakeholder groups.

## **7. CONSULTATION**

This is cross-cutting issue that concerns all the HRIA process and can be applied to any of the phases described above. This step is taken to ensure that all the relevant stakeholder groups, especially those that will be/are affected by the intervention, have the opportunity to express their views and their opinions are taken into account in HRIA process.

Consultation with stakeholder groups is considered to be at the heart of the HRIA process. Some scholars even claim that the strength and the legitimacy of HRIA largely depend upon thoroughness of the consultation process<sup>7</sup>. Given the emphasis on human rights principles of participation and transparency, HRIA is expected to involve a broad degree of consultation throughout the assessment; in particular:

- At the screening and scoping stages relevant stakeholder groups should be identified and interviewed to understand their situation, relationship with the intervention and the power dynamics between them.

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<sup>5</sup> The Danish Institute for Human Rights, 2016

<sup>6</sup> The Danish Institute for Human Rights, 2016

<sup>7</sup> The Nordic Trust Fund, 2013

Some groups or individuals might be omitted from the outset of the process, however, HRIA should be flexible enough to rectify such omission at the later stages;

- At the data collection phase stakeholders are usually the main sources of primary data;
- Perspectives of stakeholders, especially those affected by the intervention, are essential in identification and assessment of impacts, as well as in designing the mitigation measures;
- Participation in monitoring the actual impacts of intervention, as mentioned above, can help the proponents of the intervention to build the trust among stakeholder groups.

For the stakeholder groups, especially for those [potentially] affected by the intervention, participation in the HRIA processes is vital to:

- Better understand planned or ongoing intervention, as well as its potential or actual impacts;
- Learn about their rights and the respective responsibilities of other parties to uphold these rights;
- Influence decision-making that have or might have an impact on their lives.

From the methodological perspective, these seven stages of HRIA described above can clearly be distinguished; in practice, however, the phases may overlap and can be modified, depending on a set of factors related to the intervention being assessed, among them<sup>8910</sup>:

- a) Nature and size of the intervention;
- b) Type of organization commissioning the HRIA;
- c) Objective(s) of the assessment;
- d) Time of HRIA – ex-ante or ex-post; when significant changes are introduced in the organization’s activities (e.g., planning of new development activity, merger or acquisition, expansion, refurbishment, decommissioning and closure);
- e) The external context in which intervention is planned or operates (including human rights risks associated with the country/region/local area); and
- f) Resources allotted for the assessment.

## ESSENTIAL FEATURES OF HRIA

Despite differences in HRIA practice, there are also six common features that are essential to HRIAs. These features are outlined in HRIA literature and briefly described in the table below.

Table 2. Essential features of HRIA

|                                  |   |
|----------------------------------|---|
| <b>1. Normative human rights</b> | HRIA is explicitly based on international human rights framework and this is considered by HRIA researchers as the feature that distinguishes HRIA from |
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<sup>8</sup> The Nordic Trust Fund, 2013

<sup>9</sup> Gonzalez A., 2014.

<sup>10</sup> IBLF and IFC, 2010

|  |   |
|--|---|
| <b>framework</b>                                 | other types of impact assessments. This means that HRIA should measure the extent to which intervention complies with human rights, both in terms of substance (evaluate whether the likely outcomes of the intervention would have positive or negative effects on substantive human rights norms and standards) and the process (whether process of assessment is itself human rights compliant).   |
| <b>2. Equality and non-discrimination</b>        | Other types of impact assessments normally seek to evaluate the disparate impacts of interventions on different individuals/groups; This is often seen as a point in common with HRIA which also seeks to determine whether intervention is likely to have a discriminatory effect on a group within a population. In case of HRIA, the issue of equality is primarily related to the right to non-discrimination and related equality rights. Interventions might discriminate in varying ways; therefore, HRIA evaluates both direct and indirect forms of discrimination.  |
| <b>3. Transparency and access to information</b> | <p>Transparency relates to two different aspects of HRIA. The first refers to the extent to which the intervention being assessed is transparent and its content and likely impacts are made publicly available in due time and sufficient detail before it is approved. The second aspect of transparency is related to the disclosure of information on HRIA process itself, both in terms of the methodology used and the findings of the assessment. Transparency of the HRIA process itself is essential to monitor the accuracy, independence and legitimacy of the entire exercise.</p> <p>In general, when transparency is concerned, the norm is making the assessment publicly available; however, this is not always the case in practice, especially when HRIAs are carried out by business companies (contrary to HRIAs conducted by governmental agencies or NGOs that are usually made public due to statutory duties). Ideally, the transparency in the HRIA process should not be limited only to making the assessment report publicly available; rather, transparency should be reflected at all stages of the assessment process, and exemptions to this norm should be narrowly defined and justified.</p> |
| <b>4. Public participation</b>                   | Public participation is another central issue in HRIA. As in case of transparency, the principle of public participation has two dimensions in HRIA: on the one hand, HRIA should assess whether effective participatory mechanisms are in place during the whole lifecycle of the intervention (from formulation to evaluation); on the other, it should ensure that such mechanisms are integrated in the process of HRIA itself.   |
| <b>5. Accountability</b>                         | Accountability is related to the legal nature of the human rights framework. In the context of HRIA, promoting accountability means that HRIA should include effective grievance mechanisms (beyond access to the courts or the formal legal system) in case human rights are not respected. The grievance mechanism is considered effective when it is proportionate, culturally appropriate, accessible, transparent and offers protection. Such mechanism should ensure that violation is remedied and the responsible actors are held accountable. In addition to grievance mechanism, accountability in HRIA   |

|   |   |
|---|---|
|   | means that duty-bearers should monitor if the HRIA has led to any changes in their actions/operations and report on the extent to which they have fulfilled the human rights obligations.   |
| <b>6. Intersectoral approach and international policy coherence</b> | <p>The human rights - civil, political, economic, social and cultural – are indivisible, interdependent and interrelated. This means that it is difficult and in many cases, impossible to realize any of the human rights in isolation; protection of one right facilitates protection of other rights, and deprivation of one right might adversely affect enjoyment of other rights. Furthermore, HRIA should also measure cumulative impacts of an intervention, since combination of different impacts may lead to additional human rights violations, or to the variation in the intensity or extent of violations.</p> <p>HRIA is an important tool to promote international policy coherence. HRIA can ensure that: (a) international policy obligations are effectively implemented through national laws, policies and processes (vertical coherence); and (b) national policies and interventions across sectors and state agencies are consistent or compatible with one another, and at a minimum, do not undermine human rights (horizontal coherence).</p> <p>HRIA is an important tool to promote international policy coherence. HRIA can ensure that: (a) international policy obligations are effectively implemented through national laws, policies and processes (vertical coherence); and (b) national policies and interventions across sectors and state agencies are consistent or compatible with one another, and at a minimum, do not undermine human rights (horizontal coherence).</p> |

Sources: The Nordic Trust Fund, 2013; Gonzalez A., 2014.

## CONDUCTING THE COMMUNITY-BASED HRIA – TIPS FOR SUCCESS

Among the various types of HRIA carried out by different parties, we would like to focus on particularly on the community based HRIA, that could be the important tool for communities and CSOs in its work against unsustainable investments. An effective community-based HRIA responds to the expressed demands and objectives of the community or communities affected by a private investment/public investment.

The prerequisite condition is that communities must be involved in all aspects of the assessment—from setting the goals to data collection and analysis—as well as determining how the results of the report are used. An HRIA is therefore both a capacity-building exercise and a social process that empowers communities to claim and assert their rights and engage with companies (when relevant) in meaningful ways.

To carry out HRIA, the social and political context should be as favorable as possible. Strategic timing can create opportunities for the assessments to more effectively influence decision-making and incur tangible results. e.g. in front of elections when institutional changes are foreseen, or in due process of decision making around the investment projects finalized. In this case, HRIA can complement current campaigns or actions, furthering the interests of communities and their support organizations instead of duplicating or working in contradiction to ongoing efforts.

In certain cases, the conduct of HRIA may be counter productive. An unfavorable starting point, when HRIA don't consider as appropriate and effective tool is when:

- The community does not agree that an HRIA should be conducted.
- The security of the research team or the community is put at greater risk. This could especially be the case in conflict areas.
- There are no identifiable opportunities for sufficient data collection.
- The assessment would not be the most effective means to protect local interests. If, for example, a community is opposed to a project that has no firm grounds, a more effective use of resources might be to focus on lobbying or campaigning against the initiative, rather than on conducting an HRIA.

Ideally, an HRIA should be implemented prior to the start-up of a private investment project (ex-ante) and be ongoing. At this early stage, an HRIA has the greatest chance of influencing decision making and preventing potential rights' violations. impacts, but an HRIA should aspire to be proactive and preventive, rather than reactionary and mitigating. An ex-ante assessment can help frame recommendations for governments, potentially highlighting any weaknesses in institutional mechanisms aimed at protecting human rights, while at the same time promoting greater and more effective participation of affected communities in negotiations with the company or companies.

An HRIA during an investment project focuses on remedies, not prevention. A case undertaken while an investment project is already in progress (ex-post) may be easier in terms of the availability of information and opportunities for data collection, but it will not be as proactive and must focus primarily on reme A range of factors affect the implementation of an HRIA.

## CONDUCTING THE COMMUNITY-BASED HRIA – TIPS FOR SUCCESS

These are some of the most important recommendations for a research team to consider when carrying out an assessment:

- Make sure that the communities are the first source of data for the assessment. To ensure that HRIA is truly community-based it should begin from local communities' perspectives.
- Meet with all stakeholders to ensure credibility. Credibility and analytic rigor are essential for a successful assessment. Once published, HRIA reports can be subject to various criticisms, often targeting the validity of the results. In order to avoid the unnecessary criticism the report should include all possible evidences, both in terms of data, as well as stakeholder testimonies.
- Look at both positive and negative impacts of the company's activities on human rights by including data from a wide range of stakeholders. The assessment should be comprehensive not to affect the report's credibility.
- The gender dimension of the potential and actual impacts of the investment should be highlighted. The effects of private investment schemes often impact the human rights of men and women differently. All data collection and analysis should factor in these differences. In one case, for example, studies revealed traces of lead in breast milk and in the umbilical cords of newborn children, indicating that lead residue

from a copper mine was negatively impacting the reproductive capacity of women in surrounding communities.

- Be transparent in terms of process and results, and provide general information about the objectives of the HRIA, its methodology, and the assessment process to local communities. The team should also circulate the final report and should provide the results in a way that do not put communities or others at risk.
- Validate the data contained in the report, especially personal testimonies. This can often be achieved by triangulating testimonies, comparing them with second and third sources, and/or by having the testimonies verified by external experts. Testimonies can also be compared with and validated by existing research, such as published reports, academic literature, scientific journals and/or other attributed sources.
- Verify the reliability of the data sources, seeking unbiased, independent resources. For example, information about a mining company provided university-based research center is more reliable than well known anti-mining group.

## HOW TO CAPTURE COMMUNITY EXPERIENCES IN HRIA

The added value of a community-based HRIA is that it gives the assessment of human rights impacts of private investments from the perspective of the community, rather than from the company and /or State:

- therefore the accuracy with of the community perspective is critical, as it supports and engages key community member and helps to create alliances with local leaders and seek local experts to engage in the study. That helps to develop stronger relationships between the team and the community, while allowing the continuous communication and information sharing.
- The researchers and the community should have common expectations and goals for the assessment, as product. Do the HRIA report is desired outcome? Or does the community and research team want to use the process itself as a tool to raise human rights knowledge among community members and other stakeholders? Will the HRIA be used to raise public awareness or to influence national or international laws? Or is the goal to persuade the company to modify the project or its oversight of the investment?

### **Establishing a clear set of shared goals is key to:**

- Manage expectations. The HRIA may influence the dynamics regarding the project within the community, as well as may raise expectations in terms of the potential impact of the HRIA report. To avoid disappointment and frustration, the research team should manage these expectations, taking care to set realistic and potentially achievable goals.
- Identify the most significant human rights concerns. A private investment can implicate a range of human rights and it may not be possible to document its effect on all of them. It is critical to present the human rights infringements that are of greatest concern to the community, rather than those of other interest groups or stakeholders.
- Be able to adapt human rights language to local realities. A community may not be able to easily understand or apply the technical language of human rights to their specific context. A research team should seek ways to explain human rights terminology and ideas in ways that make sense in terms of the daily, practical realities of the community. Moreover, when research teams and communities speak different languages, the teams should provide oral and/or written translations throughout all phases of the

assessment. Teams can also develop and experiment with various pedagogical techniques and media, such as visual aids or participatory exercises, tailored specifically to engage the community's viewpoint. As such, the accuracy with which it portrays the community perspective is critical

## OTHER STAKEHOLDER ENGAGEMENT

Through engaging with the other stakeholders, HRIA process strives to increase communication and effective, solutions-based dialogue between affected communities and other stakeholders. There may be situations, when company or government participation is not possible, but in case of engagement there are several factors to bear in mind when a research team is able to engage with these actors.

When engaging with the company:

- Become familiar with the structure of a company to identify possible leverage points, including board of directors and/or shareholders. If a company's management is not willing to provide information, the shareholders or other corporate oversight bodies may be more supportive.
- Create safe spaces in which to interview workers. Just as with community members, company employees may hesitate to participate in an HRIA, fearing negative consequences, such as loss of employment, harassment, or a range of other potential hardships.
- Find a common language when dealing with companies. Allegations about human rights violations may have more weight when expressed in terms of cost-benefit analyses. For example, while an argument about a company's legal obligation to uphold a community's human right to water could force a company to take preventative measures, even more compelling might be an analysis of how much money a company might have to spend if its activities were to contaminate local water sources, threatening the health of surrounding communities.

When engaging with governments (home and host governments of the company):

- Have a clear understanding of the relationships between the governments and the company. More often than not, governments have an interest in attracting foreign and/or private investments. Understanding the relationship the government shares with an investing company can enable the research team to anticipate the behavior of both actors.
- Underline the knowledge-building aspect of an HRIA process. Sometimes, government officials may deny government's responsibility regarding the human rights violations due to the company's activities. The HRIA process could serve as an opportunity to build government capacity around human rights laws and the responsibilities of duty bearers and rights holders under these laws.

## WELL WRITTEN COMMUNITY HRIA REPORT:

- Based on scientific objectivity to avoid accusations of bias and partiality. The analysis reflects evidence-based analysis and recommendations.

- Makes sure that affected communities give input to the proposed content and main conclusions of the HRIA and are the primary owners of both the research process and the content of the report. As such, they should comment on the report prior to its publication or dissemination.
- Have a third party comment on the report prior to publication. Doing so can lead to important improvements and adjustments to the report.

## WHAT MAKES FOR A SUCCESSFUL HRIA?

Among the many lessons that emerged from the global learning event, the most significant was a clear articulation of these characteristics and critical success factors of an ideal HRIA process: • Responds to the interest of communities

- Conducted early and is ongoing
- Contains clear objectives
- Is credible, comprehensive, and independent
- Is grounded in a gender perspective and analysis
- Is transparent, participatory, inclusive, and locally empowering
- Makes concrete and actionable recommendations
- Is actively used by communities to promote the accountability of states and companies

### Useful Information on community based HRIA methodology:

- General article on community-based HRIA methodology: <https://www.fidh.org/en/issues/globalisation-human-rights/business-and-humanrights/community-based-human-rights-impact-assessments>
- Community-Based Human Rights Impact Assessment: The Getting it Right Tool, Training Manual (COBRIA) developed by Oxfam and FIDH: [www.fidh.org/article19490](http://www.fidh.org/article19490)
- Online tool: <http://hria.equalit.ie/en/>
- Community-based human rights impact assessments: Practical lessons Report from an international meeting, Canada 2010: best practice on conducting Human Rights Impact Assessments using the Getting it Right methodology:
- <https://www.oxfamamerica.org/static/oa3/files/community-based-human-rightsimpact-assessments-practical-lessons.pdf>

FIDH (Worldwide movement for Human Rights) actively promotes Community Based HRIA and announcing calls for proposal for CSOs and communities to conduct HRIA (<https://www.fidh.org>)

### Examples of HRIA conducted by FIDH:

- South Africa : Blyvooruitzicht Mine Village: the human toll of state and corporate abdication of responsibility Report: <https://www.fidh.org/IMG/pdf/rapafriquesud687abassdef.pdf>  
Executive summary: <https://www.fidh.org/IMG/pdf/afriquesudresumeexecut687abassdef.pdf>
- Honduras: Endangered Protected Areas and Water Sources, the case of the hydroelectric Dam project in San

Francisco, Atlántida Report: <https://www.fidh.org/IMG/pdf/hria691hondurasangweb.pdf>  
Executive Summary: <https://www.fidh.org/IMG/pdf/hria691hondurasresumexecuangbasdef.pdf>

- Colombia: The Human Cost of Oil, A human Rights Impact Assessment on the Activities of Pacific Exploration and Production Corp. in Puerto Gaitán Report:  
[https://www.fidh.org/IMG/pdf/colombie\\_informe\\_es\\_version\\_web.pdf](https://www.fidh.org/IMG/pdf/colombie_informe_es_version_web.pdf) Executive summary:  
[https://www.fidh.org/IMG/pdf/colombia\\_executive\\_summary.pdf](https://www.fidh.org/IMG/pdf/colombia_executive_summary.pdf)
- Brazil: How much are human rights worth in the Brazilian mining and steel industry? Full report:  
[https://www.fidh.org/IMG/pdf/report\\_brazil\\_2012\\_english.pdf](https://www.fidh.org/IMG/pdf/report_brazil_2012_english.pdf)  
Executive summary: [https://www.fidh.org/IMG/pdf/resume\\_Bresil\\_UK-LD2-2.pdf](https://www.fidh.org/IMG/pdf/resume_Bresil_UK-LD2-2.pdf)
- Ecuador: Large Scale Mining in Ecuador and Human Rights Abuses, the Case of Corriente Ressources Inc.  
Executive summary:  
[https://www.fidh.org/IMG/pdf/Exec\\_Summary\\_Largescale\\_Mining\\_Human\\_Rights\\_Ecuador-LD.pdf](https://www.fidh.org/IMG/pdf/Exec_Summary_Largescale_Mining_Human_Rights_Ecuador-LD.pdf)

#### **Used literature**

<https://www.oxfamamerica.org/static/oa3/files/community-based-human-rights-impact-assessments-practical-lessons.pdf>

Human Rights Impact Assessments as a New Tool for Development Policy?

[https://www.oefse.at/fileadmin/content/Downloads/Publikationen/Workingpaper/WP37\\_Human\\_Rights.pdf](https://www.oefse.at/fileadmin/content/Downloads/Publikationen/Workingpaper/WP37_Human_Rights.pdf)

#### **Study on Human Rights Impact Assessments**

[http://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/HRIA\\_Web.pdf](http://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/HRIA_Web.pdf)