



Community-based human rights impact assessments: Practical lessons

Report from an international meeting, Canada 2010



Rights & Democracy
International Centre for Human Rights
and Democratic Development



Oxfam America

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Rights & Democracy

Rights & Democracy is a non-partisan, independent Canadian institution created by an Act of Parliament in 1988 to promote democratic development and to advocate for and defend human rights as set out in the International Bill of Human Rights. In cooperation with civil society and governments in Canada and abroad, Rights & Democracy initiates and supports programmes to strengthen laws and democratic institutions, principally in developing countries.

Summary

In March 2010, Rights & Democracy, Oxfam America, and the International Federation for Human Rights (FIDH) sponsored a global learning event that brought together 13 civil society organizations engaged or interested in community-based human rights impact assessments (HRIAs) of private investments. For four days, participants exchanged their experiences using *Getting It Right*, a dynamic tool developed by Canada-based Rights & Democracy. Designed especially for communities and their support organizations, the tool enables teams to conduct HRIAs of private investment projects, such as infrastructure projects, agro-industry, dams, extractive industries, and other initiatives. This report summarizes key lessons learned and recommendations from participants, based on their pilot experiences in Bolivia, Columbia, Ecuador, Peru, the Philippines, and the United States.



What makes for a successful human rights impact assessment (HRIA)?

WHAT IS A HUMAN RIGHTS IMPACT ASSESSMENT (HRIA) OF A PRIVATE INVESTMENT?

An HRIA is a process to assess a state's performance against its human rights commitments within the context of a private investment.

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Preparing for a community-based HRIA

Are certain contexts more conducive for producing effective HRIAs than others? When during the project cycle of a private investment initiative is the ideal time to conduct an HRIA? Who should be on an HRIA assessment team? How do we ensure that the study accurately reflects the perspectives of communities affected by private investments?

These are some of the questions that participants at the global learning event deliberated during the four-day gathering in Montreal. While there were no singular answers, the group concluded that there are some critical factors to consider while preparing for an HRIA.

Understanding the general context: When should an HRIA be conducted?

A favorable starting point

A research team should consider the following before starting an HRIA:

- **An effective community-based HRIA responds to the expressed demands and objectives of the community or communities affected by a private investment.** Communities must be involved in all aspects of the assessment—from setting the goals to data collection and analysis—as well as in 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.
- **The social and political context should be as favorable as possible.** Teams might opt to conduct their assessments at key political moments, such as when elections are coming up, when institutional changes are foreseen, or during crucial moments in terms of the state's human rights obligations (for example, if the country is expected to appear before the UN Human Rights Council for a Universal Periodic Review). Strategic timing can create opportunities for the assessments to more effectively influence decision making and incur tangible results.
- **It is important to work strategically with groups already mobilizing around the investment project.** An 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.

WHAT IS RIGHTS & DEMOCRACY'S COMMUNITY-BASED HRIA INITIATIVE?

Six years ago, Rights & Democracy began developing a methodology to help communities and their support organizations identify the impacts of private investment on their human rights. Today, Rights & Democracy is partnering with Oxfam America and the International Federation for Human Rights to further test this tool.

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An unfavorable starting point

Certain contexts are not conducive for an HRIA. In particular, a research team should reconsider the appropriateness or potential effectiveness of an assessment 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 not already started, a more effective use of resources might be to focus on lobbying or campaigning against the initiative, rather than on conducting an HRIA.

When is it the right time to begin an assessment?

A research team should consider the following when timing 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. If not possible before start-up, then an HRIA is most effective early in the life cycle of an investment project and continuing throughout its duration. An ex-ante assessment may be more difficult in terms of the availability of information and the opportunity to evaluate potential 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 remedies rather than preventing rights violations.

THINGS TO CONSIDER!

In certain cases, implementing an HRIA can increase existing divisions within a community or even create new divisions. For example, in a community with a very high unemployment rate, some, but not all, community members might view a private investment as an employment opportunity. Those wanting to take advantage of this opportunity might be in favor of the investment, while others may oppose it. In this instance, conducting an HRIA might exacerbate these divisions because the HRIA might be seen as an attempt to deter the investment.

An organization conducting an assessment should also be aware of the reputational risks that can accompany an HRIA. In one case, a company launched a campaign against the organization conducting the assessment.

Who should be part of a community-based HRIA assessment team?

In theory, any community could carry out an independent HRIA, however in practice the support of an external team may lead to even greater success. Furthermore, the composition of this team can be critical. The right combination of backgrounds, expertise and skills can ensure that an assessment has scientific rigor and legitimacy while at the same time accurately reflects local realities and perspectives.

A research team should have the following characteristics:

- **Include at least one local researcher and/or member of the affected community**, ideally complemented by a range of other team members with skills appropriate to the particular case.
- **Have a long-term commitment to the community based on a relationship of mutual trust.** Through this type of horizontal relationship, a research team can gain an accurate understanding of local cultural and social realities.
- **Be gender-balanced.** An ideal assessment team is comprised of both women and men. This balance can help create comfortable environments for interviews, especially with members of affected communities. It also fosters diverse perspectives in terms of data analysis.
- **Be interdisciplinary and gender-focused.** While the specific skill sets of a team depend on the case, the context and the objectives of an HRIA require, at a minimum, that one or more members of the research team have some knowledge of or background in human rights and gender analysis.
- **Be familiar with participatory techniques** for gathering data and engaging with communities that are respectful of local culture and traditions. The use of participatory techniques can be an effective tool to foster community participation throughout the assessment, increasing its potential to drive a community-led, transformative social process.
- **Have public credibility** to avoid accusations of being biased or partial. This credibility should be recognized especially by all key stakeholders—the company, the government/s, and the affected community or communities.
- **Have a strong network of civil society alliances.** Such alliances provide greater access to information and can help facilitate data collection from a wide range of stakeholders. They can also be helpful in later stages, when publicizing report findings and developing follow-up actions.

EXAMINED CASE: BOLIVIA

In 2009, the public companies Korea Resources Corporation and Corporación Minera de Bolivia signed a contract to exploit and produce copper from the Coro-Coro deposit. Expropriation occurred without consulting the local community, violating protections enshrined in the Bolivian constitution.

In another case, in the department of el Chuquisaca, Total E&P Bolivia is conducting gas exploration. Research teams are implementing an HRIA to examine the effects of the activities on the community's rights to prior consultation, compensation, indemnities, and health.

Conducting an HRIA: Tips for success

The research team and data collection

Before starting an HRIA

A research team should consider the following prior to getting started:

- **Set clear objectives and identify the target audience or audiences of the report.** The objectives and audience/s determine the report's tone, the type of language used, and the format of the final report. If, for example, the ultimate objective is to present the report to a national court, the report should highlight legal concepts and employ a legal vocabulary, while de-emphasizing personal testimonies, since these are less persuasive forms of court evidence. On the other hand, if the goal is to use the report to raise public awareness, using personal testimonies might invoke greater public appeal.
- **Make sure that sufficient resources of time and money are available.** HRIA processes can be lengthy, requiring substantial inputs of time and financial and human resources. It is also critical that enough resources are available for publishing the report and for any follow-up actions.

SOMETHING TO CONSIDER!

In practice, experience demonstrates that local organizations opting to conduct HRIAs often have preestablished reputations for supporting victims of investment projects. This can influence how companies and governments receive and regard the assessments.

“It is best to always operate on principles of respect, sincerity, transparency, and accountability, even if some community members are hostile towards you. Before the HRIA research, I had been in and out of the community for at least two years, writing about their stories or just simply listening to what they had to say because that is what they needed most. Because of this, the community somehow got used to my presence, which became very important in the long run, since it gave me access to information and valuable insights about the conflict of interests of various actors at play. But, this also stressed greater responsibility on me as the researcher, which I had to bear even long after the HRIA was accomplished.”

– HRIA RESEARCH COORDINATOR, PHILIPPINES

EXAMINED CASE: ECUADOR

Corriente Resources Inc., a company that acquires and explores mining deposits, established five subsidiary companies in Ecuador. In 2009 and 2010, the “Comisión Ecuémica de Derechos Humanos” analyzed the impacts of their mining activities on the rights of indigenous and peasant communities in the Amazon. Findings highlight the criminalization of social protest, irregularities in the consultation and land acquisition process, and the potential risks of large-scale mining on the livelihoods of surrounding indigenous communities. The HRIA report will be published shortly.

During implementation

A range of factors affect the implementation of an HRIA. 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 be truly community-based, an HRIA must begin with the perspectives of local communities.
- **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. One way to counteract this criticism is by including evidence from the greatest possible range of data and stakeholder testimonies in the report.
- **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 team must remember that the assessment should be broad and inclusive (comprehensive). Doing otherwise might affect the report’s credibility.
- **Highlight the gender dimension of the potential and actual impacts of the investment.** 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.** When meeting with stakeholders, a research team should share general information about the objectives of the HRIA, its methodology, and the assessment process. The team should also circulate the final report, provided the results 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 source/s.** The validity of data also rests on the reliability of its source. Teams should seek unbiased, independent resources. For example, information about a mining company provided by a well-known anti-mining group might not be as reliable as data published by a university-based research center.

How to make sure an HRIA accurately captures the experiences of communities

The added value of a community-based HRIA is that it documents the human rights impacts of private investments from the perspective of the community, rather than from the company, government, or other viewpoint. As such, the accuracy with which it portrays the community perspective is critical.

A research team should take the following steps to ensure that the report accurately reflects a community's experiences:

- **Garner support from and engage key community members.** Create alliances with local leaders and whenever possible seek local experts to engage in the study. This not only helps forge strong relationships between the team and the community but allows for critical and continuous communication and information sharing.
- **Establish shared objectives.** The research team and the community should establish common expectations and goals for the assessment. What is the desired outcome? Is it publishing the HRIA report? 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.
- **Manage expectations.** The research team must understand that the act of conducting an assessment initiates change within communities and 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 affect 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. Outreach within the community or the use of an imbedded researcher are two ways to gather this information.
- **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.

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EXAMINED CASE: PERU

In 1997, Doe Run Peru S.R.L. purchased a state-owned smelter complex in La Oroya, a Peruvian town in the Andes Mountains named in 2006 as one of the 10 most polluted areas in the world. The assessment concluded that the operations of Doe Run Peru and the failure of the state to take appropriate steps had hampered the ability of the people of La Oroya, especially women, to enjoy their human rights.

- **Foster local ownership of the assessment.** Participatory processes require more time than other types of research methods. Assessment teams should allocate adequate time and resources for community outreach activities. The team should also share the final HRIA results with the affected communities to ensure that the communities are aware of and/or take forward the recommendations outlined in the report.

Tips for interacting with communities

Working closely with affected communities in meaningful and effective ways can be very challenging. Nonetheless, there are several key ways to create opportunities for the greatest success.

To foster effective working relationships with communities, a research team can take the following actions:

- **Adopt a humble attitude and take a learning approach based on effective listening.** When meeting with communities, a research team should come with an open mind and a willingness to understand local realities and perspectives. Researchers should remember that the success of the HRIA process rests on the meaningful participation of the community.
- **Create safe spaces for dialogue and discussion.** Communities may be facing threats or intimidation by stakeholders involved in the private investment. Teams should create safe environments in which community members feel they can speak freely.
- **Bear in mind that communities are not homogeneous.** A community may present a wide range of local contexts, depending on geographic location, economy, history, and sociocultural characteristics. While several communities may be affected by a single private investment, each may be impacted differently, and even within the communities experiences may vary.

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During a capacity-building workshop, a Bolivian research team introduced the concept of “human rights” (“derechos humanos”) to members of a Guarani indigenous community. Participants explained that in their language, the word “humano” meant “death” and so they understood the discussion to be about the rights of dead persons, a seemingly senseless concept. The research team quickly realized they needed to find other words and ways to express the concept.

- **Use the HRIA process to bring communities closer.** Outreach in the form of roundtable discussions, workshops, and other activities can be tools for bringing communities together and even for reconciling any existing divisions. Outreach can also create a greater sense of local ownership over the assessment process.

Engaging with other stakeholders

An HRIA process strives to increase communication and effective, solutions-based dialogue between affected communities and other stakeholders. While company or government participation in the HRIA is not always possible, 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. Companies may be led by a board of directors or owned by various shareholders. If a company itself is not willing to provide information for the assessment, perhaps shareholders or other corporate oversight bodies will.
- **Create safe spaces in which to interview workers.** Just as with community members, company employees may hesitate to participate in an HRIA, fearing negative repercussions, 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 responsibility to uphold a community's human right to water *could* compel 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.
- **Try to emphasize the knowledge-building aspect of an HRIA process.** In some cases, government officials have claimed that the government bore no responsibility in terms of the human rights violations resulting from a company's investment activities. To address this and other similar misconceptions, a research team could use the HRIA process as an opportunity to build government capacity around human rights laws and the responsibilities of duty bearers and rights holders under these laws.

EXAMINED CASE: PHILIPPINES

In 2005, TVI Pacific Inc. opened a mine on the peak of Mount Canatuan (island of Mindanao), which is considered a sacred site by the Subanon people living in the area. The HRIA report showed that the investment has had a negative impact on the ability of the Subanon to enjoy their rights to self-determination, human security, an adequate standard of living, adequate housing, work, and education.

Writing the report

A research team should follow these guidelines when writing the assessment report:

- **Exercise scientific objectivity** to avoid accusations of bias and partiality. The analysis should not reflect any personal opinions or perceptions, only evidence-based analysis and recommendations.
- **Make sure that affected communities are aware of and give input to the proposed content and main conclusions of the HRIA.** Communities should be 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. If a community is largely illiterate, the information should be transferred orally.
- **Have a third party comment on the report prior to publication.** Doing so can lead to important improvements and adjustments to the report.

Getting results: Ensuring that the findings of an HRIA have influence

A research team can take the following steps to make sure that an HRIA gives rise to concrete results for communities and other stakeholders:

- **Coordinate strategies with other groups working on the same case or on cases involving the same company.** Creating strategic synergies and overlaps can have more impact than individual initiatives. Collaborating with other groups also allows for greater experience sharing and knowledge building.
- **Formulate and implement a clear communication strategy, especially with the media.** Since publicity can work for or against the objectives of an assessment, the team should think strategically about when and how to publicize the assessment through local, national, and/or international media channels.
- **Be committed to and prioritize a long-term engagement with the case and with the affected communities.** This commitment should be sufficiently financed to ensure effective follow-up to the HRIA.
- **Include in the report clear recommendations directed at the various stakeholders** and make sure they are known to them and to other relevant audiences.
- **Be creative and investigate various strategies for publicizing and disseminating the results of the HRIA.** The team should also determine where the report will have the biggest impact at the national, regional, and/or international levels and disseminate the findings in ways that promote the objectives established at the outset of the assessment.

EXAMINED CASE: USA

Each year tens of thousands of migrant farm workers who travel to North Carolina are forced to endure slave-like living and working conditions. The Farm Labor Organizing Committee is using the HRIA tool to document the human rights abuses occurring in the tobacco fields and labor camps of that state.

Final Words

Lessons learned: 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

What is a human rights impact assessment (HRIA)?

Inspired by social and environmental impact assessments and rooted in the international human rights framework, an HRIA measures the gap between the human rights commitments made by a state (human rights in principle) and the practical possibilities of enjoying these rights within that country (human rights in practice). An HRIA emphasizes the obligations of states as primary duty bearers to respect human rights, protect populations from rights violations committed by non-state actors, and fulfill their human rights commitments as enshrined in both national and international law. An HRIA also recalls the corresponding responsibilities of non-state actors to respect human rights, not to benefit from violations of human rights, and not to be complicit in human rights violations.

HRIAs are rooted in core human rights principles, among which can include:

- The meaningful participation of the rights holders
- The accountability of duty bearers and access to remedies
- Special attention to vulnerable groups and discriminatory practices
- Indivisibility of rights
- Access to information

An HRIA of a private investment

Local, national, and international civil society organizations point out that many private investment projects, such as extractive industries, agriculture, dams, and infrastructure projects, do not adequately take into account the human rights of local communities and in fact often result in violations of these rights. Various solutions, including HRIAs, have emerged as possible vehicles to address the violations.

An HRIA of a private investment seeks to identify the impact that the investment is having, has had, or may have on human rights, reporting any failures to respect human rights or, in some cases, violations of human rights. During an assessment, the information is systematically collected, analyzed, and documented in a report that can be used in many practical ways to seek greater accountability from companies and governments.

The Community-based HRIA initiative

Companies have various tools to assess risks pertaining to their investments, but communities affected by investment projects have very few. Often disempowered with respect to governments and the companies, the concerns of communities affected by private investments are commonly ignored.

Six years ago, Rights & Democracy began addressing this gap by developing a community-based HRIA methodology, designed specifically to help communities and their support organizations identify the impacts of private investments on their human rights. The methodology was also conceived as a tool for creating opportunities for communities to effectively voice their concerns. Rights & Democracy has tested this methodology in five case studies — in Argentina, the Democratic Republic of Congo, Peru, the Philippines, and Tibet/China.

Now synthesized into a CD-ROM, the Rights & Democracy methodology — *Getting it Right: A Step-by-Step Guide to Assess the Impact of Foreign Investments on Human Rights* — has been transformed into a practical and interactive guide for conducting community-based human rights impact assessments. Designed as a capacity-building tool, the guide is intended primarily for community-based organizations, such as workers' unions, women's rights groups, indigenous organizations, and other civil society entities.

Available in English, French, and Spanish, *Getting it Right* leads users through all phases of conducting an HRIA, while also providing an array of human rights reference documents and information. Throughout the process, the tool compiles evidence, data, and analysis that become the content for a final report. While HRIA reports can be used in many practical ways to seek accountability, the overarching objective of the process is to increase the ability of communities and their support organizations to articulate their rights and engage in decision making with companies, investors, and governments from a place of knowledge and power.

To further verify the effectiveness, applicability, and user friendliness of *Getting it Right*, Rights & Democracy is currently partnering with Oxfam America and the International Federation for Human Rights to pilot the methodology. In 2009, the three organizations began testing the guide in several communities and are now providing accompaniment to teams with ongoing assessments.

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