



PROMOTING HUMAN RIGHTS IN ENVIRONMENTAL MANAGEMENT IN EASTERN AND SOUTHERN AFRICA

A MANUAL ON THE ROLE OF
NATIONAL HUMAN RIGHTS
INSTITUTIONS



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ABBREVIATIONS

2030 Agenda – 2030 Agenda for Sustainable Development

AU – African Union

CSO – Civil Society Organisation

ECOSOCC – Economic Social and Cultural Council

EIA – Environmental Impact Assessment

ESIA – Environmental and Social Impact Assessment

IFC - International Finance Corporation

ILO – International Labour Organization

NAP - National Action Plan on Business and Human Rights

NHRI – National Human Rights Institution

OECD - Organisation for Economic Co-operation and Development

PAP – Pan-African Parliament

SDG – Sustainable Development Goal

SESA - Strategic Environmental and Social Assessment

UN - United Nations

UNGPs – United Nations Guiding Principles on Business and Human Rights

1.0

INTRODUCTION

1.1 AIMS AND OBJECTIVES OF THE MANUAL

This manual provides practical insights on how national human rights institutions (NHRIs) can contribute to the promotion and protection of human rights in the context of environmental permitting and management.

The manual aims to:

- Introduce NHRIs to how human rights are currently addressed in environmental policy and practice in Eastern-Southern Africa, with reference to relevant international and regional frameworks;
- Identify key entry points for NHRIs to strengthen human rights integration in environmental permitting and management, with a particular focus on environmental and social impact assessment (ESIA), including on the salient issues of gender, participation and land access; and
- Provide practical tools for NHRIs for conducting human rights review of ESIA.

The manual has a particular focus on opportunities in Eastern-Southern Africa and the context of ESIA but may also prove useful for NHRIs in other regions. While NHRIs are the primary target audience, the manual may also prove useful to other actors working on the nexus of human rights and environmental permitting and management, such as civil society organisations (CSOs), government or business and finance actors.

1.2 HUMAN RIGHTS AND THE ENVIRONMENT

Human activities, including large-scale agriculture, construction of infrastructure and extraction of natural resources can cause negative impacts on the environment. This can include pollution and deforestation, further contributing to climate change. The environment and enjoyment of human rights are interrelated, as recognised in the right to a clean, healthy and sustainable environment. Negative environmental impacts can cause negative human rights impacts, often likely to impact those who are already vulnerable.

Businesses, whether state-owned or privately-owned, play an important role, whether that is leading, designing, funding and/or implementing projects as contractors and suppliers. As such, business activities can cause, contribute to, or be directly linked to adverse environmental impacts and associated negative human rights impacts.¹

ESIA is a commonly used process which can help businesses and states identify and assess how to address the potential environmental and social impacts of projects as part of the associated environmental permitting and management, including decision-making about what projects go ahead and under which conditions. ESIA is often mandated by law for projects of a certain size, conditions or location. International

finance institutions have also adopted formal requirements for ESIA that need to be met before financing is provided, to improve project selection, design and implementation, and to minimise adverse environmental impacts.²

However, in order for social risks to be properly assessed, businesses and states need to know and understand the human rights impacts of their activities; contemporary approaches to project impact and risk assessment need to be adapted to consider human rights; and ESIA methods need to be adapted to give greater attention to impacts on human rights.³

Environmental instruments are increasingly acknowledging the link between the environment and human rights. The 1972 Stockholm Declaration on the human environment provides that humans have the right to live in a quality environment 'that permits a life of dignity and well-being.' The 2015 Paris Agreement acknowledges that climate change is a common concern of humankind. In the African region, the 2063 Agenda, among other instruments, calls attention to the importance of a healthy environment.

Sustainable development instruments, including The 2030 Agenda for Sustainable Development (2030 Agenda) recognise the environment as one of the three foundational dimensions of sustainable development, with an aim of the 2030 Agenda being to 'ensure that all human beings can fulfil their potential in dignity and equality and in a healthy environment.'⁴ Additionally, the sustainable development goals (SDGs) link the environment to human wellbeing with specific targets under SDGs, including SDG 13 (action to combat climate change), SDG 14 (conserve oceans, seas and marine resources) and SDG 15 (protect terrestrial ecosystems, biodiversity and land). These goals and targets tie together with the human-centred approach of the 2030 Agenda and its adoption of international human rights as a foundational principle.

The right to a healthy environment was formally recognised by the United Nations (UN) General Assembly in July 2022. Furthermore, international and regional human rights bodies have addressed the links between environmental impacts and human rights through the interpretation of various human rights and freedoms under respective instruments. This trend is referred to as 'greening' of existing human rights by the UN Special Rapporteur on human rights and the environment,⁵ who has identified 155 countries with 'a binding legal obligation to respect, protect and fulfil the right to a healthy environment' on a national level.⁶ In an effort to compile the links between human rights and the environment, the former UN Special Rapporteur John Knox produced the Framework Principles on Human Rights and the Environment in 2018, a set of 16 principles that build on the recognition of the human right to a healthy environment and bring together its various components.⁷ Principle 8 states that '[t]o avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights' as a measure for avoiding actions with environmental impacts that interfere with full enjoyment of human rights.⁸

Some human rights which can be affected by environmental impact include:

- The right to life: According to the UN Human Rights Committee, 'implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.'⁹
- The right to the highest attainable standard of health includes the state obligation to guarantee 'the improvement of all aspects of environmental and industrial hygiene.' This entails 'the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.'¹⁰
- The right to food is only guaranteed if it is free from adverse substances which is directly linked to environmental hygiene.¹¹
- The right to an adequate standard of living can be affected where environmental impacts on biodiversity threaten the livelihoods of communities or individuals depending on it. It links to several other relevant rights, including the right to food and housing.
- Full realisation of the right to water is also highly susceptible to adverse environmental impacts which can deteriorate its availability, accessibility or quality.¹²
- International human rights law recognises that certain rights-holder groups, such as indigenous peoples,¹³ women¹⁴ and children,¹⁵ are particularly vulnerable to adverse environmental impacts.
- The fulfilment of cultural rights as well as the right to self-determination can be dependent on the land, territory and resources, as in the case of indigenous peoples.¹⁶ Consequently, they are closely linked to the environment and can be threatened by negative environmental impacts.
- Civil and political rights, particularly those of environmental human rights defenders, who remain highly vulnerable and under attack across the globe.¹⁷

1.3 THE ROLE AND MANDATE OF NHRI

NHRIs are independent state institutions with the constitutional or legislative mandate to promote and protect human rights.¹⁸ The Paris Principles set out the international minimum standards for the status and functioning of NHRIs. While the mandate of each NHRI is variable, the Paris Principles require NHRIs to have as wide a role as possible, with the two main responsibilities being to promote and protect human rights. In addition to these primary responsibilities the Paris Principles suggest a number of functions that NHRIs should undertake:¹⁹

- Advisory functions: NHRIs should be tasked with advising government on any matters concerning the promotion and protection of human rights. Advice can take a range of forms, for example, opinions, recommendations, proposals and reports.
- Promoting legal harmonisation: The mandate of NHRIs should enable them to promote and ensure the harmonisation of national legislation, regulation and practices with the international human rights instruments to which the state is a party. In addition, NHRIs should be mandated to ensure the effective implementation of these by participating in, or commenting on, review of current and proposed laws; advocating for appropriate amendments to existing laws, regulations and practices;

and identifying and communicating any inconsistencies between relevant national and international laws.

- Encouraging the adoption of international standards: NHRIs should be mandated to encourage accession to, or ratification of, international human rights instruments and to ensure their implementation.
- Cooperative functions: NHRIs should be mandated to cooperate with organisations and institutions competent in the areas of the promotion and protection of human rights. Such bodies should include civil society, other domestic bodies with responsibilities to promote and protect human rights, the UN, organisations within the UN system, regional institutions and national institutions of other countries.
- Educational functions: NHRIs should assist in the formulation of programmes for the teaching of, and research into, human rights and can be involved in the execution of such programmes in schools, universities and professional circles.
- Raising public awareness: NHRIs should be mandated to publicise human rights issues generally and to make efforts to combat all forms of discrimination by increasing public awareness. For example, through the provision of information and education, and by making use of the media to influence public opinion.

The Edinburgh Declaration, adopted by the 10th International Conference of the International Coordinating Committee on NHRIs (now the Global Alliance of National Human Rights Institutions) as well as the United Nations Guiding Principles on Business and Human Rights (UNGPs), recognise that NHRIs can and should apply their mandates broadly to the area of business and human rights.²⁰ Through their role in promoting and protecting human rights, NHRIs can play an important part in engaging with business and human rights issues to ensure that states, businesses and civil society uphold their respective duties and responsibilities with regard to business interaction with human rights.

Within the rapidly developing practice of NHRI engagement with business and human rights, the topic of environmental permitting and management has received significant focus.²¹ The area of environment was identified as one of three priority areas in the 2011 Africa Regional NHRI business and human rights declaration and research and practice indicates that many business and human rights issues faced by NHRIs relate to environmental permitting and management – such as insufficient consultation during impact assessments, pollution caused by business enterprises, land access and use by business enterprises adversely affecting communities' right to property and livelihoods, just to name a few examples.²² As such, NHRIs in the African region have clearly expressed interest in strengthening their capacity and practice in terms of applying their mandate to the area of environmental permitting and management. This manual seeks to contribute towards these goals by providing a practical introduction to how NHRIs might use their mandate in the context of environmental permitting and management.

2.0

FRAMEWORKS AND INSTITUTIONS FOR ENVIRONMENTAL MANAGEMENT AND ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT

2.1 ENVIRONMENTAL MANAGEMENT AND ESIA

'Impact assessment' simply defined is the process of identifying the future consequences of a current or proposed action. The 'impact' is the difference between what would happen with the action and what would happen without it. The concept of 'environment' in impact assessment evolved from an initial focus on the biophysical components to a wider definition, including the physical-chemical, biological, visual, cultural and socio-economic components of the total environment.²³ Environmental impact assessment (EIA) – also referred as ESIA when explicitly including social impact considerations – can be defined as 'the process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made.'²⁴ Moreover, ESIA is meant to contribute to sustainable development, including ongoing management of the environment.²⁵ An ESIA can play a much larger and strategic role beyond approval decision when the process is integrated in the project life cycle. Follow-up of ESIA measures and commitments are also connected with principles and practices of adaptive management along the life cycle of the project. Moreover, ESIA has a dual nature, each with its own methodological approach:²⁶

- As a process for analysing the consequences of a planned intervention (policy, plan, programme or project), providing information to stakeholders and decision-makers;
- As a legal and institutional procedure linked to the decision-making process of a planned intervention.

The essential idea is that a formal process will ensure that a comprehensive environmental assessment is undertaken in a systematic manner, leading to a well-informed decision regarding the proposed activity. ESIA does not primarily aim at compliance with a specific environmental standard, but at making sure that all critical information to predict the future impact on the environment and people is supplied and considered in the decision-making process. As a result, the quality of information sourced and the related decision-making process are of key importance for the effectiveness of ESIA.²⁷ In this context, decision-making is not limited to environmental permitting, but extends into decisions for managing development. Once impacts are identified and their significance established, a decision must be made on whether it is appropriate

to proceed with the project or not. If a decision is taken to proceed with the project, suitable mitigation measures should be developed that correspond to the impacts predicted and identified in the ESIA, which are documented in an environmental and social management plan.²⁸ These should then be implemented, monitored and adapted as needed throughout construction, operation and decommissioning (where relevant) of project activities.

In order to ensure that key issues are taken into account in the assessment and subsequent decision-making, a key element of an ESIA process is the involvement of different stakeholders – within the state and government, as well as independent technical experts, non-governmental organisations, affected communities and the general public. Through consultation and participation, ESIAAs broaden the information base for decision-making and can also fulfil other objectives, such as leveraging the support of the community and even providing a sense of ownership in relation to a specific project or development. Not only negative environmental and social impacts are included. Positive impacts of a project should be taken into account in the assessment, and ideally the assessment should also be aimed at enhancing positive benefits by informing project design and implementation.²⁹ Enhancing benefits may include modifying project infrastructure to ensure it can also service local community needs; a commitment to maximising job opportunities for local people; or enhancing restored livelihoods of people economically and physically displaced by projects.

The figure below illustrates the general steps of an ESIA process, indicating the main entry points in the process for public and NHRI inputs. In most regulatory frameworks in Sub-Saharan Africa, consultation with affected communities, competent authorities and relevant stakeholders is required during the ESIA review once the ESIA draft is finalised and often also during the scoping phase. Nevertheless, early involvement, for example during scoping and development of the terms of reference for the ESIA, can allow for a wider engagement that can improve the effectiveness of the ESIA and ensure that issues relevant for human rights are addressed. Identification of human rights issues at an early stage could encourage implementation of best practices, such as required qualifications of the ESIA team; timely and sufficient engagement; and inclusion of key rights-holders in consultation and engagement processes, including vulnerable groups and minorities.

FIGURE 1: GENERAL ESIA STEPS AND OPPORTUNITIES FOR PUBLIC AND NHRI INPUTS



2.2 INSTITUTIONS AND ACTORS INVOLVED IN ESIA

To consider where and how NHRIs might most usefully engage with ESIA processes, it is important to understand the different institutions and actors involved and their roles. Although the precise institutions and actors involved will be dependent on the national context, the below provides a quick overview of common institutions and actors involved in the ESIA process.

The project proponent: The company, institution or authority which is applying for the environmental permit (or clearance from it) for the project, policy or intervention. The project proponent submits the initial project brief as well as the ESIA report and associated management and monitoring plans to the relevant authorities for appraisal. They also commission the ESIA report and necessary baseline studies, and pay a review fee if external reviewers or specialists are needed. The project proponent is also responsible for the cost of the formal consultation meetings associated with the ESIA.

Competent/Permitting authority: In most cases the contact point and key authority for the ESIA process is the national environmental agency or authority, although in some regulatory frameworks the sector authorities (e.g., energy, mining, agriculture) are the ones issuing the permits and therefore leading and coordinating the process. In some jurisdictions with federal organisation (e.g., Ethiopia), duties and responsibilities for ESIA are delegated to the state level. Other forms of decentralisation also exist, such as to local-level agencies.

Consultant: Generally, the consultants conducting the ESIA are independent, specialist individuals or companies contracted by the proponent, and may work quite closely with the proponent's design team. In most cases this is a team of experts led by a coordinator or manager. The composition and number of team members depends largely on the type and complexity of the project or intervention that is the subject of the assessment and its location. In complex and large projects, it is common to see international consulting companies leading the ESIA in joint venture or subcontracting specific tasks to local companies or experts. The names of the consultant(s) should be included in the terms of reference of the ESIA as well as the report sent to the authorities for review. Some regulatory frameworks require the consultants to be accredited in a formal registry or certification system in the country.

Lead agencies: A ministry, department, agency, state corporation or local government responsible for control or management of any element of the environment or natural resource, such as mining authorities, energy authorities, transport or public works authorities. The agency/ies may have the mandate to review the ESIA or can be requested to do so by the permitting authority.

Internal and external reviewers: The permitting authority normally designates an internal committee for the review of the completed ESIA, transmits a copy of the ESIA to the sectoral or authorising agency and distributes copies to the sector authorities and relevant line ministries as well as state or municipal authorities as relevant. When specific expertise is required or the ESIA includes contentious aspects, external parties from various disciplines/expertise are also required to provide comments or clarifications that are considered in the final version of the ESIA and further decisions.

The ESIA report is also subject to comments of the affected rights-holders, general public, civil society and non-governmental organisations and the general public through a public hearing. Normally, the final report must include the comments received and concerns expressed and how these were considered and incorporated in the final version and decision.

Communities and other stakeholders impacted by the project: The involvement of communities and other stakeholders potentially impacted by the project is critical if impacts are to be properly identified and evaluated. Diverse community members should be involved throughout the assessment process but critically in development of the baseline, impact identification and significance evaluation stages. It is also important to involve communities and other stakeholders in impact mitigation planning and subsequent monitoring of impacts. Civil society and other stakeholders can also play an important role in the public comment period, to apply their knowledge and experiences to the ESIA as well as express their view on whether the ESIA adequately captures the relevant issues or not.

2.3 INTERNATIONAL FRAMEWORKS AND STANDARDS FOR ESIA

In addition to having a basic understanding of the process and actors involved, it is of course important to consider the types of standards and frameworks that govern ESIA, in order to effectively engage with the process and evaluate it from a human rights perspective. States must implement obligations contained within hard law instruments and develop a process to assess the environmental impacts relevant to their own national context. As of 2016, 180 states had adopted some form of ESIA legislation.³⁰ This and the following subsections therefore provide an overview of some of the international, regional and national frameworks that commonly govern ESIA processes.

Examples of international and regional legal instruments include:

- The 1982 United Nations Convention on the Law of the Sea³¹
- The 1989 ILO Indigenous and Tribal Peoples Convention³²
- The 1991 Protocol on Environmental Protection to the Antarctic Treaty³³
- The 1991 Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention)³⁴
- The 1992 Convention on Biological Diversity³⁵
- The 1992 United Nations Framework Convention on Climate Change (UNFCCC)³⁶
- The 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention)³⁷
- The 1985 European Union Directive on EIA, amended in 2011 and 2014³⁸
- The 2018 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement)³⁹

In addition, there exists a body of 'soft law' that specifically refers to EIA. These declarations and principles are non-binding but provide further reference:

- The 1972 Declaration of the United Nations Conference on the Human Environment (the Stockholm Declaration)⁴⁰

- The 1978 UN Environment Draft Principles of Conduct in the field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by two or more States
- The 1987 UNEP Goals and Principles of Environmental Impact Assessment⁴¹
- The 1992 Rio Declaration on Environment and Development (the Rio Declaration)⁴²
- The 2011 UNGPs
- The 2011 OECD Guidelines for Multinational Enterprises
- The 2018 UN Framework Principles on Human Rights and the Environment⁴³
- The 2021 United Nations Committee of Experts on Public Administration Strategy Guidance note on Impact Assessment for Sustainable Development

The International Association for Impact Assessment developed its Principles of EIA Best Practice in 1996, wherein it established basic principles to be applied throughout the EIA to ensure that the process fulfils internationally accepted standards.⁴⁴

Other instruments that provide further reference are the environmental and social safeguards, standards and policies of financial institutions, which are frequently used by actors as a 'soft law' standard but can be contractually binding on clients receiving funding from the respective institution, for example:

- The 2012 International Finance Corporation (IFC) Performance Standards
- The African Development Bank's Integrated Safeguards Systems
- The 2018 World Bank Environmental and Social Framework (ESF) and Environmental and Social Standards (ESS)

2.4 INTERNATIONAL FRAMEWORKS FOR PUBLIC PARTICIPATION RELEVANT TO ESIA PROCESSES

From a human rights perspective, effective public participation is not only a procedural aspect of an ESIA process, but a requirement of international human rights law. Furthermore, under international human rights law, certain groups have an explicit right to participation and consultation, including through:⁴⁵

- ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which provides indigenous peoples with a right to be consulted in line with the principle of free, prior and informed consent. Among other things, ILO Convention No. 169 highlights that: 'Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.'
- The Convention on the Rights of the Child states that children have the right to participate in decision-making processes that may be relevant in their lives and to influence decisions taken, including within the family, the school and the community.
- The Convention on the Rights of Migrant Workers and Members of their Families demands consultation with, and participation of, migrant workers and their families in decisions concerning the life and administration of local communities.
- The Convention against the Elimination of All Forms of Discrimination against Women states that women's right to participate in the elaboration and implementation of development planning at all levels.⁴⁶ Consultation rights flowing from this provision have been elaborated in relation to specific human rights, for example in relation to

the right to water, where a General Commentary by the UN Committee on Economic, Social and Cultural Rights emphasised that state parties should take steps to ensure that, among other things, 'women are not excluded from decision-making processes concerning water resources and entitlements.'⁴⁷

The responsibility for businesses to consult those affected by their activities has also increasingly been defined in soft law and other relevant instruments. For example:

- UNGP 18 explicitly states that the process of identifying human rights impacts should involve 'meaningful consultation with potentially affected groups and other relevant stakeholders'. In the associated commentary, it is specified that businesses should seek to understand the concerns of potentially affected stakeholders 'by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society.'⁴⁸
- The OECD Guidelines for Multinational Enterprises (2011) state that multinational enterprises should engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account during planning and decision-making, especially for projects or other activities that may significantly impact on local communities.⁴⁹
- The OECD Due Diligence Guidance for Responsible Business Conduct defines stakeholder engagement and provides that enterprises should engage 'with the genuine intention to understand how relevant stakeholder interests are affected by its activities' and be 'prepared to address adverse impacts it causes or contributes to and that stakeholders honestly represent their interests, intentions and concerns.'⁵⁰
- IFC requires its clients to undertake a process of consultation in a manner that provides the affected communities with opportunities to express their views on project risks and impacts, and for them to be considered in alternative options or mitigation.⁵¹ IFC Performance Standard 7 on Indigenous Peoples requires not only avoiding or minimising adverse impacts of projects on indigenous peoples but also ensuring free, prior and informed consent of the affected communities.⁵²

2.4 AFRICAN REGION LEGAL FRAMEWORKS RELEVANT TO ESIA

When engaging with environmental permitting and management processes, NHRIs can also use African Union (AU) legal frameworks for guidance and to request an active role in the ESIA process, as well as to leverage their participation and inputs to the legal framework. These legal instruments may be enforced, through recourse to the interpretative or adjudicative organs of the AU. They may also provide a basis for initiatives, including capacity and sensitisation initiatives for rights-holders and other stakeholders. In certain national jurisdictions, provisions may be directly justiciable under municipal courts.

The African Charter on Human and Peoples' Rights⁵³ provides the basis for environmental protection under the AU framework. It addresses human rights in the context of environmental management in the following ways:

- Article 2⁵⁴ guarantees the enjoyment of the rights in the Charter by individuals, without distinction, including on the following grounds: race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status. This right is relevant in the context of environmental management, especially relating to vulnerable and marginalised rights-holders who are susceptible to discrimination in environmental management. Related to this, Article 19⁵⁵ spells out equality among all peoples and that they shall enjoy the same respect and shall have the same rights, without any justification of the domination of a people by another.
- Under Article 9⁵⁶, the right of individuals to receive information and to express and disseminate their opinions within the law is spelled out. This right is crucial for ensuring that rights-holders receive information held by member states related to environmental management processes and that rights-holders are afforded appropriate platforms to voice their views relating to environmental management processes.
- Article 24⁵⁷ states that, 'All peoples shall have the right to a general satisfactory environment favorable to their development.' The right to a general and satisfactory environment is reinforced by several provisions guaranteeing human rights protections to individuals and peoples.
- The Charter also implicitly recognises certain core rights to which environmental protection and management contributes. These rights include: the right to life,⁵⁸ right to health and to development;⁵⁹ economic, social and cultural rights, which are broadly interpreted to subsume aspects of environmental protection and management. Moreover, Article 22⁶⁰ of the Charter protects the right to economic, social and cultural development with due regard to peoples' freedom and identity and in the equal enjoyment of the common heritage of mankind. The African Commission on Human and Peoples' Rights has developed principles and guidelines for the protection of economic, social and cultural rights.⁶¹ Individuals are guaranteed the enjoyment of the right to the best attainable state of physical and mental health.⁶² According to the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, developed by the African Commission on Human and Peoples' Rights, the determinants of health include: access to safe and potable water and adequate sanitation; an adequate supply of safe food, nutrition and housing; healthy occupational and environmental conditions.⁶³

2.5 NATIONAL-LEVEL FRAMEWORKS

An environmental permit is often a pre-condition for obtaining a development permit for large projects considered to carry the risk of negative impacts on the environment, and the results of an ESIA are taken into account in the final decision-making process to decide whether to grant an environmental permit.⁶⁴ A summary description of the process, responsible authorities and main components of ESIA for a number of countries can be found in the EIA Country Profiles developed by the Netherlands Commission for Environmental Assessment (NCEA).⁶⁵ Some countries have developed guidelines to provide detailed guidance and requirements for the total or specific steps of the ESIA process. Some of the common elements for the relevant African national-level ESIA frameworks are the following:

Screening: National frameworks include a list of projects categorised to indicate the environmental permitting process and completeness of ESIA required, often combined with a case-by-case screening option with criteria. The list contains thresholds or provides location criteria.

Scoping: Projects that require a full ESIA need to undertake a scoping and prepare terms of reference for the ESIA. These need to be approved by the permitting authority.

Assessment: In general, the proponent is required to commission independent parties to: identify, predict and evaluate significant impacts; assess all alternatives and their impacts; and based on this recommend the appropriate options. The proponent then identifies impact mitigation and enhancement measures and prepares a report. In most legal frameworks community engagement is required and the proponent must ensure that the concerns and views from stakeholders are fully taken into account during assessment.

Review process: The permitting authority sets up a technical committee for the review; circulates the ESIA report in order to receive written comments from various institutions and government stakeholders; and makes it available to the public. Most frameworks provide the permitting authority with the mandate to engage external experts from various disciplines. The review may include site visits as part of the review process and holding open public hearings.

Decision-making: Based on the results of the ESIA review and public hearing, a decision on whether to provide an environmental licence or permit is issued. The permit can be subject to conditions. The environmental permit or licence is in most countries a precondition for the project approval decision, which is taken by a separate authority. Some countries have integrated permit systems. Some ESIA legal frameworks include possibilities for appeal.

Follow-up: Monitoring of compliance to environmental thresholds, mitigation measures and conditions is normally required as self-assessments, audits and reporting to the authority in all legal frameworks. Moreover, inspection and monitoring by the authority or external inspectors is to take place. Action may be required on the basis of monitoring and auditing, following the internationally recognised principles of adaptive management.

Stakeholder engagement: All ESIA legal frameworks prescribe stakeholder engagement, especially during the scoping and review phase, some with more detail than others. Comments can be made in writing or orally during public hearings. Cost of the stakeholder engagement activities, which in some cases can include site visits, are covered by the project proponent.

Access to information: ESIA reports are, as a general rule, public documents that should be available to the general public to access.

2.6 COMMON HUMAN RIGHTS CHALLENGES IN ESIA

ESIA processes in Eastern-Southern Africa, as in many other regions in the world, show some challenges with respect to human rights. Based on case observations and experience, a list of some of the most common challenges that NHRIs might encounter when engaging with ESIA is provided below:

- Consideration of human rights impacts is often not explicitly mandated by ESIA frameworks; impact assessment professionals lack expertise on human rights.
- Legacy issues and cumulative impacts of many similar projects over time and/or in the same region are often not adequately considered.⁶⁶
- Most ESIA reports have a strong emphasis on biodiversity and environmental aspects such as pollution and resource consumption, but are less comprehensive or silent on impacts related to people and power structures, such as the risk of increased gender violence and harassment, impacts of security forces associated with project activities, impacts related to displacement and influx of workers and job-seekers, just to name a few.⁶⁷
- Relatedly, management plans and the capacity to implement effective mitigations in social impacts, including those derived of environmental effects, are usually very limited.
- Human rights risks and impacts of workers are not or rarely addressed, except when related to occupational health and safety issues related to toxic substances.
- ESIA legal frameworks in the region do not require comprehensive health impact assessments, and very few projects include sufficient information and analysis of consequences on community health.
- The emphasis on self-monitoring, auditing and reporting, strengthened by the lack of financial and sometimes technical capacity of the authorities to undertake independent monitoring, often results in non-compliance not being identified and reacted upon.
- Despite legal provisions, consultations with affected communities often take place when key design features that can affect the communities like location, technology, etc. have already been decided. Moreover, consultations are frequently poorly informed and restricted in time or conducted in an unsuitable format, limiting the possibilities of the affected parties to understand the issues that may affect them.
- While legal frameworks may not include formal barriers for the participation of women and marginalised groups, no special provisions to ensure their participation are required or offered by most project proponents and therefore the concerns and priorities of these groups are not considered; nor is their specific vulnerability considered in the significance assessment of the impacts. Overall, the diversity of the individuals and communities that may be impacted and therefore the differences in how they might experience certain impacts are frequently under-addressed in ESIA governance frameworks and assessments.
- Project-level grievance mechanisms are infrequently implemented and seldom aligned with the effectiveness criteria required by the UNGPs, and therefore do not fulfil their role in facilitating access to remedy for affected persons.
- While ESIA legislation usually requires public access to ESIA reports, in practice it can often be difficult for civil society, NHRIs or other actors to obtain copies.

3.0

ISSUES IN FOCUS: GENDER, PARTICIPATION AND LAND ACCESS

3.1 GENDER

This section addresses some of the common issues related to gender inequality in ESIA. It is not a comprehensive list, but examples and issues that can increase awareness, inspire and guide potential inputs of NHRIs to the ESIA process.

Large-scale projects affect women and men differently because the roles that women and men play vary in all societies, the assets that they can claim as their own differ and the enjoyment of human rights may be experienced differently by women and men. These gendered divisions can also make women and girls more vulnerable to changes caused by large-scale projects. For example, women's roles can mean that they are more dependent than men on resources such as water, food, forest products (e.g., medicinal plants), fodder and fuel wood found in the local environment. Women are also likely to face more limited access to compensation for land or employment opportunities. As such, large-scale projects often create and exacerbate existing gender inequalities in affected communities.⁶⁸

Notably, most ESIA legal frameworks are silent or vague on ensuring women's participation and gender considerations in assessment of impacts, implementation of mitigation measures and monitoring plans. Exceptions include Kenya's and Tanzania's ESIA regulatory frameworks, where gender disaggregation is included in social analysis. Under Schedule 2 of EIA and Audit Regulation in Tanzania, the project screening criteria of the regulations inquire about the impact a project may bear on a social group or gender.⁶⁹

Most processes and methods commonly applied in assessment of environmental impacts are gender insensitive, and assessment of social impacts is frequently limited by lack of gender expertise and cognitive bias in the teams, lack of gender disaggregated data and scarce participation of women during the ESIA process and review. As a result, priority issues, concerns and aspirations of women may not be included in the scoping phase, the identification of impacts and the assessment of their significance.⁷⁰

As an example, the external review of the ESIA for two flower farms helped point out that key impacts will be social and gender specific.⁷¹ The ESIA predicted a large influx of workers, of whom 90% were estimated to be female. Incoming female workers tend to bring their families and will require housing, health care and schools. These services will need to be created and may also lead to socio-cultural changes in the receiving community. Local female workers will need to arrange for childcare and food that they would normally produce themselves. If the new salary does not cover for this, they

may risk falling into a poverty trap. Health impacts are also likely to be gender specific: the pesticides that are used in agriculture can influence hormones and reproductive health. None of these impacts were captured in the initial ESIA.

Lack of gender considerations can also lead to inadequate impact mitigation. In a case concerning involuntary resettlement related to a geothermal field, it was concluded that communities' socio-economic livelihood activities had not been restored to a level equal to or above the previous one as required by the international lenders' policies for involuntary resettlement.⁷² The conclusions report of the investigation conducted by the involved financial institution's complaints handling mechanism requested that 'the resettlement of the affected communities be performed in compliance with human rights.'⁷³ The results of the mediation process demanded steps to enhance the restoration and improvement of livelihoods, particularly for youth and women.⁷⁴ Such examples illustrate that lack of adequate gender engagement can contribute to ESIA, management plans and licensing agreements that fail to address women's concerns and livelihood restoration.

3.2 PARTICIPATION

This section addresses the common issues in participation of rights-holders in ESIA. It also specifically addresses dynamics of participation as related to marginalised groups.

While local political contexts matter, democracy does not guarantee participation metrics or quality. In many Eastern and Southern African countries, guidance to state institutions, stakeholders and rights-holders on how to ensure effective participation in ESIA remains superficial, and implementation of requirements that do exist in that guidance remains poor, especially when using a human rights lens.⁷⁵ Many institutions rely on their own internal mechanisms, which may not be fully aligned with international human rights standards, in enhancing participation by rights-holders in ESIA.

Furthermore, statutes governing environmental protection in Kenya, Uganda, Tanzania and Zambia do not expressly address the participation needs of vulnerable persons in the community.⁷⁶ As such, vulnerable and marginalised communities are susceptible to discrimination in the ESIA process, or face exclusion from it altogether. For instance, the Kenyan Environmental Management and Coordination Act and related regulations, do not specifically require that aspects of discrimination against marginalised groups are addressed in the context of the ESIA. Women, indigenous peoples and pastoralists are not specifically identified as requiring special protection and appropriate participatory models to enable them to participate effectively in the process.

Many rights-holders are unable to participate effectively in ESIA because of low levels of awareness and understanding of the process, often related to low levels of literacy. Rights-holders do not always have ready access to independent advice on the social and environmental impacts of development projects, hence, they are often unable to make informed decisions or contribute to proposals for addressing adverse impacts of these projects. For indigenous peoples it is also critical to consider the role of free, prior and informed consent (FPIC) in participation and consultation processes. For all communities, the constituent elements of FPIC can be used to guide consultation and

engagement processes with a view to communities being genuinely involved in the decision-making process. 'Free' means that there is no manipulation or coercion of the people involved in the consultation process or impacted by the project; 'prior' implies that consent is sought sufficiently in advance of any activities either being commenced or authorised; 'informed' suggests that the communities involved in consultation receive satisfactory and sufficient information on key points regarding the project in order to form a meaningful opinion about its possible implications on their lives; and 'consent' requires that the people impacted have a genuine say in whether a project proceeds or not, and if so under what conditions, recognising that indigenous peoples should also be afforded the opportunity to 'determine autonomously how they define and establish consent.'⁷⁷

In some instances, inadequate dissemination of relevant, timely and comprehensive information by companies, persons or institutions involved in the ESIA process can create barriers for communities to participate. In some cases, ESIA reports are not always publicised as per the law; information about the rights of rights-holders to requisition public information is not well publicised. Rights-holders may not be able to access information publicised through gazette notices and national newspapers.

Often, there is inadequate coordination among duty-bearers who are tasked with addressing specific aspects of the ESIA. This can lead to duplication in processes for consulting rights-holders, consultation fatigue among rights-holders and the loss of valuable insights and opportunities for addressing rights-holders' views holistically.

The participation of rights-holders in ESIA processes is often affected by the ineffectiveness of grievance redress mechanisms meant to address grievances relating to the ESIA process. Judicial grievance mechanisms are characterised by the slow determination of matters and high legal costs, often beyond the reach of many rights-holders. Operational-level grievance mechanisms are often not sufficiently developed in line with the effectiveness criteria spelled out under Principle 31 of the UNGPs.

3.3 LAND ACCESS

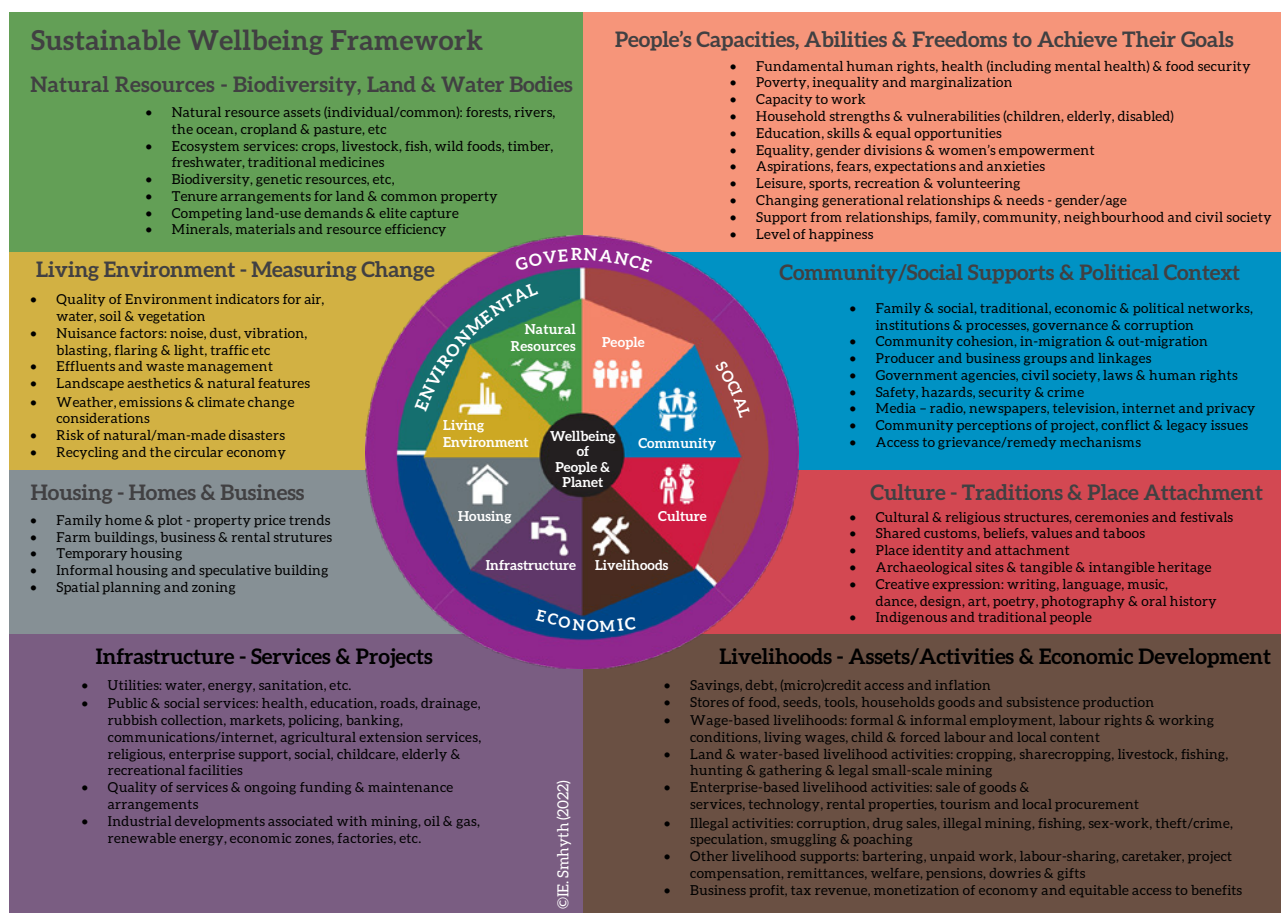
This section addresses the common human rights impacts related to displacement from lands, houses and livelihoods resulting of project-induced land acquisition, lease and use. It intends to provide high-level guidance to NHRIs to identify which are the key issues, which ESIA documents to request, and guide the formulation of critical questions.

Large projects may displace people and disrupt their livelihoods. The large areas of land needed for the project site as well as for ancillary services – including land for worker accommodation, offices, roads, pipelines, railway lines, electricity transmission corridors, water supply dams – can lead to the resettlement of hundreds of people. Resettlement is a major risk to all economic, social and cultural rights.⁷⁸ Eight major impoverishment risks to people that commonly arise from project-induced displacement and resettlement are: landlessness; joblessness; homelessness; marginalisation; increased morbidity and mortality; food insecurity; loss of access to common property; and social disarticulation.⁷⁹ Moreover, being displaced can be a very traumatic experience for people, disrupting their sense of place, their social networks

and community connectedness.⁸⁰ Displacement impacts are strongly gendered, and so should be the measures to mitigate and compensate them. Frequently, impacts on land are also inextricably linked to impacts on culture and cultural heritage, which are often insufficiently addressed in ESIA's despite having significant impacts on people and their way of life. In many countries, how customary land rights are addressed in legislation and by projects can also contribute to adverse project impacts on community uses of land that may be insufficiently protected by legislation or in the ESIA process.

An ESIA should clearly demonstrate that all measures to avoid displacement and resettlement have been adequately considered. In the case of resettlement, an ESIA should clearly state how many people are affected by project-induced displacement or loss of livelihood, how they are affected (total or partial, temporary or permanent restrictions to resources or land, etc.) and which measures will be taken to avoid or minimise the number of people affected. Projects resulting in displacement should include analysis of social impacts by describing the characteristics of the affected populations, including their livelihoods and dependencies on natural resources, communication services and commercial networks, and any loss of culturally significant places and common assets, etc. 'The Social Framework'⁸¹ below, is one tool available to social impact assessment practitioners to guide engagement and impact identification with communities. NHRIs could likewise use it to identify important gaps in baselines, impacts and mitigation measures in different areas of human wellbeing associated to human rights that are affected by land access.

FIGURE 2: THE SOCIAL FRAMEWORK⁸²



Just like the project itself, the act of resettlement is a planned intervention that creates social impacts and therefore is a process that needs to be managed carefully in a participatory way. Any project that will cause physical or economic displacement must provide appropriate remediation and compensation. Compensation should be understood not only as cash compensation, but rather as the set of interventions, including social assistance, training, etc., which are aimed at ensuring that the project-affected person improves, or at least, is restored to their living conditions and livelihood. These measures, as well as a detailed identification of affected persons, assets lost and entitlements are included in separated plans, usually annexes to the ESIA. These can take the form of a Resettlement Framework, Resettlement Action Plan and/or Livelihood Restoration Plan. Most countries have national legislation regarding the use of expropriation and the entitlements of people who have to be resettled.⁸³ In addition to these national requirements, there are international standards that should also be met, and may be required if there is funding from international financial institutions.⁸⁴ For example, the Basic Principles and Guidelines on Development-Based Evictions and Displacement developed by the Special rapporteur on adequate housing as a component of the right to an adequate standard of living address the human rights implications of evictions and displacement related to development projects.⁸⁵ Vulnerable households and indigenous peoples are entitled to additional support and specific considerations are made in these international standards.

4.0

NHRI ENGAGEMENT OPPORTUNITIES IN ENVIRONMENTAL PERMITTING AND MANAGEMENT

This section of the manual presents a range of practical entry points for NHRI engagement to promote protection of human rights in the context of environmental permitting and management. The ideas were generated through desktop research and collective brainstorming of the contributors and seek to serve as a non-exhaustive list of ideas from which NHRIs might build further in their own practice.

4.1 COMPLAINTS-HANDLING

Those NHRIs that have a complaints-handling mandate might apply that mandate to matters of environmental permitting and management. For example, NHRIs might hear complaints related to inadequate compensation in land access and use matters associated with business activities, business and government environmental monitoring practices or matters relating to consultation of communities in ESIA processes. Based upon systematic complaints analysis, NHRIs might also identify common trends and patterns in a particular jurisdiction relating to specific aspects of environmental permitting and management, such as consultation, disclosure, adequate coverage of social and human rights issues in assessments or monitoring. On this basis, NHRIs can also apply other mandate functions to address such issues more systemically, for example by engaging in law reform or government advisory on the topic of environmental permitting and management. Where NHRIs do not have a complaints-handling function, or where the matters raised do not fall within the jurisdiction of the NHRIs' complaints-handling mandate, NHRIs can still play an important role in referral of matters to the relevant government authorities or by supporting communities through the application of other mandate functions, such as awareness raising of communities about the ESIA process and community involvement and intervention opportunities in such processes.

NHRI PRACTICE EXAMPLES

The Ghanaian Commission on Human Rights and Administrative Justice (CHRAJ) has been handling human rights and environmental rights abuses in the mining sector since the beginning of its mandate. CHRAJ has proven to be a faster and more affordable avenue for NGOs and CSOs wishing to bring complaints against mining companies, the latter having used delays in the judicial process to their advantage.⁸⁶

Mexico's Comisión Nacional de los Derechos Humanos (CNDH) received multiple complaints regarding the proposal of a coastal resort project, for which mangrove forests had been cut down. Reports of harassment of human rights defenders were

brought to the attention of the NHRI, which issued a protective order to cease the harassment and a specific recommendation to the local authorities concerned, arguing that the authorities' conduct violated the communities' right to a healthy environment, protected under the Constitution and the San Salvador Protocol to the American Convention on Human Rights. The recommendations included the restoration of the mangrove forest and the improvement of the national and local authorities' oversight of permit approval processes. The recommendations are currently being implemented.⁸⁷

4.2 OWN-MOTION INVESTIGATION AND PUBLIC INQUIRIES

Where possible according to the institutional mandate, NHRIs can apply their own motion investigation powers or public inquiries to matters concerning environmental permitting and management. For example, an NHRI might undertake a public inquiry into a sector or region where systemic human rights issues have surfaced through ESIA and other environmental management processes. Such public inquiry could then also include evaluating the process of ESIA undertaken in that particular sector or region to identify gaps and opportunities for strengthening human rights compliance. Own-motion investigation could usefully be applied to address human rights issues raised at particular business sites, such as issues around resettlement, cultural heritage management, land access or other issues addressed in ESIA.

NHRI PRACTICE EXAMPLES

Kenya's KNCHR conducted an audit in February 2017 as a follow-up to the 2007 audit that was undertaken on the basis of human rights abuses and environmental degradation arising from the activities of salt manufacturing companies in Magarini, in the sub-county of Malindi. The report addresses issues related to evictions, land tenure and environmental degradation caused by the concerned companies.⁸⁸

Similarly, Ghana's CHRAJ produced its first inquiry into the extractive sector following the rise in the number of complaints it had to handle in relation to environmental and human rights abuses in the country and following the recommendations of CSOs.⁸⁹

In 2018, the Gambian National Human Rights Commission launched an inquiry into the clashes opposing villagers in Faraba Banta, Sanyang and Ganjur and the Police Intervention Unit that had been sent to quell the tensions that the community had with sand and mineral mining companies and foreign fishmeal factories. The Commission reported that a lot of damage had been caused to the community and recommended that ESIA's conducted by consultants that were not employees of the national environmental agencies always be undertaken before any sand and mineral mining project is approved. It had indeed discovered that the local communities had not been properly consulted and that the communities were usually informed about the development of projects only after licences were issued. After the inquiry, the Commission made recommendations to the state to monitor the activities of licence holders in the mining and mineral sectors; address all concerns of the community on issues relating to environmental pollution; adopt measures to prevent pollution and ecological degradation; put in place effective mechanisms for the rehabilitation of sites; and operationalise and support the full functioning of a land commission dedicated to addressing these issues.⁹⁰

4.3 LEGISLATIVE REVIEW AND AMENDMENT

NHRIs can utilise their advisory functions to review environmental permitting and management legislation and regulations, such as those pertaining to ESIA for adherence to international human rights standards and industry good practice, and based upon such analysis present legislative review and amendment proposals to government to address any gaps identified.

NHRI PRACTICE EXAMPLES

The Mexican CNDH produced a recommendation following its assessment of Mexican regulation in terms of adequate standard of living, right to a healthy environment and right to information about environmental dangers. The recommendation included policy proposals addressed to different levels of government on the basis of Mexico's human rights and international obligations. The Government of Mexico has been receptive, with one state inviting the CNDH to provide a review of the criteria it had created to monitor air pollution.⁹¹

Similarly, the Zambia Human Rights Commission published a comprehensive review of the Zambian environmental management framework in 2010, wherein it reviewed EIA legislation in the country, presented the issues related to public participation, transparency, access to information and existing human rights violations.⁹² The Commission evaluated the EIA process in Zambia in light of the International Guiding Principles of EIA Good Practice.⁹³

Based on a complaint, the Subsecretariat General of Argentina's Defensor del Pueblo is investigating a road project called 'Apertura de traza, construcción de obras básicas, calzada enripiada y obras de arte – Corredor Canal Beagle'. The interested party claimed that the project would be carried out without a proper assessment of the possible impact on the natural and cultural heritage of the province of Tierra del Fuego. The Defensoría considered that, in the present case, the violation of the right to a healthy environment resulted from the degradation of natural resources and translated, in turn, into the violation of other fundamental human rights, such as the right to life, access to drinking water, health and education. In addition, it was noted that the assessment process should comply with human rights obligations laid out in the 16 Framework Principles on Human Rights and Environment, including providing public information on the assessment and making the assessment and final decision available to the public (Framework Principle 7), facilitating public participation of those who may be affected by the proposed activity (Framework Principle 9), and providing effective legal remedies (Framework Principle 10). It was concluded that, in view of a series of irregularities, the environmental impact assessment for the project did not comply with the current environmental public order embodied in the General Environmental Law and provincial regulations, and that there was also no assessment of the impact that the project would have on human rights, thus also deviating from the aforementioned conventional law. It was pointed out that the province of Tierra del Fuego had not required this assessment of the company to identify and determine the real or potential negative consequences on human rights that its own activity or that of the contractors linked to the project could have. By virtue of what is set forth in the resolution and in view of the irregularities detected throughout the environmental

impact assessment, the Defensoría considered that it was appropriate to recommend to the competent local authorities, i.e., the governor of the province of Tierra del Fuego, the Secretariat of Environment, Sustainable Development and Climate Change, and the Ministry of Environment, Sustainable Development and Climate Change, and the Ministry of Public Works and Services to remedy the dysfunctions indicated in the mentioned resolution and to adapt their actions to the conventional and legal regulations. Likewise, the resolution was brought to the attention of the Government Secretariat of Environment and Sustainable Development of the Nation.⁹⁴

On September 15, 2016, the contract for the Río Grande-Rositas Multiple Hydroelectric Project, located in the department of Santa Cruz, Bolivia, was signed for the execution of the engineering, construction, assembly, supply, testing and commissioning work. This consisted of the construction of an earthen dam with a reservoir located on the Grande River and its confluence with the Rositas River. At the beginning of the project, various observations were made public regarding possible negative environmental effects, destruction of the protected area, and alteration of the productive apparatus of the indigenous communities and populations in the area, which could be flooded. A public consultation was established, but no aspects of any prior consultation with the indigenous peoples were detailed. In addition, the environmental sectors denounced that the Government had not informed about the environmental effects, the magnitude of the impact on human health and the violation of the right to prior consultation. With regard to the framework of international standards on prior consultation, the Defensoría formulated proposals with the purpose of promoting the realisation of such consultation, in its preparatory phase, in the two aforementioned projects. In the 2018-2019 period and within the framework of the above-mentioned proposals for ombudsman action, the Defensoría sent the National Enterprise of Electricity a written report request with the purpose of contributing to the correct and timely identification by said company of the measure that should be subject to consultation, the rights likely to be affected, the population to be consulted and their representatives.⁹⁵

4.4 GUIDANCE TO BUSINESS

Based on the policies and regulations in place for environmental permitting and management, NHRIs can provide guidance to businesses on how these relate to human rights implications and on how a human rights-based approach might be applied to their interpretation and implementation. For example, NHRIs might elaborate the human rights content in regulations regarding community consultation and free, prior and informed consent, to guide businesses on the human rights dimensions of consultation. NHRIs might also influence the development of interpretive guidance provided to businesses that are developed by other actors, such as the government or financial institutions, to promote the alignment of such guidance with human rights standards and principles. This might include guidance to businesses on a range of matters involved in environmental permitting and management, such as community consultation and consent, gender analysis and the rights of women and girls, vulnerability and poverty analysis, ecosystem services, joint company-community monitoring frameworks or a range of other potential issues at play.

NHRI PRACTICE EXAMPLES

In 2021, the Gambian National Human Rights Commission held a multi-stakeholder dialogue, including businesses, in order to discuss environmental and human rights abuses happening on the coast in relation to sand mining and fishmeal activities. As a result of this event, it produced an advisory note on environmental protection presenting the international and national legal framework on the matter and made specific recommendations to business actors to ameliorate their relations with the local communities, mitigate harms caused to the environment and the local population, and prevent any further damage to the coast.⁹⁶

4.5 GOVERNMENT AND BUSINESS CAPACITY BUILDING

Through their educative function, NHRIs can play a key role in contributing to building the capacity of government and business actors to understand and respond to the links between human rights, the environment and climate change. For example, NHRIs might undertake capacity building of industry bodies or businesses in a particular sector to raise their awareness of common sectoral human rights issues that arise and can be addressed through environmental permitting and management. Or NHRIs might engage with environmental and sectoral government ministries and agencies to strengthen their capacity on human rights, specifically on the links between human rights and the environment. Due to their broad mandate, NHRIs are also in a good position to play a convenor role, whereby they might be able to bring together different government, business and finance actors to address a particular human rights issue raised in the context of environmental permitting and management, such as the environmental and human rights requirements made of foreign investors, or the human rights dimensions of frameworks for resettlement to which investors need to adhere.

NHRI PRACTICE EXAMPLES

Kenya's KNCHR has committed to playing a decisive role in educating stakeholders about the nexus between environmental protection and human rights, making this a key aspect of its 2018-2023 workplan.⁹⁷ A key activity pursuant to this commitment, has been KNCHR's engagement with the National Environmental Management Authority, to further the linkages between human rights and environmental assessment.

4.6 MONITORING

Through their monitoring mandate, NHRIs can review business compliance with environmental permitting and management requirements, pointing to gaps and opportunities for strengthening human rights compliance. NHRIs can also engage on the topic of monitoring through other means, such as through community capacity building to understand the role of company environmental monitoring and how communities might engage with such processes; to lobby the government to invest more resources in state environmental monitoring capacity, including technical equipment for state monitoring efforts; or by raising concerns about a particular business site with financial institution complaints mechanisms to prompt increased monitoring and review of that particular site's environmental performance. Furthermore, NHRIs are in a good position to promote multi-stakeholder approaches to monitoring, such as developing and promoting models for community involvement and engagement in environmental monitoring, where relevant.

NHRI PRACTICE EXAMPLES

The Chilean National Institute for Human Rights produced an interactive map depicting ongoing conflicts linked to socio-environmental rights in real time and explaining the root causes of the conflicts.⁹⁸ The map provides an analysis of the concerned sectors (energy, mining, and environmental sanitation), indicates whether the conflict is taking place on indigenous land, and the human rights being impacted. The map also provides if and which type of environmental impact assessment has been undertaken for the project at the heart of the conflict.

Initiated by the construction of the Belo Monte hydroelectric power plant in the Brazilian region of Volta Grande do Rio Xingu, which is historically known for genocide of indigenous peoples and the invisibility of peasants and coastal communities,⁹⁹ Brazil's Procuradoria Federal dos Direitos do Cidadão and Procuradores da República issued the Federal Justice in the municipality of Altamira various public civil lawsuits against the Federal Union, an energy company, the National Indian Foundation (Fundação Nacional do Índio) and the Brazilian Institute for the Environment and Renewable Natural Resources in order to demonstrate that the negative effects outlined in an EIA conducted on the Belo Monte Hydroelectric Power Plant project were not mitigated to an adequate extent and that the failure – or partial and incomplete compliance – with the obligations on part of the enterprise brought about human rights violations and grave consequences for the affected communities.¹⁰⁰ Among the actions initiated on the basis of this is civil action No. 0003017–82.2015.4.01.3903, which referred to the impacts that the Belo Monte Hydroelectric Power Plant had caused to the communities affected, such as the destruction of the way of life of the indigenous peoples of the Xingu region.¹⁰¹ In addition to the judicial process, the Procuradora da República convened the Brazilian Society for the Progress of Science to produce a major study on riparian populations expelled from the Xingu to make way for the reservoir of the Belo Monte Hydroelectric Power Plant.¹⁰² Among other things, this practice contributed to the initiation of monitoring of compliance with the obligations set forth in the environmental licensing process regarding the socio-environmental impacts caused, and proposed the necessary adjustments to correct, compensate or remedy the violations of the rights (including the right to a healthy environment).¹⁰³

4.7 NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS

The environment, including environmental permitting and management, is a key focus area of many National Action Plans on Business and Human Rights (NAPs). As such, NHRIs are well positioned to promote the integration of environmental permitting and management in NAPs processes, including not only in the actual NAP but also in subsequent implementation and monitoring efforts. By virtue of NAPs' focus on all three pillars of the UNGPs, promoting attention to the human rights dimensions of environmental permitting and management through NAPs can also create important linkages between the respective roles of governments and businesses, as well as drawing attention to the need for access to effective remedies where environmental permitting and management fail to respect human rights. The current focus on multi-stakeholder steering committees for the implementation of NAPs also creates an opening for NHRIs to promote stronger collaboration between environmental and human rights actors in the implementation of environmental permitting and management for business operations.

NHRI PRACTICE EXAMPLES

Kenya's KNHRC was one of the driving entities in the NAP development process in Kenya, which now includes strategic policy actions of sensitisation of relevant groups of stakeholders on their environmental rights; trainings of businesses on respecting environmental rights; enforcement and improvement of access to remedy for violations of environmental law.¹⁰⁴

The Uganda Human Rights Commission was also involved in the development, drafting and editing of the NAP. This key role devolved to the NHRI may have influenced the selection of the thematic areas, which include the environment, land and natural resources, among others.¹⁰⁵

4.8 HUMAN RIGHTS DUE DILIGENCE AND PROJECT-LEVEL GRIEVANCE MECHANISMS

Human rights due diligence is a process through which business actors identify, prevent, mitigate, account for and report on potential and actual human rights impacts associated with their activities and operations. This process requires continuous, meaningful and effective stakeholder engagement. Project-level grievance mechanisms are expected to contribute to addressing and providing remedy for human rights impacts. NHRIs are well placed to develop and promote frameworks for human rights due diligence and project-level grievance mechanisms that address human rights and environmental permitting and management in a holistic and integrated manner. For example, NHRIs can demonstrate possibilities for the integration of human rights and human rights-based approaches in ESIA, or the use of human rights impact assessments or gender impact assessments for business operations. For example, NHRIs can engage in dialogue with relevant state and business actors to promote integrated impact assessment approaches. To promote access to effective remedies, NHRIs can work with business actors and others on the implementation of effective project-level grievance mechanisms, including to ensure that such mechanisms can address issues that are related to environmental permitting and management.

NHRI PRACTICE EXAMPLES

The Colombian Defensoría del Pueblo has adopted substantial and operational principles on human rights due diligence in which it advocates for the respect of environmental rights.¹⁰⁶

The Malawi Human Rights Commission has also used its mandate to inform and guide businesses on human rights due diligence during their investigations and inquiries following some complaints. At the end of this type of processes, the Commission managed to have business entities sign corporate social responsibility pacts with local communities and ensure that proper compensation was granted for cases of environmental and human rights abuses. To follow up with these activities, the Commission conducted a monitoring exercise in mines to ensure that human rights due diligence principles were being implemented. The Malawian Commission has also made it one of its priority goals to have businesses apply human rights due diligence in their operations.¹⁰⁷

4.9 REPORTING TO REGIONAL AND INTERNATIONAL HUMAN RIGHTS BODIES

NHRIs can report on any human rights gaps identified in environmental permitting and management to relevant human rights bodies, for example, through the Universal Periodic Review process, during UN Special Rapporteur country visits, treaty reporting or Voluntary National Review for the SDGs. Such initiatives can make an important contribution to building further momentum for recognising the inextricable interlinkages between human rights and the environment, as well as providing an opportunity to raise specific human rights gaps identified in the NHRIs' jurisdiction.

NHRI PRACTICE EXAMPLES

Tanzania's CHRAGG reported to the Human Rights Council during Tanzania's 2021 Universal Periodic Review. Among other things, CHRAGG underlined the lack of planning in certain towns and villages with regard to land management and the legislative framework in place to reduce land disputes. The Commission reported 'a lack of adequate engagement of the communities in decision-making on land matters, and persistent boundary disputes around reserved land, as well as disputes between pastoralists and farmers.'¹⁰⁸ CHRAGG also reported on disparities in accessing water services in rural and urban areas.¹⁰⁹

Another example includes the Peruvian Human Rights Commission, which also took advantage of Peru's latest Universal Periodic Review cycle to call out the inconsistencies in public policies on environmental pollution, the weakening of environmental oversight and the enactment of legislative decrees that violated rights and weakened environmental management.¹¹⁰

Similarly, the Argentinian Defensoría del Pueblo de la Nación had underlined in its 2012 Universal Periodic Review report that the 'policies on access to information, citizen participation, and environmental impact assessment were insufficient and environmental damage was not mapped correctly.'¹¹¹

4.10 HUMAN RIGHTS REVIEW OF ENVIRONMENTAL ASSESSMENTS

NHRIs can undertake human rights review of specific environmental assessments, drawing attention to any human rights gaps in the analysis provided. Such review might be undertaken during the public commenting period for ESIA's; through supporting communities in the consultation processes for ESIA's; engagement in strategic environmental assessments; or even by empowering district-level environmental officers in reviewing the risks of non-conformity.

NHRI PRACTICE EXAMPLES

The Colombian NHRI, the Defensoría del Pueblo, carried out a review of ESIA's conducted for the development of eight hydroelectric projects across seven different departments, including the very controversial El Quimbo Hydropower Energy Project that had led to the forced displacement and loss of livelihoods of thousands, notably environmental and human rights defenders. In its report, the NHRI found that the environmental licences and environmental management plans had been repeatedly changed, warning of a lack of planning and violations of communities' participatory

rights. According to the NHRI, the projects were not executed in the way that was agreed upon, in addition to being evidently non-compliant with the environmental obligations that exist in Colombia. Based on the findings, the NHRI made several recommendations to ensure that these projects would be monitored better by public authorities and that communities' right to participation was respected.¹¹²

Case Study: Kenya National Commission on Human Rights and the Implementation of the Strategic Environmental and Social Assessment (SESA) Project in the mining, oil and gas sectors in Kenya in 2019 and 2020.

a) The Issues

The recent discovery of oil, gas and minerals in parts of Kenya has led to the growth of the Kenyan mining, oil and gas sub-sectors and to increased environmental impacts from mining companies exploiting these resources. These resources are mostly found in remote areas where indigenous or marginalised communities live. Most mineral, oil and gas resources are to be found in fragile ecosystems, such as the marine environments with rich reef and marine ecosystems, forested areas, hilly terrains, and areas with rich cultural and heritage significance.

Through KNCHR's complaints mechanism, they have identified adverse environmental impacts in mining communities to include: pollution of water, soil and air, thereby affecting the livelihoods and wellbeing of rights-holders. In addition, the encroachment of business operations into the natural environment has led to the loss of biodiversity. The prevailing patriarchal cultures in many oil, gas and mining regions assign distinct roles for women and men therefore posing gendered dimensions in environmental impacts. Invariably, women, who often have less voice, opportunity and economic power, disproportionately suffer the brunt of environmental and social impacts of mining activities. However, with lack of adequate policies and enforcement of laws to govern the extractives sector, there are harsh environmental impacts on such ecosystems, with vulnerable populations bearing the disproportionate burden of social, economic and environmental risks.

ESIAs have not been effective in comprehensively identifying and addressing social and environmental impacts of projects in the mining, oil and gas sectors, with more emphasis placed on direct environmental impacts.

b) The Intervention

The Strategic Environmental and Social Assessment (SESA) was informed by the inadequacies of EIA in addressing cumulative and long-term social and environmental impacts of the mining, oil and gas sub-sectors. Its objective was to interrogate how environmental governance was conducted in order to develop a framework for integrating human rights and environmental risks in the assessment. The SESA was undertaken by a multi-sectoral technical committee comprising officers from: United Nations Development Programme (UNDP), Department of Occupational Safety and Health (DOSHS), National Environmental Management Authority (NEMA), Kenya Chamber of Mines, Ministry of Environment and Natural Resources, Ministry of Mining, relevant county governments and the KNCHR. It was conducted in three counties: Nairobi; Kwale; and Kitui.

The SESA Technical Committee oversaw the following processes:

- Stakeholder consultations with stakeholders and rights-holders in mining sectors, in the counties.
- Desk research to generate secondary data.
- Analysis of information and data.

c) Findings, Outcomes and Outputs

The SESA identified specific environmental, social and human rights impacts of mining, oil and gas sub-sector operations to include risks related to: deforestation by mining activities; loss and degradation of critical ecosystems; contamination of streams, rivers, lakes and ground water resources, public safety and health; likely spread of HIV and AIDS; consumer rights; rights to fair administrative action; the right to access to public information; the right to security and peace; and, the right to health.

Some of the main outcomes of the SESA were:

- Development of ESIA Guidelines for the Mining Sector to support the integration of such considerations as sustainable development, human rights, gender mainstreaming, health and safety, land-use planning and climate change mainstreaming, into ESIA processes in the mining sector.¹¹³
- Inter-institutional/agency collaboration in conducting mine site inspections and to conduct trainings at both community and national levels.
- As a result of the collaboration between agencies and institutions, state agencies in the committee have made it a practice to share EIAs and project proposals with the KNCHR for the latter's appraisal from a human rights standpoint, ahead of the issuance of licences for the project.

d) Lessons Learned

- Collaboration with community organisations and rights-holders, conducting sectoral public inquiries and sectoral impact assessments assists and informs interventions needed.
- Inter-institutional/agency collaboration in site visits was well appreciated by communities as it allows them to discuss multi-disciplinary issues through each forum.
- There is need for a legal framework for inter-agency and institutional coordination for ensuring that social and human rights considerations are integrated into ESIA's.
- NHRIs can be important intermediaries, between government and other actors such as communities and business entities.
- NHRIs can serve as the possible missing link in the coordination and holistic implementation and integration of environmental and human rights perspectives in governance.
- In the spirit of SDGs to leave no one behind, NHRIs must consider gender dimensions in all interventions.

4.11 COLLABORATIVE HUMAN RIGHTS AND ESIA PROCESSES

Where relevant and appropriate, NHRIs might promote the application of a collaborative ESIA process for a particular operation, such as a process that combines the regulatory ESIA process with more community-focused approaches and methodologies such as human rights impact assessment or community-based human rights impact assessment. In the alternative, NHRIs might be able to support communities, companies and government actors in identifying operations for which it may be desirable to conduct a parallel community-based or human rights impact assessment to complement the regulatory ESIA process.

4.12 MULTI-STAKEHOLDER AND COLLABORATIVE APPROACHES

Through their convening power, NHRIs are well positioned to promote collaborative efforts towards the integration of human rights in environmental permitting and management. For example, NHRIs might collaborate with CSOs to promote human rights-based approaches to ESIA, support specific communities in an ESIA process, or collaborate with environmental experts in initiatives towards further integration of human rights in ESIA.

NHRI PRACTICE EXAMPLES

Kenya's KNCHR has been collaborating with the Kenya Human Rights Commission, the European Union, Amnesty International and Peace Brigades International on specific topics such as the protection of environmental and human rights defenders across the country.¹¹⁴

In July 2014, with the support of Shift and SOMO, Ghana's CHRAJ convened a multi-stakeholder event to discuss the implementation of the UNGPs in Ghana. The event consisted of three capacity-building workshops convening over 100 stakeholders and had a specific focus on, among other topics, environmental degradation caused by extractive companies and agribusinesses.¹¹⁵

4.13 STRATEGIC LITIGATION

NHRIs might engage in strategic litigation on environmental permitting and management matters where these have been identified to insufficiently address human rights, or NHRIs might be able to support communities or civil society organisations in launching and undertaking such actions or to support them through sharing relevant information for their cases. Such actions might be initiated at the national level but may also include actions at the regional level, such as through lodging or facilitating cases and complaints with the African Court on Human and Peoples' Rights to achieve redress for abuses of human rights in the context of environmental permitting and management.

NHRI PRACTICE EXAMPLES

The Philippines' Commission on Human Rights began a series of inquiries and public hearings after receiving petitions from civil society to look into the activities of the Carbon Majors. After three years of investigation, compiling of evidence and witness testimonies, the NHRI announced its findings and made its recommendations during the COP25 in Madrid. The NHRI clearly stated that businesses have a responsibility to protect human rights in the climate crisis, adding that its findings could be strong

evidence for mens rea, or criminal intent, in cases of litigation. It concluded that the Carbon Majors could potentially be held accountable under both civil and criminal law. These findings were welcomed by CSOs, especially in the context of ongoing and new lawsuits against those major companies.¹¹⁶

4.14 COMMUNITY CAPACITY BUILDING

NHRIs are well placed to support community capacity building to understand and engage with environmental permitting and management processes, for example, through awareness campaigns, easily accessible materials or referrals to further information sources or experts that communities might be able to draw on in promoting human rights in environmental permitting and management matters.

NHRI PRACTICE EXAMPLES

The Mexican NHRI, produces a lot of visual and audio content on environmental and human rights abuses to support local affected communities and environmental and human rights defenders across the country to raise awareness on current cases.¹¹⁷

Kenya's KNCHR has also committed to playing a decisive role in educating stakeholders about the nexus between environmental protection and human rights, making it a key aspect of its 2018-2023 workplan. According to the Commission, a fundamental challenge will be achieving environmental justice by strengthening the capacities of environmental actors in engaging with human rights and environmental protection frameworks.¹¹⁸

Since 2016, the Moroccan Conseil national des droits de l'Homme has held numerous public workshops on climate change and environmental protection. One of the series focused on gender, climate change and sustainable development. In collaboration with the National Renewable Energy and Energy Efficiency Agency, the NHRI trained civil society leaders on developing, among other things, gender-responsive climate adaptation policies and accessing international financing for environmentally conscious technologies.¹¹⁹

4.15 ENGAGEMENT WITH AFRICAN UNION BODIES

NHRIs could utilise their observer status with the AU to access and collaborate with the Executive Council through Specialised Technical Committees, including the Specialised Technical Committee on Agriculture, Rural Development, Water and Environment or Ministerial Sub-Committees, to contribute to the policy agenda for ratification by the AU Assembly, including contributing to policies on human rights and environmental management.¹²⁰ Through Observer Status with the AU, NHRIs could liaise with the AU Commission to generate information on developments, processes and business of the AU, to inform and facilitate citizen participation in AU processes policy and decision making at the AU and monitoring implementation of Member States' obligations, including on rights-based environmental management. NHRIs can address questions and propositions on human rights to members of the Pan-African Parliament (PAP); create awareness among citizens of their respective countries on PAP's agenda and work; and contribute to development of legislation which advance human rights with environmental dimensions through, among others, the Committee on Rural Economy, Agriculture, Natural Resources and Environment.¹²¹ NHRIs could

also provide support to Members of the PAP through research and information sharing on business and human rights, to inform the decisions and advisory efforts of the PAP. In relation to the Economic Social and Cultural Council (ECOSOCC) NHRIs can leverage their observer status to contribute to the work of the ECOSOCC relating to human rights and environmental protection by: strengthening the evidence base on human rights issues to support the ECOSOCC's processes and decision making; advocating for the development and adoption of a progressive frameworks and for domestication by AU Member States, of progressive policy frameworks and guidance, including, the AU Business and Human Rights Action Plan, and the African Mining Vision (AMV); supporting committee and sub-committee Chairs, rapporteurs and mandate holders to investigate and report on human rights complaints relating to environmental protection and human rights by generating relevant evidence and information and by facilitating linkages with aggrieved persons.

In terms of the African Commission on Human and Peoples' Rights (ACHPR), through the Communications Procedure (Articles 48, 49 and 55¹²²), NHRIs could support a Member State to lodge a complaint against another state where the latter state is in violation of its obligations to protect human rights, including those with environmental dimensions. NHRIs can also raise issues related to environmental permitting and management through State Reporting, by rendering independent reports to the ACHPR during the state reporting process. NHRIs may contribute to the work of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa, by: lodging complaints of human rights abuses with the Working Group; providing complementary information and evidence of alleged violations at country level, during investigations by the Working Group and, facilitating rights-holder participation in the Working Group's work. NHRIs can also consider facilitating citizen participation in processes and decision-making of the ACHPR and monitoring the implementation of Member States' obligations by disseminating relevant information to civil society to sensitise citizens and facilitate their participation in AU processes.

ANNEX A:

HUMAN RIGHTS CHECKLIST

Annex A: Human Rights Analysis Framework (from HRIA Guidance and Toolbox¹²³)

Key criteria for the process and content of HRIA		Example guiding questions
Process	<p>Participation</p> <p>Meaningful participation of affected or potentially affected rights-holders is integrated during all stages of the impact assessment process, including scoping, data collection and baseline development, impact analysis, and impact mitigation and management.</p>	<ul style="list-style-type: none"> • Have a broad range of rights-holders been engaged in the impact assessment, including workers and community members? Have the rights and involvement of contracted and supply chain workers and downstream communities been considered? • Have rights-holders been involved throughout the impact assessment process, including during early phases of the impact assessment such as: design of the impact assessment process; development of terms of reference for the assessment; impact scoping; and prioritisation of critical issues to be considered by the assessment? • Have rights-holders, duty-bearers and other relevant parties been involved in designing measures to address impacts (e.g., through prevention, mitigation and remediation) and follow-up to evaluate the effectiveness of these measures? • Have the participation rights of particular groups of rights-holders been fully recognised and respected in the impact assessment (for example, the right of indigenous peoples to be consulted according to the principle of free, prior and informed consent)? • Have rights-holder representatives or representative organisations been included in consultation and engagement, including consideration of the legitimacy of their claim to represent workers or community members? • Is engagement and participation in the impact assessment guided by the local context, including through using the community's preferred mechanisms (e.g., modes of communication) where possible? • Is the assessment process being undertaken at particular times to ensure participation (for example, when women are not in the fields, young people are not at school and families are not involved in the harvest)? • Does the impact assessment provide for ongoing dialogue between rights-holders, duty-bearers and other relevant parties (e.g., through collaborative problem analysis and design of mitigation measures)?

Annex A: Human Rights Analysis Framework (from HRIA Guidance and Toolbox¹²³)

Key criteria for the process and content of HRIA		Example guiding questions
Non-discrimination	Engagement and consultation processes are inclusive, gender-responsive and take into account the needs of individuals and groups at risk of vulnerability or marginalisation.	<ul style="list-style-type: none"> • Has impact assessment consultation and engagement involved both women and men, including through gender-responsive engagement methods as necessary (e.g., through holding women-only meetings or going house-to-house for individual consultation)? • Have steps been taken to ensure that the modes of engagement and participation address any barriers that may be faced by vulnerable and marginalised individuals (e.g., by offering transport or holding meetings in culturally appropriate locations)? • Have the vulnerable or marginalised individuals and groups in the given context been identified and considered (by considering discrimination, resilience, poverty factors, etc.)? • Have the needs of vulnerable and marginalised individuals been identified in stakeholder mapping and engagement planning?
Empowerment	Capacity building of individuals and groups at risk of vulnerability or marginalisation is undertaken to ensure their meaningful participation.	<ul style="list-style-type: none"> • Do rights-holders have access to independent and competent legal, technical and other advice as necessary? If not, does the impact assessment include provisions for making such support available? • Does the impact assessment provide for capacity building of rights-holders to know and claim their rights, as well as of duty-bearers to meet their human rights duties? • Does the assessment process allow sufficient time for capacity building to allow communities to be meaningfully involved? • Does the impact assessment provide particular attention to vulnerable or marginalised individuals and groups in engagement and participation activities (e.g., by allowing sufficient time and resources to facilitate the inclusion of these individuals)?

Annex A: Human Rights Analysis Framework (from HRIA Guidance and Toolbox¹²³)

Key criteria for the process and content of HRIA		Example guiding questions
Transparency	The impact assessment process is as transparent as possible in order to adequately engage affected or potentially affected rights-holders, without causing any risk to security and well-being of rights-holders or other participants (such as NGOs and human rights defenders). Impact assessment findings are appropriately publicly communicated.	<ul style="list-style-type: none"> • Does the impact assessment process provide for information sharing between participants at relevant intervals? • Is the information about the business project or activities available to participating stakeholders adequate for giving a comprehensive understanding of potential implications and human rights impacts associated with the business project or activities (e.g., information on ancillary infrastructure such as the construction of a port, railway, etc.)? • Are HRIA findings and impact management plans publicly communicated to the greatest extent possible (e.g., published, with any reservations based on risk to rights-holders or other participants clearly justified)? • Are the phases of the impact assessment, including timeframes, communicated to all relevant stakeholders in a clear and timely manner? • Does communication and reporting take into account and respond to the local context? For example, is information made available in relevant languages and formats, in non-technical summaries and in physical and/or web-based formats that are accessible to stakeholders?
Accountability	The impact assessment team is supported by human rights expertise, and the roles and responsibilities for impact assessment, mitigation and management are assigned and adequately resourced. The impact assessment identifies the entitlements of rights-holders and the duties and responsibilities of relevant duty-bearers (e.g., the company, contractors and suppliers and local government authorities).	<ul style="list-style-type: none"> • Is responsibility for the implementation, monitoring and follow-up of mitigation measures assigned to particular individuals/groups? • Are sufficient resources dedicated to undertaking the HRIA, as well as implementing the impact management plan (i.e., adequate time, as well as financial and human resources)? • Are relevant duty-bearers meaningfully and appropriately engaged in the impact assessment process, including impact mitigation and management? • Does the HRIA draw on the knowledge and expertise of other relevant parties, in particular human rights actors? • Does the HRIA team have the relevant interdisciplinary skills and expertise (including human rights, legal, language and local knowledge) to undertake the HRIA in the given context? • Have efforts been made to include local people, including women, in the impact assessment team, if appropriate?

Annex A: Human Rights Analysis Framework (from HRIA Guidance and Toolbox¹²³)

Key criteria for the process and content of HRIA		Example guiding questions
Content	Benchmark	<p>Human rights standards constitute the benchmark for the impact assessment. Impact analysis, assessment of impact severity and design of mitigation measures are guided by international human rights standards and principles.</p> <ul style="list-style-type: none"> • Have international human rights standards and principles been used as the benchmark for the assessment? • Has the impact assessment addressed the full scope of relevant human rights? If certain human rights have been excluded from the assessment, is the basis for this reasonable, as well as explicitly noted and explained in the impact assessment? • Is the scoping, baseline data collection, analysis of actual and potential impacts, and design of mitigation measures guided by the substantive content of human rights?
	Scope of impacts	<p>The assessment identifies actual and potential impacts the business caused or contributed to. The assessment also considers impacts directly linked to the business through operations, products or services and/or business relationships (contractual and non-contractual). The assessment analyses cumulative impacts and legacy issues.</p> <ul style="list-style-type: none"> • Does the assessment include all relevant types of actual and potential impacts, i.e. those that are caused, contributed to, and directly linked? • Does the assessment assess human rights impacts the business is directly linked to through operations, products or services and/or business relationships (e.g., with suppliers, contractors, joint-venture partners, customers and state agencies)? • Does the assessment consider cumulative impacts, i.e., impacts that arise due to the aggregative or cumulative effect of multiple business operations and activities in the same area? • Does the assessment identify and address legacy impacts associated with the business project or activities (e.g., poorly conducted government resettlement of communities prior to the company acquiring the land)?

Annex A: Human Rights Analysis Framework (from HRIA Guidance and Toolbox¹²³)

Key criteria for the process and content of HRIA		Example guiding questions
Assessing impact severity	Impacts are addressed according to the severity of their human rights consequences. This includes considering the scope, scale and irremediability of particular impacts, taking into account the views of rights-holders and/or their legitimate representatives.	<ul style="list-style-type: none"> • Is the assessment of impact severity guided by relevant considerations, including the scope, scale, irremediability and interrelatedness of impacts? Is the assessment of severity determined with respect to the consequences for the individuals affected? • Are the relevant rights-holders and/or their legitimate representatives involved in the assessment of impact severity? Does the assessment of severity reflect the views of the relevant rights-holders? • Has the analysis of impacts taken into account the interrelatedness of human rights, as well as the interrelatedness of environmental, social and human rights factors? (For example, if a business project or activity impacts on the right to adequate rest and leisure by requiring excessive overtime, this may have a corresponding impact on the rights of children to care. Or if a business uses a significant amount of water resources, for instance through irrigation of an agricultural plantation, this will have an impact not only on the environment but may also impact on people's right to adequate water for drinking and sanitation, or the right to an adequate standard of living if families can no longer grow their food.)
Impact mitigation measures	All human rights impacts are addressed. Where it is necessary to prioritise actions to address impacts, severity of human rights consequences is the core criterion. Addressing identified impacts follows the mitigation hierarchy of 'avoid-reduce-restore-remediate'.	<ul style="list-style-type: none"> • Are all human rights impacts that are identified addressed? • If it is necessary to prioritise actions to address impacts, is such prioritisation guided by the severity of human rights consequences? • In determining mitigation measures, are all efforts made to first avoid the impact altogether, and if this is not possible, to reduce, mitigate and remediate the impact? • Is care taken to ensure that compensation is not considered synonymous with impact mitigation and remediation? • Does the impact assessment identify ways of exercising leverage to address any impacts the business contributes or is directly linked to (e.g., through business relationships)? Where leverage does not exist, does impact mitigation include building leverage to address such impacts?

Annex A: Human Rights Analysis Framework (from HRIA Guidance and Toolbox¹²³)

Key criteria for the process and content of HRIA		Example guiding questions
Access to remedy	Impacted rights-holders have avenues whereby they can raise grievances regarding the business project or activities, as well as the impact assessment process and outcomes. Impact assessment and management ensure that the business provides for or cooperates in access to remedy for impacted rights-holders.	<ul style="list-style-type: none"> • Does the impact assessment identify actual impacts for which a remedy is needed? Are such impacts referred to the appropriate channels for remediation, including legal and non-legal as appropriate? • Have any severe human rights impacts that may constitute a legal breach been referred to the relevant legal channels (pending the consent of the rights-holders involved)? Does the business co-operate in any legal proceedings? • Is there an operational-level grievance mechanism in place that contributes to ongoing impact management, as well as the identification of unanticipated impacts? If not, does the impact management plan include the establishment of such a mechanism? Does the operational-level grievance mechanism meet the eight effectiveness criteria for non-judicial grievance mechanisms that are outlined in UNGP 31? • Is it ensured that the operational-level grievance mechanism does not deny rights-holders access to all relevant judicial processes? • Are the access to remedy channels responsive to the context and preferences of the rights-holders in question?

Annex A: Human Rights Analysis Framework (from HRIA Guidance and Toolbox¹²³)**Key criteria for the process and content of HRIA** | **Example guiding questions**

Sources: These criteria are based on a literature review including sources on human rights impact assessment, stakeholder engagement, social impact assessment and the human rights-based approach, including the following key sources: Desiree Abrahams, Yann Wyss (2010), 'Guide to Human Rights Impact Assessment and Management', Washington: International Business Leaders Forum, International Finance Corporation and UN Global Compact; James Harrison (2013), 'Establishing a Meaningful Human Rights Due Diligence Process for Corporations: Learning from Experience of Human Rights Impact Assessment', *Impact Assessment and Project Appraisal*, vol. 31, no. 2; James Harrison (2010), 'Measuring Human Rights: Reflections on the Practice of Human Rights Impact Assessment and Lessons for the Future', *Legal Studies Research Paper No. 2010-26*, University of Warwick School of Law; James Harrison, Mary-Ann Stephenson (2010), 'Human Rights Impact Assessment: Review of Practice and Guidance for Future Assessments', Edinburgh: Scottish Human Rights Commission; Christina Hill (2009), 'Women, Communities and Mining: The Gender Impacts of Mining and the Role of Gender Impact Assessment', Melbourne: Oxfam Australia; Gillian MacNaughton, Paul Hunt (2011), 'A Human Rights-Based Approach to Social Impact Assessment', in Frank Vanclay, Ana Maria Esteves (eds), *New Directions in Social Impact Assessment: Conceptual and Methodological Advances*, Cheltenham: Edward Elgar, pp. 355-368; Norwegian Agency for Development Cooperation (2001), 'Handbook in Human Rights Assessment: State Obligations, Awareness and Empowerment', Oslo: NORAD; Office of the United Nations High Commissioner for Human Rights (2012), 'The Corporate Responsibility to Respect Human Rights: An Interpretive Guide', New York and Geneva: United Nations; Office of the United Nations High Commissioner for Human Rights (2006), 'Frequently Asked Questions on a Human Rights-Based Approach To Development Cooperation', New York and Geneva: United Nations; Rights & Democracy (2011), 'Getting it Right: Human Rights Impact Assessment Guide', <http://hria.equalit.ie/en/index.html> (accessed 29 March 2022); HRC (2011), 'Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework', A/HRC/17/31; Frank Vanclay, Ana Maria Esteves, Ilse Aucamp, Daniel M Franks (2015), 'Social Impact Assessment: Guidance for Assessing and Managing the Social Impacts of Projects', International Association for Impact Assessment; Simon Walker (2009), 'The Future of Human Rights Impact Assessments of Trade Agreements', Antwerp: Intersentia; World Bank and Nordic Trust Fund (2013), 'Human Rights Impact Assessments: A Review of the Literature, Differences with other forms of Assessments and Relevance for Development', Washington: World Bank and Nordic Trust Fund.

ANNEX B:

FURTHER RESOURCES

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