

## **HUMAN RIGHTS IMPACT ASSESSMENT WORKSHOP 29 NOVEMBER 2018, GENEVA - SUMMARY REPORT**

### **1 INTRODUCTION**

On 29 November 2018, a group of 21 human rights and impact assessment practitioners – ranging from company representatives, company and community-led HRIA practitioners, financial institutions and multilateral organisations – came together to discuss the topic of human rights impact assessment (HRIA).

The aim of the workshop was to discuss the state of play on HRIA, hear from practitioners about different approaches to working with human rights in impact assessment, and to discuss a future vision for the HRIA space and a HRIA ‘community of practice’ (CoP).

The workshop was organised and facilitated by the Danish Institute for Human Rights (DIHR), with logistical support kindly provided by UNICEF. It included the following agenda items:

1. Welcome and tour de table of participants
2. Presentation of case study 1 and Q&A: “Experiences and lessons learnt from 3HRIAs in the technology sector” by Madeleine Koalick, twentyfifty
3. Presentation of case study 2 and Q&A: “HRIA of Facebook in Myanmar” by Dunstan Allison Hope, BSR
4. Presentation of case study 3 and Q&A: “A child rights impact assessment of the tourism sector in Zanzibar” by Beth Verhey, UNICEF
5. Small group discussions on select topics
6. Concluding session: The future of the HRIA CoP – discussion of suggestions for the way forward, including joint activities and suggestions for topics and structure for next HIRA CoP meeting

This report presents a summarised account of the main themes and topics of discussion. The workshop took place under Chatham House rules. A list of participants is provided at the end of the report.

If you have any questions about the workshop or the HRIA community of practice please contact: Tulika Bansal, DIHR, at [tuba@humanrights.dk](mailto:tuba@humanrights.dk) and Nora Götzmann, DIHR, at [nog@humanrights.dk](mailto:nog@humanrights.dk).

### **2 CASE STUDY 1: “EXPERIENCES AND LESSONS LEARNT FROM 3 HRIAS IN THE ICT SECTOR” BY MADELEINE KOALICK, TWENTYFIFTY**

The presentation focused on three HRIAs conducted with companies in the technology sector: in India, Brazil, and Singapore. The main purpose of this exercise was to understand actual and potential human rights impacts in the country operations and the response capacity of the local company subsidiaries. The presentation provided an overview of the methodology

adopted, specificities and challenges of conducting a company-led HRIA, typical findings from the three assessments, lessons learnt, and reflections going forward.

Specificities and challenges with company-led HRIAs include limits to scope, lack of understanding of what constitutes a human rights approach within companies and tensions between headquarters and local sites that can lead to resistance to change. twentyfifty addressed these issues respectively by developing a risk register to prioritise focus areas for the assessment while ensuring the methodology covers all human rights, building the capacity of company staff on human rights approaches to ensure they can co-lead the assessment and follow up, and working to build trust between the headquarters and the subsidiary level to ensure that human rights considerations will still be a relevant topic for both entities once the consultants have left.

Typical findings from the three HRIAs were excessive working hours and 'involuntary' overtime; discrimination and harassment; safety issues on the way to and from work; a lack of environmental awareness and practices; issues related to use of on-site contractors; a disconnect between global processes and local implementation; and the presence of corruption. The assessments raised questions about whether the excessive overtime could in some cases be considered forced labour because employees were mostly highly skilled and seemed motivated to work extra hard in order to progress their career. Factors such as the employees' vulnerability, whether their expectations have been properly managed, managers' behaviour and overtime remuneration/compensation were taken into consideration to determine this.

Preliminary lessons arising from the HRIAs included the importance of linking the findings to brand reputation and business performance, the need to closely involve headquarter functions during preparation and follow up stages, challenges of conducting group interviews in a highly competitive sector, and the importance of keeping grievance channels open after field work.

Going forward, these engagements demonstrated that for companies HRIAs can be a good starting point for further integration of human rights due diligence aspects into their internal systems. Certain risks identified in a subsidiary HRIA can be investigated further through other processes with all global sites. It also proves beneficial to bring local sites together for cross learning opportunities and to ensure consistent application of global policies.

Participants asked questions about publication of findings, the influence of cultural aspects, use of remedy mechanisms, plans for similar HRIAs for all sites

- twentyfifty encourages companies to publish findings and will usually produce summary reports for the client that can form the basis for public communication. However, it takes time to build the client company's trust for publication of a full report.
- Assessment teams work with local partners and conduct interviews in local languages to ensure that they capture all subtleties. To address selection bias they as much as possible aim to select freely who to interview. They are also attentive to any tensions and avoid exposing rightsholders by cautiously addressing sensitive issues, making sure reports on findings don't

allow for identification of individuals and following up afterwards if they suspect a risk of reprisal.

- Where company grievance mechanisms are considered to be adequate, the assessment team suggests that employees follow the official company grievance procedure to raise their concerns.
- BSR ensures that the follow up phase is an essential part of any HRIA project it gets involved with, so that action plans are agreed within the project time frame. In this case the clients found the exercise useful, and committed to either further mitigation measures and due diligence integration or to performing HRIAs at other selected sites based on country and operational profile.

### **3 CASE STUDY 2: “HRIA OF FACEBOOK IN MYANMAR” BY DUNSTAN ALLISON-HOPE, BUSINESS FOR SOCIAL RESPONSIBILITY (BSR)**

BSR undertook a HRIA of Facebook in Myanmar between May and September 2018, and the HRIA was published by Facebook in November 2018.<sup>1</sup> The HRIA was not intended to be a fact-finding mission, but rather an assessment of where Facebook is today in Myanmar, and how it should go forward in terms of a human rights management plan. The BSR assessment was undertaken during the same period as the UN Fact Finding Mission on Myanmar, and the BSR HRIA was mostly complete when the UN Fact Finding Mission published its findings in September 2018. BSR conducted two field visits in the course of the HRIA, one in May 2018 (with the company) and a second in August 2018 (on its own). BSR has undertaken around a dozen projects in Myanmar in the past six years.

The presentation elaborated on how BSR conducted the HRIA and outlined some conceptual challenges related to impact assessments in the ICT sector that the assessment team encountered through the engagement.

Three issues focussed on in the discussion were how BSR evaluated impact; application of ‘cause’, ‘contributed to’, and ‘directly linked to’ as articulated in the UNGPs; and whether Facebook should have a physical presence in Myanmar.

Given Facebook’s omnipresence, a challenge was the identification of rightsholders. BSR applied a two-pronged methodology where they identified at-risk rights holders e.g. human rights defenders, people whose accounts had been hacked, victims of online harassment, digital rights advocates, and other people whose human rights had been violated. They also consulted experts (who may also be in the same group) to identify relevant rights holders to speak with.

BSR found that there is a lack of guidance available for companies, particularly in the tech sector, for them to determine if their activities cause, contribute or are directly linked to human rights abuse. The assessment team found that ultimately, Facebook’s is directly linked to human rights

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<sup>1</sup> BSR “[Human Rights Impact Assessment: Facebook in Myanmar](#)”, 2018

violations via the actions of users on its platform that violate Facebook's Community Standards and that evade Facebook's Community Standards enforcement mechanisms. If BSR had reviewed Facebook in the past rather than Facebook today then the cause, contribute, and directly linked conclusion may have been different--while Facebook did not undertake human rights due diligence when Facebook first became widely used in Myanmar, it is now attempting to rectify this gap by hiring more staff to monitor and enforce community standards and engage in other activities to mitigate its impact.

Whether Facebook should have a physical presence in Myanmar was another key issue in the HRIA. On the one hand, many reported to BSR that Facebook's lack of a physical presence in Myanmar may prevent the company from fully understanding the local human rights risks, such as hate speech, in Myanmar. On the other hand, if Facebook would have physical presence in Myanmar it would almost certainly entail Facebook needing to engage in contracts with the government, who would then have significant leverage over Facebook – e.g. forcing Facebook to take down user accounts and posts, forcing Facebook to reinstate military accounts and posts, or requiring that Facebook share user data with the government. BSR reached the conclusion that the long-term ideal scenario is for Facebook to have a physical presence in Myanmar, and in the short term Facebook should focus on having Burmese staff based in its offices outside the country.

Questions from participants related to BSR's decision to publish the HRIA report; HRIA methodology; whether the assessment led to any changes at the company level; and whether HRIA is the best tool to address the issues that Facebook and similar companies are facing:

- It has been a learning experience to receive comments and feedback after the HRIA was published. HRIA practitioners can usefully think through the quite different nature of audiences inside a company and various public audiences, their different information needs, and their different levels of focus on different parts of the HRIA. BSR is strong advocate for transparency of human rights due diligence, since the resulting dialogue allows for additional perspectives to be raised and for the accountability process to kick in.
- BSR carefully considered how and who to engage with in conducting the HRIA. While it did not have a local partner, there were team members who had previously lived and worked extensively in Myanmar and were well familiar with the country context. The team adopted a snowball approach to interviews by asking interviewees to suggest other rightsholders and stakeholders with whom they should speak. BSR's recommendations included further dialogue with rightsholders outside of Myanmar's main urban centres because of the various perspectives that exist across the country. As an additional factor, BSR has actively considered the safety of BSR staff visiting Myanmar for other project work following the report's publication.
- Facebook is facing unprecedented challenges and is addressing this by hiring experts (i.e. staff and consultants) to address the issues emerging throughout the company. Change in companies is hard and BSR's approach is to take companies step-by-step in integrating human rights in the life, processes and structure of the company. Furthermore, too many HRIAs examine the present situation and make recommendations on the basis that these situations

remain static. This is unrealistic, reality is constantly changing and according to BSR, we should be better attuned to how human rights risks may evolve and change over time.

- Finally, the HRIA was beneficial by illuminating governance issues and enabling the company to look at its human rights issues through the lens of a rights holder. Facebook is hiring additional human rights specialists to strengthen engagement with and solicit input from stakeholders such as NGOs, academia, and international organisations.

#### **4 CASE STUDY 3: “A CHILD RIGHTS IMPACT ASSESSMENT OF THE TOURISM SECTOR IN ZANZIBAR” BY BETH VERHEY, UNICEF<sup>2</sup>**

UNICEF conducted a child rights impact assessment of the tourism sector in Zanzibar alongside a multi-stakeholder team, which included the Tanzanian Government, academics, and consultants. Missions were carried out in four locations – Nungwi, Jambiana, Kiwengwa and Stone Town. There are multiple overlapping human rights in the impact assessment, but the focus is on children.

The team adopted a mixed methodology approach, which included desk research, a policy context review, examination of comparative cases, kick off workshops, stakeholder consultations and interviews, focus group interviews with children, community group interviews, sustainable livelihood analysis, value chain analysis, participatory observations, multi-stakeholder mapping, survey of general managers and accommodation staff, and a survey of departing tourists.

The assessment findings fall under five main headings: socio-economic impact of tourism on children; impact of tourism on culture; environmental impacts; negative effects and risks of tourism development on children; and the relevant stakeholders’ interaction to address negative and positive effects of tourism development.

Overall, while communities are dependent on income, they do not particularly benefit from the tourism industry. Employment is not perceived to be fair or ethical. The team found that in addition to having poor working conditions, parents working in tourism did not earn sufficient income to feed, clothe children and provide them with proper education and shelter. The assessment additionally raised concerns about inappropriate care and neglect. These factors may affect early childhood development. While maternity leave is mostly allowed, not all mothers were allowed to breastfeed their children. Furthermore, most parents did not have support with their children’s health costs, which put more pressure on their income.

There was a concern that tourism led to ‘cultural degradation’ through westernisation of the culture, a concern has been passed inter-generationally. Drug trafficking is still an issue, but there is a sense that this has improved. There is a perceived idea that the way to engage youth is through vocational training – however, an issue is that much of the in-house training provided by accommodation providers does not lead to transferable skills.

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<sup>2</sup>UNICEF “[Assessment of the Impact of Tourism on Communities and Children in Zanzibar](#)”, June 2018

The teams found hardly any child labour and sporadic cases of sexual exploitation. However, they found a culture of begging. Children appreciate their contact with tourists, and especially receiving donations. There is a complex interplay between thinking that begging is something to value and its perceived impact on cultural degradation. Interviewed tourists self-reported that they care about sustainability.

Participants asked questions about who was surveyed and their level of understanding; the benefit of doing a children's rights impact assessment; and the purpose of undertaking this impact assessment:

- The team conducted surveys and interviews with staff, general managers and tourists. Two international consultants and a team of Zanzibaris covering Swahili and English engaged with the general managers and staff. Information gathered was triangulated to ensure reliability of findings. The teams interviewed departing tourists at the airport, which was more challenging due to timeframes. However, connections with the tourism industry helped to somewhat alleviate this issue.
- It is extremely important to explicitly focus on children in impact assessments because they experience different impacts to other rights-holders. Children talk about issues that other people do not see as impacts. The impact assessment findings will assist UNICEF in determining its future programming.

## **5 SMALL GROUP DISCUSSIONS ON SELECT TOPICS**

In the afternoon, the participants were split into a number of break-out groups. They were asked to identify 1) good practices; 2) challenges; 3) needs; and 4) opportunities related to five HRIA-related topics. The groups addressed each topic in a world-café format, moving to the next station once time for that session had elapsed.

### **5.1 TOPIC 1 – MULTIDISCIPLINARY TEAMS IN HRIA: CURRENT PRACTICES, CHALLENGES, NEEDS AND OPPORTUNITIES**

This topic looked at the use of multidisciplinary teams in HRIA. Stakeholders sometimes discredit individual HRIAs for lacking the requisite subject-matter expertise to address certain issues, so hiring experts to form a multidisciplinary team may be one way of addressing this. However, this needs to be balanced against possible scope limitations.

#### Current good practice:

- Core human rights impact assessment teams are already being supported by experts.
- HRIA teams already draw more on expertise in particular cases. Local CSOs have been asked to advise on cultural issues such as for example Sharia Law, health, and gender expertise
- However, there is room for improvement to increasingly use expert capacity.

#### Challenges:

- There are tensions around wanting to be comprehensive and still have a manageable scope. Companies may impose scope limitations.
- There is limited time and funding to bring in all the needed expertise.
- There may be a perception of bias when one brings in an expert (i.e. the company could think the expert is pro-community).
- Possible difficulties finding experts on crosscutting issues – e.g. as seen in the tech sector
- Mindfulness when and if there should be engagement with rights-holders
- Engagement with legitimate representatives
- Finding experts – e.g. some countries' legislation will require the use of accredited experts who may not necessarily meet the standard that one would ostensibly expect given their accreditation status.

#### Needs:

- There is a need for pro bono expert availability (trained in HRIA) which can address issues around cost.
- It is necessary to build the capacity of rights-holders before, so that they are able to meaningfully engage with experts.
- There is also a need to communicate and manage the expectations of rights-holders
- There is a need for a continuous impact assessment process over time.

#### Opportunities:

- Experts can be interviewed as stakeholders themselves.
- Experts can build the capacity of assessors and communities
- Experts can help to improve the ability to discuss HRIA results within the client company
- Having experts on the team may help address potential in-team conflicts early on
- Experts can provide better definitions and offer the ability to design action plans, make recommendations and suggestions for long-term change management
- Including subject matter experts raises the credibility of an HRIA tremendously, which could lead to improved leverage both internally and externally. For example, campaigning NGOs often criticise HRIAs on the basis that the assessment team lacked experts on a particular subject matter and therefore could not adequately address issues stemming from this.

## **5.2 TOPIC 2 – THE ROLE OF INTERGOVERNMENTAL ORGANISATIONS IN HRIA: HOW ARE INTERGOVERNMENTAL ORGANISATIONS CURRENTLY INVOLVED IN HRIA? WHAT ARE THE CHALLENGES AND OPPORTUNITIES?**

This topic asked participants to consider the spaces that intergovernmental organisations currently operate in with respect to HRIA, as well as challenges and future opportunities.

The teams identified that intergovernmental organisations (in particular UN agencies) have a role to play with respect to HRIA through data sharing and providing recommendations. For instance, intergovernmental organisations have been called to brief governments on human rights risks in foreign countries and on national action plans on business and human rights.

#### Opportunities and challenges:

1. Intergovernmental organisations have a role in policy formulation and can draw on HRIAs – for instance in the development of UN action plans
2. Intergovernmental organisations should use HRIA expert consultants more and be more available to these experts
3. Intergovernmental organisations should convene more widely, but be aware of their limitations – they are not in the business of doing deep dives for companies. They should also be attuned to threats of blue washing and should not occupy spaces that are already filled. Intergovernmental organisations should see themselves as a form of support to other actors, but can also introduce more rigour towards standardisation of industry-wide assessments
4. Intergovernmental organisations can facilitate more dialogue. Impact assessors should contact them with questions. Even if the organisation does not know the answer, they can refer to someone who does know.

### **5.3 TOPIC 3 – SECTOR-WIDE IMPACT ASSESSMENTS (SWIAS): CURRENT GOOD PRACTICE, NEEDS AND OPPORTUNITIES**

SWIAs are a relatively new type of impact assessment and practitioners are increasingly recognising their potential utility. For instance, there were suggestions at the workshop that SWIAs could be useful in tech and communications industries, where multiple large companies collectively face the same issues.

The teams identified the following examples as current good practice:

1. 4 sector-wide impact assessments by the Myanmar Centre for Responsible Business
2. An impact assessment by IHRB / CREER on the mining sector in Colombia
3. UNICEF's impact assessment on tourism
4. DIHR and partners SWIAs on fisheries in Bangladesh and Chile

#### Challenges:

There are a number of challenges with sector-wide impact assessments. These include a lack of specificity (due to data aggregation), difficulties engaging with companies when externally funded, scoping and sampling, diverging timelines, and follow up consultations. Company engagement can be difficult particularly with respect to follow up and a perception that different actors are taking too long (due to a lack of resources on the part of the latter).

#### Needs:

It was articulated that there is a need to promote the methodological practice of SWIAs, particularly because they are new. It is also necessary to think about funding for SWIAs, whether this be basket funding, donor funding, or through industry associations.

#### Opportunities:

Opportunities for SWIAs include an ability to think broadly and create nationwide public data, addressing cumulative impacts rather than project-level impacts, looking not only at the company

as duty-bearers but at the state and other stakeholders. There could also be opportunities to adopt a thematic approach to SWIAs instead of a deep dive into all issues – e.g. looking at labour rights in a particular sector, a particular segment of a value chain or part of a life cycle. Finally, SWIAs can be the basis for multi-stakeholder dialogue.

#### **5.4 TOPIC 4 – REPORTING ON HRIA FINDINGS: CURRENT GOOD PRACTICE, CHALLENGES AND OPPORTUNITIES**

HRIA reporting can be a contentious issue and difficult space for practitioners to navigate, owing to the presence of competing stakeholder interests. In this discussion, participants were asked to articulate current good practice, challenges and opportunities in this area.

##### Current good practice:

Participants highlighted that publishing a HRIA when you feel comfortable is positive and good practice. It is good to be public as this helps meet stakeholder expectations. A comment was made that to date only 25 HRIAs have been published. Publicising HRIA reports can also help create momentum inside the company, since the reports include follow-up activities that should be performed.

##### Challenges:

Some challenges with respect to the publication of HRIAs include a consideration of possible legal consequences, fear at the top management level, the report's intended audience, and the level of editorial control that the company has over the report. The culture of a company can also be an obstacle, especially when companies are used to only communicating on great achievements. Finally, there may be possible risks to staff and rights-holders when a report is made public, which then raises the question – who is the report's audience?

##### Opportunities:

Possible opportunities include clearly defining what a HRIA is and what other tools are. This would create less confusion as other types of reports are published and subsequently compared to HRIA reports. Another possible opportunity is to help develop third-party verification systems that would allow executive summaries of HRIAs to be published with third-party verification. This would help ensure that a reader doesn't have to simply trust that the company did what it claimed it did. Greater accountability through publication of HRIA reports was also mentioned as an opportunity. Finally, publishing HRIA reports can make investors more interested in a company, can increase a company's competitive advantage and can increase access to finance, it can also help create greater trust among rights-holders and critical stakeholders, which can help in a local "crisis" situation.

#### **5.5 TOPIC 5 – ASSESSING IMPACTS WITH LIMITED PHYSICAL IMPACTS: SECTORS / EX-ANTE HRIAS: CURRENT GOOD PRACTICES, CHALLENGES, NEEDS AND OPPORTUNITIES**

This topic called on participants to elucidate examples of current good practice, challenges, needs and opportunities with respect to the assessment of impacts that have limited physical impacts. This is a fairly open-ended question and invited creative interpretations and responses from the participants.

Participants examined this topic from a variety of perspectives. Some interpreted this question as applying to companies with a limited physical presence (e.g. tech companies). Others interpreted the question in terms of activities which have limited physical impacts to the person (e.g. privacy rights).

#### Current good practice:

- BSR has developed a two-pronged methodology to help companies identify rights-holders for a HRIA. This involves: 1) identifying vulnerable groups in society (e.g. human rights defenders, victims of harassment, victims of privacy breaches); and 2) consulting experts for their advice on rights-holders to engage with – there may be overlaps in that experts may themselves be vulnerable persons.

#### Challenges:

- There is a lack of guidance for tech companies to address emerging issues. For example, the recently published UN Working Group report on the state of play on human rights due diligence contained significant detail on supply chain challenges, but lacked any similar consideration of product impact challenges (and therefore any guidance for companies on how to address due diligence of product impacts).
- Companies with a limited physical presence may have insufficient exposure to civil society. In turn this limits the company's engagement within the country and could put less pressure on them to improve.
- The sheer number of users makes it difficult for tech companies to determine which rights-holders they need to engage with during a HRIA.
- A challenge when conducting *ex-ante* HRIAs is that the assessed situation may differ from what happens later in reality. For instance, an oil company may plan to construct a pipeline in a particular area but upon feasibility assessments, or for another reason, decides rather to place it somewhere else. However, the HRIA was pursuant to oil company's original plans – which did not eventually materialise.
- A related challenge with *ex-ante* HRIAs is that it can be difficult to provide concrete recommendations due to the inherent uncertainty associated with the overall project.
- It can also be challenging to identify impacts when these are not physically visible on the rights-holder – e.g. where there is debt servitude or breach of privacy.

#### Needs:

- There is a need to debate what 'cause, contribute to, and directly linked to' means because it is extremely relevant for companies lacking a physical presence (e.g. tech companies)
- As a corollary to the challenge identified before, there is a need for specialised guidance to help tech companies navigate the new human rights challenges they are encountering

## 6 CONCLUDING SESSION: THE FUTURE OF HRIA AND THE HRIA COMMUNITY OF PRACTICE

The day was concluded with a discussion on next steps going forward. Participants were invited to join the human rights impact assessment Google group, which allows HRIA practitioners to share relevant resources. There was interest in the formation of a peer learning platform in the Google group, where participants can raise issues they have encountered for wider guidance. There was also interest in the development of quality criteria for HRIA, which could be facilitated through the International Association for Impact Assessment (IAIA). Lastly, participants agreed to organize a webinar series on relevant HRIA related topics. DIHR will initiate a proposal for this and circulate among the workshop participants.

There was a call for HRIA materials to help SMEs conduct a HRIA scoped to their size. twentyfifty directed participants to resources developed by the German Global Compact network for SMEs: [https://www.globalcompact.de/wAssets/docs/Menschenrechte/Publikationen/5\\_steps\\_towards\\_managing\\_the\\_human\\_rights\\_impacts\\_of\\_your\\_business.pdf](https://www.globalcompact.de/wAssets/docs/Menschenrechte/Publikationen/5_steps_towards_managing_the_human_rights_impacts_of_your_business.pdf) and on different types of human rights assessments: <https://www.globalcompact.de/wAssets/docs/Menschenrechte/Publikationen/Assessing-Human-Rights-Risks-and-Impacts.pdf>

### LIST OF PARTICIPANTS

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