

1 INTRODUCTION

On 17 November 2016, a group of 22 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’.

The workshop was organised and facilitated by the Danish Institute for Human Rights (DIHR) and included the following agenda items:

1. Welcome and tour de table of participants
2. Update on the road-testing version of the [HRIA Guidance and Toolbox](#), developed by DIHR and launched in January 2016
3. Presentation of case study 1 and Q&A: “Designing the Continental Free Trade Area (CFTA): An African Human Rights Perspective” by Susan Mathews, OHCHR
4. Presentation of case study 2 and Q&A: “HRIA in the Agricultural Sector” by Kendyl Salcito, NomoGaia
5. Break-out groups session 1: Topics in HRIA, discussion of specific topics in HRIA in small groups
6. Break-out groups session 2: HRIA in specific sectors, discussion of sector-specific HRIA approaches and challenges
7. Concluding session: The future of HRIA and the HRIA community of practice, discussion of suggestions for the way forward

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: Nora Götzmann, DIHR, at nog@humanrights.dk and Tulika Bansal, DIHR, at tuba@humanrights.dk.



2 CASE STUDY 1: “DESIGNING THE CONTINENTAL FREE TRADE AREA (CFTA): AN AFRICAN HUMAN RIGHTS PERSPECTIVE” BY SUSAN MATHEWS, OHCHR

In June 2015 the African Union launched agreements on having a Continental Free Trade Area (CFTA) between African countries to promote regional free trade.¹ Following the development of an issues paper by the Office of the High Commissioner for Human Rights (OHCHR) – which was presented at a meeting in Addis Abeba in 2015 with the presence of civil society organisations, international organisations and trade unions – it was decided to conduct a scoping study for a HRIA of the CFTA. The scoping study was conducted by an interdisciplinary team consisting of three organisations: OHCHR; the Friedrich-Ebert Stiftung (FES); and the United Nations Economic Commission for Africa (ECA).

The impact assessment methodology proposed for the HRIA, and applied to develop the scoping study, follows a standard set of steps, adapted for an ex-ante HRIA of the trade agreement – i.e. an assessment which is completed before the trade negotiations start. The methodology had to be flexible. During the screening and scoping phase, the assessment team looked at what trade measures will appear in the agreement and what human rights will most likely be impacted.

The main areas of focus for the assessment are: (i) agriculture and (ii) employment. Agriculture had been identified as the cornerstone for the region and some of the most dire human rights issues, such as food security and impacts on livelihoods, are related to the sector. Employment was identified as another priority because it is a cross-cutting issue that should be considered in such a trade agreement. Other important issues such as services, investment and intellectual property are not within the scope of the assessment because the team determined that a narrower focus would allow a better and more meaningful analysis of the two key issues identified.

As a first step, the team conducted a literature review and developed case studies based on expert interviews and research, looking at broad risks rather than granular impacts. One case study was dedicated to agriculture and food security and agro-manufacturing. As part of this case study the team developed recommendations related to the potential impacts of the trade agreement on food security. A second case study focused on informal cross-border traders. This group is excluded from trade agreements, and despite contributing a lot of revenue to countries is often neglected. This case study also focused on the freedom of movement, livelihoods impacts, education, and the impacts on female traders.

There was limited empirical research that the team could build on in developing the scoping study. To foster a participatory process, questionnaires were developed which were shared with a wide range of stakeholders. For example, the International Labour Organisation (ILO) was identified as a key stakeholder and could facilitate access to relevant parties such as small and medium-sized enterprises (SMEs), which play a key role in employment on the continent.

¹ More information about the HRIA of the Continental Free Trade Area can be found [here](#).

The impact assessment to date has been an iterative process, and one objective is to empower stakeholders and build capacity. There has been little awareness about the trade negotiations on the African continent. The assessment team has tried to reach out to civil society and other groups to mobilize stakeholders around the negotiations. The organisations involved have also promoted greater transparency in the trade negotiation process itself. In terms of access to information during the trade negotiations and scoping phase of the impact assessment, the assessment team reached out to various networks in Africa to seek input to recommendations and their implementation.

The next step will be to seek funding and commitment to progress the impact assessment.

3 CASE STUDY 2: “HRIA IN THE AGRICULTURAL SECTOR” BY KENDYL SALCITO, NOMOGAIA

The presentation focused on three HRIAs conducted in the agricultural sector: Dole’s pineapple plantations in Costa Rica²; Palm oil in Liberia³; and Green Resources pine tree plantations in Tanzania⁴.

All three HRIAs showed a range of issues, such as land tenure insecurity, post-conflict instability, labour and environmental rights impacts, and supply chain links. The presentation followed the impact assessment steps, highlighting key points and challenges of each step.

In relation to screening, it was noted that this is essential for a company that has operations across the globe, in order to decide where an assessment is required.

For the scoping phase, it is important to look at human rights indicators and to undertake thorough desktop research on these before going into the field.

The field research phase is for validating the initial predictions made in the scoping phase – i.e. aggregating data, acquiring the views of rights-holders, identifying gaps and rating impacts. During the field research, the involvement of local facilitators on the assessment team can be invaluable to ensure that relevant local knowledge is reflected in the assessment process and outcomes. Human rights training of such local facilitators and interpreters is a key part of the assessment process. Challenges during field research can include the unexpected presence of bosses at camps where the assessment team plans to interview workers, or the availability of interviewees during the day when they are busy. To address these challenges, the assessment team always stays overnight near the plantations, to be available at all times. Triangulation of data during the field research phase is key, through interviews with rights-holders and asking them to respond to statements from other interviewees, but also by taking photos to document evidence and repeat visits. To ensure the views of women and children are taken into consideration the assessment teams held female-only group discussions. In those situations where no female guide or interpreter was part of the team, they asked a female teacher or nurse in the community to join them to interpret. To ensure that rights-holders are not put at risk during the assessment, the team

² NomoGaia (2010). [Dole Fresh Fruit HRIA](#)

³ NomoGaia (2016). [Equatorial Palm Oil HRIA](#)

⁴ NomoGaia (2009). [Tanzania – Green Resources Unchindile Tree Farm](#)

checks with the local facilitators and community leaders what the sensitive topics in the community are. They never hold group discussions on sensitive topics, talk 'around' topics and aim to conduct interviews in an innocuous place. Interviewees are met on their own terms to make sure they feel comfortable and to gain trust.

After the field research, impacts have to be rated – the human rights topics have to be linked to the rights-holders affected, followed by looking at intensity and extent. Extent is considered by looking at the number of rights-holders affected, this does not need to be a large number, it could also be that all of the eight pregnant women are affected, which would mean a large extent.

For the development of recommendations, the team speaks with the affected rights-holders and others to validate findings; they print out photobooks and based on this explain the impacts identified and recommendations made, followed by validation of the findings with other stakeholders such as community leaders, government, companies etc. The team always first checks the viability of proposed recommendations with the company in question and any relevant government stakeholders, to make sure that any recommendations validated with rights-holders are feasible.

The assessment report – including methodology, field research findings and recommendations – are made publicly available on the NomoGaia website. Six months after an assessment a follow-up site visit is conducted to see whether recommendations have been implemented, this is part of the monitoring and evaluation phase of the impact assessment.

4 BREAK-OUT GROUPS SESSION 1: TOPICS IN HRIA

In the afternoon the group divided into a number of break-out groups. Each group discussed one topic and was asked to discuss challenges related to the topic, what is needed to address these challenges, and good practice examples.

GROUP 1: HRIA MONITORING AND FOLLOW-UP

As challenges the group discussed that there is usually funding and time for conducting the actual HRIA but not necessarily for monitoring and follow-up. For certain companies, the scale of monitoring could be enormous. Also, operationalisation of monitoring within the company can be difficult. The buy-in and support from the country-level is needed; whereas often the demands for the assessment come from the company headquarters not the subsidiary. Another challenge mentioned related to establishing causality – i.e. it is possible to monitor the impact of a mitigation measure, but how do you identify that this has led to change in behaviour?

In terms of solutions, it was flagged that it is important to share the assessment findings and recommendations with the potentially affected communities and other relevant rights-holders, possibly in a simplified format, presented as short- and long-term recommendations. It was also noted that it is important to collaborate with different stakeholders as part of monitoring; civil society needs to be included in the monitoring process and more information should be shared from community consultations. Participants

agreed that monitoring of the implementation of HRIA mitigation measures and effectiveness should always be an official function in a business; it should be part of someone's job and ToR.

GROUP 2: VULNERABLE GROUPS AND PARTICIPATION OF RIGHTS-HOLDERS

The second group discussed vulnerable groups and participation of rights-holders in HRIA. A number of challenges were raised. Firstly, accessibility for vulnerable groups in HRIA is a challenge. Secondly, building trust and rapport can be difficult; finding the right interlocutors is therefore very important but not always easy. Confidentiality of information about or from rights-holders in impact assessment was mentioned as another challenge, as well as managing the security of assessors and the interviewees. Participation in an impact assessment can also lead to exacerbation of existing tensions in the community or the process can be co-opted by politicians. The role of human rights defenders in HRIA was also mentioned. A question was raised about whether it is enough to consult rights-holders in the assessment, or whether they need to be part of designing the impact assessment process itself. Capacity of rights-holders to meaningfully participate was noted as another challenge; how can technical issues related to the project be meaningfully discussed? Lastly, in certain countries governments do not recognize certain groups of rights-holders, which can make it more difficult to involve them in an impact assessment process.

In terms of what is needed to address these challenges it was discussed that impact assessment teams have to start to think about these challenges both during the screening phase and the design of the HRIA. For example, the screening should include an analysis of NGO laws in the country to identify any potential risks for human rights defenders and other rights-holders involved in the assessment. A HRIA should be carried out using a human rights-based approach, including a strong capacity building component for rights-holders, on human rights as well as technical issues. In terms of resources or developments, it was noted that it would be useful to have public tools and strategies for how to deal with vulnerability, more company awareness regarding vulnerable groups and rights-holder participation, and more cross-learning and sharing between practitioners on these issues.

GROUP 3: STAND-ALONE VERSUS INTEGRATED HRIAS

The third group discussed stand-alone HRIAs vs. integrating human rights into other types of impact assessment (e.g. environmental and social impact assessment). It was discussed that conducting a stand-alone HRIA can facilitate a deeper focus on human rights, including specific issues, but within companies there can be a lack of management systems to systematically follow-up on such human rights issues. An example was shared where a company conducted both a stand-alone HRIA and an ESHIA of the same project, with similar findings, but two different management systems in place to address the issues causing a disconnect in how the issues were addressed. Human rights language was another challenge discussed; in an integrated approach staff members that do not have the requisite understanding of human rights might be required to take a leading role in the assessment. Another challenge when integrating human rights into other impact assessments can be that human rights are treated as just an 'add on' and can get lost amongst other issues, not receiving the attention they require.

As solutions, it was mentioned that there is a need to build the capacity of ESHIA practitioners on human rights and vice versa to build the impact assessment capacity of human rights

practitioners. In many cases, integrating the 'S' from social into ESHIAs is often already weak, let alone adding human rights. Therefore, further cross-learning between ESHIA and human rights practitioners was identified as necessary. Also, it was noted that it may be useful to bring together champions who have successfully applied an integrated approach to build a depository of good practices.

GROUP 4: TRANSPARENCY AND REPORTING

Group four discussed the challenges associated with transparency and reporting of HRIA processes and outcomes. Firstly, it was discussed that there is frequently not enough focus on sharing of information with rights-holders during the HRIA process and that not only the transparency of the HRIA report is important but also the process. Regarding the publication of HRIA reports it was discussed that companies hesitate or refuse to publish HRIA reports based on an array of arguments, including:

- Concerns regarding potential legal liabilities (however, there is no evidence that this is the case from EIA, SIA, HRIA or other types of reporting);
- Concerns that information in the report will be misinterpreted;
- Perceiving the findings to be wrong; and/or
- Internal politics preventing publication of the report.

Lastly, the lack of follow-up after reporting was noted as a challenge.

In terms of needs to increase transparency of HRIAs, it was mentioned that the standards applied should require HRIAs to be published. Reports should include: methodology; findings; recommendations; management plan; and timelines. When a report is not made public, there is limited public oversight and quality control. If NGOs, other companies, government or other stakeholders can vet a HRIA report this can raise the bar. Participants reasoned that transparency requirements should therefore be built into company standards, contracts, and other mechanisms.

In terms of developments for the future, there should also be more reporting back to rights-holders in assessment processes. As a final point, it was mentioned that there is a need for capacity building at various levels to promote transparency, for example:

- Within companies there should be cross-functional dialogue as part of a HRIA to avoid that certain persons/departments do not buy in to disclosure;
- Rights-holders' capacity should be built on what their rights are; and
- Other duty-bearers' capacity should be built to help allocate responsibilities for mitigation measures and remediation – this could include the government and other stakeholders such as joint venture partners.



5 BREAK-OUT GROUPS SESSION 2: HRIAS IN SPECIFIC SECTORS

Following the discussion of HRIA topics, during session two of the break-out groups, each group discussed the key issues, challenges and needs for a specific sector.

GROUP 1: EXTRACTIVE INDUSTRIES

Key human rights impacts in the extractive industries noted included: security; land; Free Prior and Informed Consent (FPIC); resettlement; rights related to the environment; right to water; impacts related to population influx; procurement and supply chains; health and safety; issues around benefit sharing; rights around royalties and tax; artisanal and small-scale mining (ASM); gender; and child labour.

In terms of challenges associated with HRIA in the sector, it was mentioned that there can be a disconnect between the team conducting the HRIA and those in charge of implementing the mitigation measures, as usually the team carrying out the assessment is not involved in core business. HRIA can also lead to community divisions, and government representatives who are interested in the process can demand to be present at community meetings. A further challenge noted was the difficulty to obtain baseline information in certain contexts. Lastly, a question was raised about how HRIA should deal with positive impacts.

In terms of good practice examples of HRIAs in the extractive industries, the published human rights assessment of the Goldcorp Marlin Mine⁵ was mentioned and the work on an ex-ante HRIA by International Alert for Total in the Democratic Republic of Congo (DRC),⁶ taking into consideration the conflict dimensions. Another example mentioned was from Australia and Canada, where some companies provide funding for communities to choose the practitioners to carry out impact assessments.⁷

GROUP 2: FOOD AND BEVERAGE/AGRICULTURAL SECTOR

In this group the participants discussed that the main human rights issues in the sector depend on the context. Supply chains in the sector can be very complex. Most assessments look at the more obvious human rights dimensions such as labour rights or rights related to community impacts, but it is important to also look at consumer rights and the entire lifecycle.

Specific human rights impacts in the sector noted included: land rights; security; labour rights; women's rights; impacts related to climate change; impacts on small-holder farmers due to the move from small-scale farming to large-scale agricultural developments; and livelihoods impacts.

Due to the high informality of the sector there are significant data gaps. Frequently, there is also a lack of transparency and disclosure, and participants noted that more HRIA reports in the sector need to be published. Another challenge noted relates to the scale of the food and beverage sector. It is often argued that there will always be some adverse human rights

⁵ Goldcorp (2010). [Human Rights Assessment of Goldcorp's Marlin Mine](#)

⁶ International Alert (2014). [Oil Exploration in Ituri: A Human Rights and Conflict Risk Assessment in Block III](#)

⁷ Columbia Center on Sustainable Investment (2016). [Emerging Practices in Community Development Agreements](#)

impacts associated with a large food and beverage company; but should a company address all the gaps that the government isn't fulfilling? An example was shared about addressing the root causes of child labour. In this case, children were not attending school because they didn't have birth certificates. The company in question paid for the birth certificates preventing the children from attending school, rather than building a school.

As good practice examples for the sector, the *Behind the Brands Scorecard* by Oxfam America was mentioned,⁸ as well as the *Know the Chain* benchmark.⁹

GROUP 3: INTERNATIONAL FINANCIAL INSTITUTIONS AND MULTILATERAL ORGANISATIONS

Participants in group three discussed a number of challenges relating to human rights and impact assessment in the context of the environmental and social safeguard standards of financial and multilateral institutions. To work towards better consistency and coherence it was suggested that there is a need for harmonization of these standards; in particular in cases where projects subject to the standards are co-financed such increased coherence could be beneficial. Participants also reflected on how a high common standard in such harmonization could be ensured, including the role that independent third-parties might play in ensuring that human rights are adequately covered. Accountability mechanisms and transparency were noted as essential contributing factors in the effective implementation of the standards; if there is no accountability mechanism there is no imperative for implementing the standards or conducting assessments. Lastly, it was pointed out that the systems behind the standards are critical for their effective implementation. One of the dilemmas discussed was that leverage can be more limited in the case of private financing, as potential clients can opt for alternative financing.

A few examples were discussed regarding what multilaterals are doing in the space of impact assessment and accountability mechanisms. In terms of harmonisation, the Multilateral Finance Institutions' Working Group on Environment and Social Standards, which meets bi-annually, was noted, as well as the similar development finance institutions' annual social experts meeting. The new United Nations Development Programme (UNDP) safeguard standards¹⁰ were discussed, including how human rights are reflected in these. UNDP is currently in the process of developing guidance on the impact assessment component of the standards. Differences between various institutions were discussed, for example that the European Investment Bank (EIB) differs from other institutions because it is an EU body and therefore bound by the Lisbon treaty.

In terms of needs, participants noted that there should be increased capacity building on the environmental and social safeguard standards; an example is the Asia Development Bank (ADB)-World Bank (WB) learning centres established in a number of Asian countries.¹¹ It was also noted that civil society actors have a critical role to play and that NGOs should ask more questions about how the safeguard standards are implemented, including by making use of access to information provisions. Lastly, it was discussed that there is a need for a space to discuss practice on human rights within international financial and multilateral institutions.

⁸ Oxfam (2016). [Behind the Brands Scorecard](#)

⁹ Humanity United (2016). [Know the Chain](#)

¹⁰ UNDP (2014). [Social and Environmental Standards](#)

¹¹ World Bank Group (2015). [Learning Center Established to Promote Environmental and Social Sustainability in Vietnam](#)

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

In the concluding session of the day, participants discussed how they saw the future of the HRIA space in five years from now, and what their expectations and wishes are for a HRIA community of practice.

HRIA SPACE IN 5 YEARS

Participants discussed future developments in HRIA. The following points were raised.

HRIA methodology:

- Increased transparency in HRIA publication across sectors, a public database of HRIAs;
- Mandatory disclosure of HRIAs, and associated with this a norm of publishing findings of a HRIA;
- Measureable change for rights-holders, evidence of positive change after a HRIA;
- Better understanding of HRIA purpose and commitment for NGOs;
- A due diligence fund established for rights-holders to conduct HRIAs;
- Increased attention on community-based HRIAs;
- HRIA as an accepted methodology, like EIA or SIA, including a clarification and criteria for what a 'good practice' HRIA should entail; and
- Endorsement of HRIA guidelines by an authoritative body like a UN agency or the International Association for Impact Assessment (IAIA).

With regard to HRIA in practice:

- More practice of conducting and implementing HRIAs;
- More involvement of home-state companies in HRIA;
- More buy-in from all stakeholders in HRIA (rights-holders, governments, others);
- Built-in human rights capacities, skills and knowledge in companies;
- Better performance on consultation, inclusion and participation of rights-holders in HRIA;
- Human rights in impact assessment is integrated as a core element of a due diligence process;
- Human rights in the context of impact assessment are mainstreamed and regulated, whether through integrated assessments or stand-alone assessments; and
- Better understanding of links between ESHIAs and HRIAs and that there will be human rights elements in all ESHIAs.

HRIA COMMUNITY OF PRACTICE

To conclude, the group discussed the community of practice (CoP) on HRIA as a way forward.

Regarding objectives, people shared that they hope the CoP will allow for:

- Sharing of methodologies, a space for practice oriented peer-learning;
- Sharing of expertise and contacts or subject matter specialists for inclusion of additional disciplines in HRIA teams; and
- Sectoral and cross-sectoral collaborations.

In terms of who should be part of the CoP, people raised that:

- It should be multi-stakeholder;

- ESHIA specialists should be brought in;
- Universities could play a role;
- It should include people from the global south;
- Companies should be included; and
- There should be more space for vulnerable groups.

Lastly, it was discussed how the CoP can operate. Some concrete ideas were shared including:

- Gathering of evidence on the value of HRIA;
- Creation of a depository of good practice HRIA reports;
- Sharing of lessons learned;
- Company-company sharing of best practices;
- Defining together what the criteria for a good quality HRIA are and promoting these in the broader human rights and business community;
- Piloting assessments together, bridging the divide between company- and community-led HRIAs;
- Annual or bi-annual HRIA meetings or learning events and quarterly webinars with sharing of case studies; and
- Co-development of a future HRIA workshop agenda through the HRIA google group.

LIST OF PARTICIPANTS

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|--------------------|---|
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