

BRIEFING NOTE: A COLLABORATIVE APPROACH TO HUMAN RIGHTS IMPACT ASSESSMENTS

AUTHORS: COLUMBIA CENTER ON SUSTAINABLE INVESTMENT,
DANISH INSTITUTE FOR HUMAN RIGHTS, AND
SCIENCES PO LAW SCHOOL CLINIC

MARCH 2017

KEY POINTS:

- A collaborative approach to human rights impact assessments (HRIAs) is a new approach that brings together project-affected people, a company, and other stakeholders to jointly design and implement an assessment.
- A collaborative HRIA could help address one of the key challenges of current HRIA practices: limited stakeholder engagement and participation, which can undermine effectiveness and trust.
- A collaborative HRIA could result in improved communication, increased access to relevant information, greater engagement with an HRIA's findings and recommendations, and increased prevention or mitigation of negative human rights impacts.
- To be successful, a collaborative HRIA will require participants to carefully navigate a series of issues that range from ensuring meaningful participation to governing and funding the process.

INTRODUCTION

Human rights impact assessments (HRIAs) are increasingly used by companies and communities to assess the actual or potential impacts of a business project or operation. While methodologies and standards have evolved, current HRIA practices frequently confront a set of common challenges. This note sets out a new, collaborative approach to conducting HRIAs of business projects or operations in an effort to address one of the key challenges of current practices: the limited engagement of relevant stakeholders, which can undermine effectiveness and trust. A collaborative approach seeks to bring project-affected people, a company, and other relevant stakeholders together to jointly design and implement an assessment, with the objectives of improving communication, increasing the information sources that can be drawn upon, and encouraging greater engagement by all participants in the HRIA's findings and recommendations. The intended ultimate result of such an approach is the more effective prevention or mitigation of a project's negative human rights impacts.


This briefing note provides an overview of what a collaborative HRIA would entail, reasons for undertaking one, and factors that may affect its feasibility. The note then briefly explains how a collaborative HRIA could work in practice: from ensuring meaningful participation; to structuring, governing, and funding the process; through to conducting the assessment, developing and implementing an action plan, and disclosing results.

WHAT IS A COLLABORATIVE HRIA?

A collaborative HRIA is a joint process undertaken by project-affected people and a company, and potentially with involvement of the host government or other stakeholders, to investigate, measure, and respond to a business project or operation's potential or actual human rights impacts. It requires formal processes to facilitate collective decision-making among participating stakeholders, who together design and conduct the HRIA. This differs from existing approaches, where HRIAs are generally undertaken or commissioned by *either* a company *or* project-affected people, with limited interaction among stakeholders, except as part of standard stakeholder consultations. Such practices, particularly when coupled with existing tensions, can lead to suspicion of HRIA results, rendering them ineffective or contentious. To date, no collaborative HRIA has been carried out and tested, although some HRIAs have incorporated particularly strong efforts to increase stakeholder engagement.

REASONS FOR UNDERTAKING A COLLABORATIVE HRIA AND FACTORS TO CONSIDER

Collaborative HRIAs offer shared incentives for stakeholders. They could, for example, improve information sharing, leading to deeper understandings of impacts. They could also facilitate efforts by stakeholders to engage in dialogue, identify shared priorities, and reach agreement on key issues.



In addition, for companies, collaborative HRIAs could reduce the risk of social conflicts and associated financial and reputational costs. They could also improve the company's human rights capacities, engagement strategies, and decision-making, including for future projects. Companies engaging in collaborative HRIAs and other "best practices" may be able to differentiate themselves from competitors.

For project-affected people, collaborative HRIAs could provide a new avenue for direct communication with the company, which could help them more effectively influence decision-making related to the design or implementation of a project or operation that stands to affect them. Participation in a collaborative HRIA could also provide opportunities to further develop relevant knowledge and skills.

When governments participate, their involvement could send an important signal to companies regarding the necessity of respecting human rights. Government involvement could also increase the potential that it will engage meaningfully with the HRIA's recommendations. Working both with companies and with project-affected people could also help governments to reconcile their obligations to respect, protect, and fulfill human rights with their investment promotion objectives.

WHEN WILL A COLLABORATIVE HRIA BE APPROPRIATE?

The suitability of a collaborative HRIA depends on various factors, including specifics related to the project or operation being assessed, the characteristics of participating stakeholders and the pre-existing relationships between them, and the political context in which the assessment will take place.

Relevant characteristics of the project or operation include the amount of money already invested, whether it is tied to a specific location, and its overall complexity. The company's relevant characteristics include its human rights sensitization, its resources and expertise, and its internal structure. Factors concerning project-affected people include the extent to which internal divisions exist, whether project-affected people uncompromisingly oppose the project, and the availability of capacities and skills. Meanwhile, the suitability of a government's participation in a collaborative HRIA will depend on characteristics such as its attitude toward human rights obligations, its commitment to transparency and disclosure, and its democratic legitimacy, as well as the attitude of project-affected people toward governmental involvement in the process.

STAKEHOLDER INVOLVEMENT AND MEANINGFUL PARTICIPATION

Accurately identifying all relevant stakeholders and ensuring their effective participation is key to unlocking the value of a collaborative HRIA. Care must be taken to ensure that relevant subgroups of stakeholders—including those who may be marginalized or more vulnerable to a project's impacts—are

appropriately engaged and represented. The various internal components of a participating company (such as its headquarters and in-country office, and the different departments and hierarchies within each) and, if involved, the government (national, regional, and local levels, each with their own agencies and institutions) also need to be properly understood to ensure appropriate representation, coordination, and engagement.

Once the relevant stakeholders and their representatives are identified, capacity building will be needed—especially for representatives of project-affected people and, potentially, for representatives of the company or government—to ensure effective participation. Assistance for such capacity building could come from local or national civil society organizations (CSOs), as well as from international organizations and experts with expertise in capacity building, in HRIA methodologies, or in specific issues relevant to the assessment. These actors, as well as others, might also join as participants in the HRIA or remain involved on an *ad hoc* basis.

STRUCTURE AND COMPOSITION

The structure of a collaborative HRIA will influence how the assessment functions, and should be designed to encourage collaboration and to avoid replication of existing power imbalances between participating stakeholders. Rules of conduct will be needed, as well as entities that can assist with oversight of the process and compliance with the rules. While a collaborative HRIA could take many forms, the following three components are proposed:

- A **steering committee**, composed of representatives from project-affected people, the company, and other participating stakeholders, to set up the collaborative HRIA and oversee the process, as well as to provide a forum for improved communication between participating stakeholders and, potentially, for dispute resolution. The steering committee should have one or more independent facilitators to manage meetings and build consensus, to assist with project coordination, and to oversee compliance with the rules of conduct.
- A **trustee** or other trusted entity to receive and disburse funds as needed.
- An **impact assessment (IA) team**, also composed of representatives from project-affected people, the company, and other participating stakeholders, to carry out the actual assessment, as well as to design the recommendations and action plan to address the project's human rights impacts. The IA team should also have one or more independent IA practitioners to ensure sufficient skills and expertise, to act as project manager, and to conduct interviews when it is not appropriate for representatives of project-affected people or the company to be present.

GOVERNANCE

Participants can take steps to ensure that the collective decision-making processes in both the steering committee and IA team operate in an equitable manner. This is important given that participants will have varying degrees of experience with formal processes, and uneven access to support and resources. The decision to carry out a collaborative HRIA should be recorded in an agreement, which can set out the structure and the rules of conduct. The rules should include processes for decision-making and dispute resolution; they can be enforced by the steering committee, with the independent facilitator taking the primary role of overseeing compliance.

In the course of a collaborative HRIA, disputes and grievances may arise. For instance, members of the IA team may disagree on how to carry out a specific part of the assessment, representatives on the steering committee may reach an impasse on a particular issue, or non-participating stakeholders may have grievances regarding the conduct of the IA team. Stakeholders establishing a collaborative HRIA may decide to have some or all of these types of issues resolved by the steering committee according to clear processes, or they may agree to turn to an external dispute resolution process. When the steering committee is tasked with resolving certain disputes, there should be a process in place to address any failure to reach consensus.

FUNDING

Ensuring sufficient funding for the assessment is critical. Equally important is ensuring that the source of funding does not adversely influence the process and outcomes, or affect the assessment's credibility. Each funding source has its own advantages and drawbacks. Sourcing funding from the company, for example, may encourage company buy-in, and might also be the most scalable approach. However, company funding also carries the greatest risk of inadvertently influencing the assessment—or creating the perception of doing so. The host government, as the primary duty-bearer of human rights obligations, might be a logical funding source, but also presents challenges regarding actual or perceived influence. Neutral-party funding—from philanthropic organizations or foundations, bilateral donors, or other entities that are not direct stakeholders in a project—could help shield a collaborative HRIA from problematic influence and protect perceptions of the assessment's legitimacy. Neutral party funding is, however, less replicable and scalable than relying on funding from an involved stakeholder.

Despite its drawbacks, funding from one or more neutral parties is the recommended option. Where this is not possible, the process could adopt a phased approach that combines neutral-party funding for the scoping phase (to determine issues such as which rights will be covered and what methodology will be used) with funding from the company for all additional phases of the collaborative HRIA. A third option would be to seek funding from multiple sources for all phases of the project, with the goal of diluting any single funder's contribution and thus potential influence.

IMPACT ASSESSMENT METHODOLOGY

As with existing HRIA practices, a collaborative HRIA will have a number of phases. These include: planning and scoping the issues to be covered; investigating and collecting data; analyzing impacts and making recommendations; and undertaking monitoring, evaluation, and follow-up activities. All phases of the collaborative HRIA process require ongoing stakeholder engagement and access to dispute resolution processes.

The participatory nature of the IA team can create complications regarding who from the team can interview which types of stakeholders. For instance, company representatives on the IA team generally should not be present during interviews of project-affected people to ensure that interviewees are comfortable and open during interviews. Similar concerns might arise regarding the presence of representatives of project-affected people during some interviews of company representatives—for example, when sensitive company information might be shared. In some situations, one of the independent IA practitioners on the team will be best placed to conduct interviews.

DESIGNING THE RECOMMENDATIONS AND ACTION PLAN

Once findings have been assembled, all members of the IA team will work together to develop recommendations, and to convert these into action items in an action plan. The action plan should include provisions for monitoring implementation, for adapting to unforeseen issues and impacts that subsequently arise, and, potentially, for undertaking follow-up measures and/or other forms of ongoing engagement.

TRANSPARENCY AND DISCLOSURE

Ensuring that project-affected people have access to relevant information is an important aspect of conducting a rights-respecting process. Transparency is an essential (although not regularly observed) component of HRIsAs. Disclosure of information throughout the assessment process—particularly regarding methodology, findings, and the action plan—is important for the legitimacy of a collaborative HRIA. In some cases, a company participating in the collaborative HRIA may have concerns regarding full disclosure of information gathered during the HRIA. Solutions should be established to address those concerns while still affording opportunities for project-affected people to access relevant information. While it is recommended to always disclose relevant information, the identities of interviewees should always be kept confidential and protected.

CONCLUSION

A collaborative approach to HRIsAs creates a mechanism for collaboration and communication between key stakeholders. This can minimize knowledge asymmetries, contribute to a deeper understanding of each stakeholder's perspective and priorities, help to build trust, and result in more effective action plans to address a project's human rights impacts.

The need for capacity building and sensitization, and the radically different backgrounds of participating stakeholders, mean that a collaborative HRIA will be time-intensive and will require stable funding. In addition, strong governance structures will be critical to ensure that the process does not replicate or exacerbate existing power imbalances between stakeholders—an issue with which other multi-stakeholder efforts have struggled.

Despite these challenges, a collaborative approach to HRIAs offers significant potential. Such an approach could provide a new way for companies, project-affected people, and other stakeholders to work together on understanding and addressing potential or actual human rights impacts. By doing so, a collaborative HRIA could support a range of stakeholders seeking better and more effective ways of assessing impacts and protecting rights in the context of business projects and operations.

This briefing note draws from a longer paper: Columbia Center on Sustainable Investment, Danish Institute for Human Rights, and Sciences Po Law School Clinic, *A Collaborative Approach to Human Rights Impact Assessments*, March 2017, available at:

<http://ccsi.columbia.edu/work/projects/CHRIA/>

This note was prepared with financial support from The Tiffany & Co. Foundation, although the views expressed do not necessarily represent those of the Foundation.