



# COMMUNITY VOICE IN HUMAN RIGHTS IMPACT ASSESSMENTS



**OXFAM**  
America

*COVER: Maria Nazarete's community is conducting a Human Rights Impact Assessment using the Getting it Right tool which is forthcoming in 2016.  
Tatiana Cardeal / Oxfam*

# INTRODUCTION

Human rights impact assessments (HRIAs) are intended to minimize human rights risks, lessen adverse impacts, and strengthen positive outcomes of business investments on affected populations. For an HRIA to fulfill this purpose, it must consider the perspectives of everyone affected by a company's operations, project, products, or services. But all too often, companies ignore this critical input, instead opting for top-down tools that fail to capture communities'<sup>1</sup> assertions. In doing so, they forfeit the opportunity to minimize human rights violations and costly conflicts.

Thanks in part to the due diligence requirements of the United Nations Guiding Principles on Business and Human Rights (UNGPs)<sup>2</sup>, recent years have seen a surge in both community- and company-led HRIAs. Community-based HRIAs, by nature, analyze impacts from the perspective of the community. Oxfam America has promoted a leading community-based HRIA methodology found in Rights & Democracy's Getting It Right tool, an approach that emphasizes a community's human rights concerns rather than starting from the company's perspective. Using this tool, communities identify the human rights risks and impacts they will examine, interview the stakeholders involved, analyze the information collected, and compile the information in a report to share with governments and companies. They conduct HRIAs in order to shape a project, mitigate impacts, and/or outline remedies.

Companies have also developed tools and processes to assess the potential impact of their projects; however, they often fail to seek out the expectations or assertions of the very people whose rights they are at risk of violating. This oversight undermines the very purpose of HRIAs. Common pitfalls of company-led

In 2004, the Canadian organization Rights & Democracy developed a community-based HRIA tool, a dynamic participatory approach for analyzing the human rights impacts of private foreign investments. The digital tool focuses on local communities as experts and advocates. Oxfam America and other nongovernmental organizations (NGOs), community organizations, and communities have had good success piloting [Getting It Right](#) as an accessible, practical, and interactive guide.

Oxfam, along with the International Federation for Human Rights (FIDH), the Project on Organizing, Development, Education, and Research (PODER), and the Carter Center have been promoting the use of the tool with communities. In addition, FIDH and Oxfam, with contributions from PODER, have conducted several trainings in order to increase usage of the tool by community-based organizations.

<sup>1</sup> Although the term *community* is treated as reflecting a homogenous group in the context of this paper, there are invariably subgroups within local populations whose human rights perspectives must be pursued with equal vigor. Additionally, while traditional leaders often serve as the spokesperson for locals, the perspectives of all individuals and groups who may be affected by project operations should be taken into account to the extent possible. Despite the importance of the topic of the dynamics of community voice, the subject is beyond the scope of this paper.

<sup>2</sup> Special Representative of the Secretary-General, UN Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, (2011) [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

HRIAs include heavy reliance on desk research or failure to extend interviews beyond government officials and nongovernmental organizations (NGOs). Although governments and international NGOs offer unique perspectives, they are not substitutes for strong community engagement.

The identification of these shortfalls should not overshadow the very real benefit of company-led HRIAs; when conducted properly,<sup>3</sup> an HRIA allows a company to absorb lessons learned and improve its ability to measure human rights impacts across all of its operations. Perhaps more importantly, the company has the ability to change the project, mitigate negative impacts, enhance positive outcomes, and provide remedies following an HRIA. Company-led HRIAs can also have positive multiplier effects that extend to other project sites. Indeed, strengthening corporate HRIA capacity is a crucial step toward greater human rights protection for some of the world's most vulnerable populations.

### This paper:

- Describes why HRIAs are an essential element of the due diligence process stipulated in the United Nations Guiding Principles on Business and Human Rights;
- Explains the business case for seeking communities' expectations and assertions of rights during an HRIA;
- Includes case studies of the costs of company failure to engage, as well as case studies of company-led HRIAs, identifying where and why companies have fallen short in reaching out to communities and providing rare examples of companies that have gone further;
- Includes case studies of community-based HRIAs, demonstrating the importance of hearing from communities themselves regarding companies' impacts on their human rights;
- Highlights elements of the Getting It Right tool to guide communities through the process, and issues a call to scale up such efforts;
- Discusses the possible benefits, constraints, and funding possibilities of a parallel company- and community-led process, or hybrid approach, where companies and communities co-own the HRIA process;
- Provides recommendations to companies, investors, and governments; and
- Provides guidance for conducting a thorough HRIA process.

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<sup>3</sup> Guidance on how to conduct HRIAs properly appears at the end of this paper under Part VII., "Recommendations."

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## HRIAS IN THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK

HRIAs are rooted in the international human rights framework and measure the gap between human rights principles, as embodied in international human rights standards, and human rights practices within a given jurisdiction.<sup>4</sup> As such, they represent at a minimum the rights companies must respect within their operations and business relationships.<sup>5</sup> Impact assessments arose as a general tool for measuring the social or environmental effect of various projects or policies in the 1950s.<sup>6</sup> HRIAs became more prevalent in the late 1990s, appearing independently across NGOs, international bodies, and human rights institutes.<sup>7</sup> Many consider the 2002 analysis of human rights impacts at British Petroleum's Tangguh, Indonesia, gas project the first modern iteration of HRIAs.<sup>8</sup> Today, assessment tools are available to measure a spectrum of impacts that touch on a wide variety of industries and rights. The World Business Council for Sustainable Development, for example, has compiled a variety of tools that businesses can employ to take stock of their impact on water, biodiversity, contractor safety, energy efficiency, stakeholder empowerment, and more.<sup>9</sup> HRIAs are intended to be some of the most comprehensive of all impact assessments, as they ideally examine a wide range of potential impacts through a human rights lens.<sup>10</sup> As sustainable development experts Sandra Roling and Thomas Koenen explain:

While companies often have human rights policies in place and certain aspects might already be covered within other measures, such as Environmental Impact Assessments (EIA) and Social Impact Assessments (SIA), a specific HRIA ensures that all relevant aspects are systematically taken into consideration. It also includes both potential negative and positive impacts on human rights, giving the company a full picture of its scope of influence. Such a

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<sup>4</sup> Oxfam America, *A State of Fear: Human Rights Abuses in North Carolina's Tobacco Industry* (2011), 10.

<sup>5</sup> The UNGP General Principle 13 clarifies that a company has responsibilities that are linked to its operations, products, or services by its business relationships. Commentary on the principle states: "For the purpose of these Guiding Principles, a business enterprise's ... 'business relationships' are understood to include relationships with business partners, entities in its value chain, and other non-State or State entity directly linked to its business operations, products or services." See also Principle 1. United Nations (UN) Human Rights Office of the High Commissioner, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2011).

<sup>6</sup> James Harrison, *Measuring Human Rights: Reflections on the Practice of Human Rights Impact Assessment and Lessons for the Future*, University of Warwick School of Law, Legal Studies Research Paper 2010-26 (2010), 4–5.

<sup>7</sup> Harrison, *Measuring Human Rights*, 4–5.

<sup>8</sup> The World Bank and Nordic Trust Fund, *Human Rights Impact Assessments: A Review of the Literature, Differences with other forms of Assessments and Relevance for Development*, at page 17 (2013), [http://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/HRIA\\_Web.pdf](http://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/HRIA_Web.pdf); see also International Association for Impact Assessment, *IAIA12 Conference Proceedings*, at page 1 (2012) <http://www.iaia.org/conferences/iaia12/uploadpapers/Final%20papers%20review%20process/Wielga,%20Mark.%20%20Corporate%20HRIA%20-%20Lessons%20from%20the%20Field.pdf?AspxAutoDetectCookieSupport=1>.

<sup>9</sup> World Business Council for Sustainable Development (WBCSD), "WBCSD Tool Box," <http://www.wbcd.org/Pages/EDocument/EDocumentDetails.aspx?ID=15700&NoSearchContextKey=true>.

<sup>10</sup> Oxfam, *Community-Based Human Rights Impact Assessment (COBHRA): Key Messages*, 1.

comprehensive analysis also implies a profound learning experience for the company, as the understanding of human rights is deepened and expertise is built through continuous analysis and improvement.<sup>11</sup>

Unlike environmental and social impact assessments (ESIAs), HRIAs are grounded in the rights recognized under international law and represent the floor in terms of the number and scope of company impacts that should be considered and addressed. ESIAs do not have a similar mandate.<sup>12</sup> Furthermore, when the scope of an HRIA accounts for both negative and positive facets—such as the prevention, mitigation, and remediation of negative impacts and the strengthening of positive impacts—the assessment can contribute to improved development and sustainability outcomes.<sup>13</sup>

The normative framework for corporate human rights commitments was clarified in 2011, with human rights due diligence<sup>14</sup> enshrined in *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*.<sup>15</sup> Principle 17 of the UNGP outlines businesses’ due diligence responsibilities, making special note that the “process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, and tracking responses as well as communicating how impacts are addressed.”<sup>16</sup> Due diligence is thus a process that consists of four discrete steps: (1) assessing impacts, (2) integrating and acting upon identified impacts, (3) tracking performance, and (4) communicating

#### Free, prior, and informed consent

Closely aligned to a company’s meaningful consultation with potentially affected groups is the right to free, prior, and informed consent (FPIC). While there is no universally accepted definition of FPIC, Oxfam defines it as the principle that indigenous peoples and local communities must be adequately informed about projects that affect their lands in a timely manner, free of coercion and manipulation, and that they should be given the opportunity to approve or reject a project prior to the commencement of all activities.

For indigenous peoples, FPIC is established as a right under international law. FPIC is also emerging more broadly as a principle of best practice for sustainable development, used to reduce social conflict as well as increase the legitimacy of projects in the eyes of all stakeholders and rights-holders.

For more information, see Oxfam’s Community Consent Index (forthcoming).

<sup>11</sup> Sandra Roling and Thomas Koenen, *Human Rights Impact Assessments: A Tool Towards Better Business Accountability*, CSR Europe (2010), 8, <http://www.reports-and-materials.org/sites/default/files/reports-and-materials/Impact-assessments-CSR-Europe-June-2010.pdf>.

<sup>12</sup> UN General Assembly/Human Rights Council, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises: Human Rights Impact Assessments—Resolving Key Methodological Questions*, A/HRC/4/74 (2007), 6, <http://www.reports-and-materials.org/sites/default/files/reports-and-materials/Ruggie-report-human-rights-impact-assessments-5-Feb-2007.pdf>.

<sup>13</sup> Nordic Trust Fund/World Bank and Shift Workshop Report, “Human Rights Due Diligence in Development,” September 16, 2014, 4.

<sup>14</sup> Although the Guiding Principles do not on conducting HRIAs, guidance was given for HRIAs by the special representative of the UN secretary-general even before the UNGP were adopted. See UN General Assembly/Human Rights Council, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*.

<sup>15</sup> Gabriel Watson, Irit Tamir, and Brianna Kemp, “Human Rights Impact Assessment in Practice: Oxfam’s Application of a Community-Based Approach,” *Impact Assessment and Project Appraisal* 31, no. 2 (2013), 119, doi: 10.1080/14615517.2013.771007. Although the UNGP do not endorse HRIAs, they remain an important tool for businesses to conduct human rights due diligence.

<sup>16</sup> UN Human Rights Office of the High Commissioner, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, Principle 17.

on performance.<sup>17</sup> As former UN Special Rapporteur on the Right to Food Olivier de Schutter and his co-authors observed, the concept of human rights due diligence “has risen to prominence as a potential tool for meeting the twin challenges of shaping better business behavior and providing access to justice for victims when business fails to meet the standards set by society. Due diligence is not itself a replacement for providing victims with effective redress mechanisms.”<sup>18</sup> HRIAs have become an important vehicle for embedding corporate due diligence into company practice, and they can be a springboard for all four steps of human rights due diligence if done well and repeated periodically, which is not generally the case.

While the term *human rights impact assessment* does not appear in the UNGP, HRIAs are essential to any serious human rights due diligence process. The UNGP state that companies’ due diligence should involve “meaningful consultation with potentially affected groups” to assess actual and potential human rights impacts, integrating and acting on findings, and tracking and communicating how impacts are addressed.<sup>19</sup> This emphasis on meaningful participation underscores the importance of seeking out community voice rather than sidelining community views in favor of a company-only perspective.

HRIAs have been deemed an important component of putting the second pillar of the framework into practice: business responsibility to respect human rights.<sup>20</sup> Having companies assess the actual and potential human rights impacts of their own activities and those generated through their business relationships is a critical component of human rights due diligence, enabling companies to know and show that they are meeting their responsibility to respect human rights.<sup>21</sup>

In terms of scope, the Danish Institute of Human Rights notes that human rights due diligence should include an “assessment of actual and potential impacts; assessment of impacts the company has caused, contributed to, or is linked to; engagement with rights-holders and other relevant stakeholders, including vulnerable groups, in an appropriate and meaningful manner; and inclusion of all relevant international human rights as a reference point.”<sup>22</sup> Generally, engagement with rights-holders is more

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<sup>17</sup> Shift-SER Workshop Report, *Business and Human Rights Impacts: Identifying and Prioritizing Human Rights Risks* (2014), 8, [http://shiftproject.org/sites/default/files/Shift-SER Workshop Report- Business and Human Rights Impacts\\_0.pdf](http://shiftproject.org/sites/default/files/Shift-SER%20Workshop%20Report-%20Business%20and%20Human%20Rights%20Impacts_0.pdf).

<sup>18</sup> Olivier de Schutter, Anita Ramasastry, Mark B. Taylor, and Robert C. Thompson, *Human Rights Due Diligence: The Role of States*, International Accountability Roundtable (2012), 1. <http://accountabilityroundtable.org/analysis/hrdd/>.

<sup>19</sup> Watson, Tamir, and Kemp, “Human Rights Impact Assessment in Practice,” 119.

<sup>20</sup> Roling and Koenen, *Human Rights Impact Assessments: A Tool*.

<sup>21</sup> Oxfam, *COBHRA*.

<sup>22</sup> Tulika Bansal and Yann Wyss, “Talking the Human Rights Walk: Nestle’s Experience Assessing Human Rights Impacts in its Activities,” p. 13, The Danish Institute for Human Rights (2013) 13 (emphasis added).



thorough when conducted through community-based HRIAs.<sup>23</sup> As a report on best practices concluded, “Participation is essential not only for the quality of the HRIA but also so that all stakeholders consider its results legitimate.”<sup>24</sup> Working with vulnerable groups like women and children is key to conducting a comprehensive assessment and to ensure that all perspectives are equally heard, as discrimination within communities can otherwise silence these voices.<sup>25</sup> Unfortunately, these groups are often overlooked.

At the same time, the UNGP likewise note certain benefits of due diligence that can be attained through company-led due diligence processes. For example, the Guiding Principles’ Interpretive Guide discourages the exclusive use of external actors to conduct due diligence, which could cut off an opportunity for the business to absorb human rights principles. Companies often hire a third-party consultant, provide a budget, and then limit that consultant’s participation in the process—one might call this company-sponsored rather than company-led. Third parties can often offer an expertise on a particular issue or country context and can be helpful when interviewing rights-holders who may be reluctant to speak frankly with company representatives. In addition, utilizing a third party can also be seen as more objective and may be more accepted by external stakeholders, provided that such experts avoid conflicts of interest and garner the trust of stakeholders. However, for companies to truly absorb the learnings from human rights due diligence, they cannot rely solely on third-party experts.

Community-based HRIAs put the human rights of local communities at the forefront of the impact assessment. Companies hoping to minimize adverse human rights impacts would be well-advised to follow a similar process rather than starting from the vantage point of company risks. This lesson appears to be increasingly recognized as research shows that a “large majority of executives now believe that business is an important player in respecting human rights, and that what their companies do—or fail to do—affects those rights.”<sup>26</sup> A recent *Economist* survey revealed that 83 percent of corporate respondents believe that human rights are a matter for businesses and not just governments, and 71 percent of respondents affirm that these responsibilities reach beyond adherence to local law.<sup>27</sup>

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<sup>23</sup> Although community-based HRIAs cannot substitute for company-led engagement unless done in a collaborative way, these assessments can inform a company’s due diligence process, and companies should actively participate in community-based HRIAs as requested to do so.

<sup>24</sup> Alejandro Gonzalez, *Evaluating the Human Rights Impact of Investment Projects: Background, Best Practices, and Opportunities*, Project on Organizing, Development, Education, and Research (PODER) (2014), 50, <http://projectpoder.org/wp-content/uploads/2015/01/PODER-HRIA-Best-Practices-Dec-2014.pdf>.

<sup>25</sup> For a comprehensive discussion of how and why children’s voices must be incorporated into HRIAs, see Tara M. Collins, “The Relationship Between Children’s Rights and Business,” *International Journal of Human Rights* no. 582 (2014), 18.

<sup>26</sup> *The Economist* Intelligence Unit, “The Road from Principles to Practice: Today’s Challenges for Business in Respecting Human Rights,” *The Economist*, March 16, 2015, 4, <http://www.economistinsights.com/business-strategy/analysis/road-principles-practice>.

<sup>27</sup> *Economist*, “Road from Principles to Practice,” 10.

The public sector can also fulfill UNGP obligations by promoting community-based HRIAs: the UN Working Group on Business and Human Rights (UNWG) has tasked governments with creating national action plans (NAPs) that spell out policies designed to prevent adverse human rights impacts in corporate activities.<sup>28</sup> The UNWG observes that states “need to clarify the ways in which they expect business enterprises to discharge their responsibilities under [the UNGP],”<sup>29</sup> which entails “developing practical guidance on specific steps of human rights due diligence processes,” for example, “on human rights impact assessments (HRIA), the definition and implementation of mitigation measures, or reporting.”<sup>30</sup> Thus, states have an explicit mandate to create corporate HRIA requirements. Though the UNWG acknowledges that no one-size-fits-all model will apply across all national contexts—and thereby avoids providing more-detailed analysis of what an HRIA must include—nevertheless emphasizes that “particular attention should be given to identifying and addressing the challenges faced by individuals and groups that may be at heightened risk of becoming vulnerable or marginalized, including by taking into account differential impacts based on gender.”<sup>31</sup>

Community-based HRIAs dovetail seamlessly with these instructions to focus on the needs of the marginalized and less powerful groups and individuals that business operations impact. For example, the Getting It Right methodology places a spotlight on the needs of the traditionally vulnerable and the communities most heavily impacted by corporate operations; thus, governments articulating due diligence requirements in their NAPs would be well-advised either to mandate community-based HRIAs where communities have an interest in conducting one, or, at the very least, to require thorough engagement processes with rights-holders and other stakeholders—a key feature of the Getting It Right tool. These governments could also support community-based HRIAs by creating funds for communities to tap in their quest to hold companies accountable for human rights impacts, as will be discussed further in this paper.

But companies should not be persuaded to incorporate community engagement processes because of legal obligations<sup>32</sup> alone. As Case Study 1 illustrates, the costs of failing to conduct an HRIA and to enlist robust community engagement reinforce the importance of taking local perspectives into account.

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<sup>28</sup> UN Working Group on Business and Human Rights (UNWG), *Guidance on National Action Plans on Business and Human Rights*, Version 1.0 (2014), ii, [http://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](http://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf).

<sup>29</sup> UNWG, *Guidance*, 3.

<sup>30</sup> UNWG, *Guidance*, 20.

<sup>31</sup> UNWG, *Guidance*, 3.

<sup>32</sup> A body of case law reinforces FPIC both at national and regional levels. See, for example, *Saramak v. Suriname* at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_172\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf).

## Case Study 1. Yanacocha Mine, Peru: Proceeding without consent

### Background

Yanacocha, a joint-venture operation consisting of six open mine pits, five cyanide leach pads, and facilities spanning 160 square kilometers, five mountains, and four watersheds, commenced operation in 1992. Tension between the community and company built over the coming years as the mine attracted a flood of job-seekers, and rising levels of crime, violence, prostitution, and alcoholism accompanied the population boom. Local farmers accused Yanacocha of engaging in coercive land acquisition tactics and soaking up the local water resources with its operations. In June 2000, conflict came to a head when a Yanacocha contractor's truck spilled 330 pounds of mercury, causing widespread mercury poisoning among villagers. The company's inadequate response exacerbated the situation. Hundreds of locals erected a blockade on the road connecting the mine to Lima. Despite its frayed relationship with the local population and lack of effective engagement—let alone consent—the joint venture continued to pursue further expansion of facilities. Four years later, the company pursued further exploration into the Quilish, an area of spiritual significance that the local community had been assured would be left untouched.

### Outcomes

This push into Quilish ignited a provincewide strike that saw more than 10,000 people gather in protest in the Cajamarca public square, which forced Yanacocha to back down and agree to not develop the project without community approval. Thus, the lack of community consent not only harmed the local population, but the mine operators. The World Resources Institute estimates that the production delays and failure to access the gold reserves cost Yanacocha \$1.69 billion in lost profits. Furthermore, the conflict set protest contagion into motion. After witnessing the success of protestors in Yanacocha, *campesinos* from other regions began demanding that mining companies throughout Peru listen to their demands.

Steven Herz, Antonia Vina, and Jonathan Sohn, *Development Without Conflict: The Business Case for Community Consent*, World Resources Institute (2007), 40–44, [http://www.wri.org/sites/default/files/pdf/development\\_without\\_conflict\\_fpic.pdf](http://www.wri.org/sites/default/files/pdf/development_without_conflict_fpic.pdf).

## HRIAS AND THE BUSINESS CASE

### The costs of not engaging communities

Companies often fail to recognize the immediate financial costs of poor human rights performance.<sup>33</sup> Yet meaningful community engagement can alert businesses to local human rights risks and insulate businesses from the expensive mistake of ignoring community concerns. Extractive industry companies routinely overlook the cost of conflict engagement.<sup>34</sup> Davis and Franks recognize that the difficulty in quantifying conflict-related costs often leads to under appreciation of their magnitude. Even if businesses do recognize the costs, “taking the necessary time to prevent and address such conflict, particularly the time needed to build sustainable relationships through engagement with local communities, is often in tension with short-term production targets or ambitious construction schedules.”<sup>35</sup> A project that goes through the planning phase without consultation with the very people whose lives it will affect is courting a serious risk of local conflict. Even the business-friendly US Overseas Private Investment Corporation (OPIC) urges its clients to aim to achieve “broad community support for the project.”<sup>36</sup>

The extractive industry is not alone in incurring such costs, as the recent experiences of Coca-Cola and Michelin make clear.<sup>37</sup> Companies face numerous types of costs when they have failed to engage with communities prior to starting operations or when they have not taken community concerns into consideration when designing or adapting projects. After conducting several interviews with individuals from within companies, Davis and Franks point out that such expenses include:

- Operational costs: project modification; security; material damage to site; lost productivity due to production delays; capital devaluation; likely higher insurance premiums
- Personnel costs: high percentage of staff time spent on conflict management; harder to recruit; low morale; costs of remediation and negotiation
- Legal costs: compensation to affected communities and individuals; fines; lawsuits

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<sup>33</sup> Saramak v. Suriname, 5.

<sup>34</sup> Rachel Davis and Daniel Franks, *Costs of Company-Community Conflict in the Extractive Sector*, Corporate Social Responsibility Report 66, Shift/Kennedy CSRI Initiative/University of Queensland (2014), 8, [http://www.hks.harvard.edu/m-rcbg/CSRI/research/Costs of Conflict\\_Davis\\_Franks.pdf](http://www.hks.harvard.edu/m-rcbg/CSRI/research/Costs%20of%20Conflict_Davis_Franks.pdf).

<sup>35</sup> Davis and Franks, *Costs of Company-Community Conflict*, 9.

<sup>36</sup> De Schutter, Ramasastry, Taylor, and Thompson, *Human Rights Due Diligence: The Role of States*, 28, } and the International Finance Corporation (IFC) Performance Standard 7 for Indigenous Peoples: IFC, “Overview of Performance Standards on Environmental and Social Sustainability” (2012), [http://www.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7\\_English\\_2012.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7_English_2012.pdf?MOD=AJPERES).

<sup>37</sup> See, for instance, examples of expensive community conflict in “Case Against Coca-Cola Kerala State: India,” The Rights to Water and Sanitation website, <http://www.righttowater.info/rights-in-practice/legal-approach-case-studies/case-against-coca-cola-kerala-state-india/>; and RFI, “Indian ‘Untouchables’ Threatened by Michelin Tyre Factory,” RFI English website, July 16, 2012, <http://www.english.rfi.fr/france/20120715-indian-untouchables-threatened-michelin-tyre-factory>.

- Reputational costs: falling stock prices; negative PR harms consumer-facing companies<sup>38</sup>

The authors further reaffirm these costs by presenting a host of concrete examples.<sup>39</sup>

Businesses should take particular note of the specter of expensive litigation for failure to comply with human rights obligations.<sup>40</sup> For example, Nestlé, Cargill, and ADM (formerly known as Archer Daniels Midland) face legal liability in the United States for their complacency in child labor violations in Cote d'Ivoire.<sup>41</sup> Litigation has also proved to be an expensive side effect of failure to consult with local communities, and “human rights due diligence might help companies in addressing ‘the risk of legal claims against them by showing they took every reasonable step to avoid involvement with an alleged human rights abuse.’”<sup>42</sup> Businesses should likewise consider the public censure and expense that can result from failure to engage with local communities. As Roling and Koenen detail:

Besides the legal obligations, companies are also faced with increasing risks of moral liability. A Globescan survey in 2005 found that eight out of ten people hold large companies at least partially responsible for human rights abuses. Scrutiny by media and human rights organizations is rising. Due to the new media, allegations of company misconduct can spread fast. For most global companies, brand image is one of the most important—sometimes even the most important—assets. Negative campaigns can therefore severely damage business. Independent of the outcome of charges, a company will have to spend significant resources on court procedures or image campaigns in order to restore [its] reputation.<sup>43</sup>

Companies pursuing strong human rights practices are motivated in large part by long-term brand and reputation considerations.<sup>44</sup> A reputation is hard-won and easily

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<sup>38</sup> Davis and Franks, *Costs of Company-Community Conflict*, 15–16.

<sup>39</sup> Davis and Franks, *Costs of Company-Community Conflict*, 19–21.

<sup>40</sup> Roling and Koenen, *Human Rights Impact Assessments: A Tool*, 5.

<sup>41</sup> Irit Tamar, “Child Laborers Bring Case Against Food Companies: ‘You’re Enabling Enslavement,’” Oxfam America website, September 26, 2014, <http://politicsofpoverty.oxfamamerica.org/2014/09/child-laborers-bring-case-food-companies-youre-enabling-enslavement/>.

<sup>42</sup> Surya Deva, “Treating Human Rights Lightly: A Critique of the Consensus Rhetoric and the Language Employed by the Guiding Principles,” 78-104, at 98-99, in *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Protect?* (Surya Deva and David Bilchitz, eds. 2013) (emphasis added). (quoting Guiding Principles 17(a) note 1).

<sup>43</sup> Roling and Koenen, *Human Rights Impact Assessments: A Tool*, 5. In the Roling and Koenen text, the GlobeScan sentence is cited to GlobeScan’s 2005 opinion survey, and noted in Lucy Amis, Peter Brew, and Caroline Ersmarker, *Human Rights: It Is Your Business: The Case for Corporate Engagement* (2005).

<sup>44</sup> *Economist*, “Road from Principles to Practice,” 12.

lost, making it critical that businesses protect their brand with responsible and meaningful community engagement. Additionally, investors evaluating a company must be able to foresee, mitigate, and manage risks and impacts, including those related to human rights.<sup>45</sup> By reaching out directly to the affected communities and other stakeholders, similar to the approach taken by communities in the Getting It Right tool, companies have the opportunity to do just that.

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<sup>45</sup> Gonzalez, *Evaluating the Human Rights Impact of Investment Projects*, 27.

## Case Study 2. Meridian Gold in Esquel, Argentina: Billions lost for failure to engage

### Background

In June 2002, Meridian Gold purchased land holdings in Esquel, Argentina, in the hopes of establishing an open pit gold mine.

### Stakeholders engaged

The company failed to communicate with the local community to any meaningful degree and routinely ignored local people's requests for information as to the potential health risks or economic benefits of the mine. Frustrated with a lack of responsiveness, a number of community members banded together to organize anti-mining demonstrations and rejected the proposed mine in a 2003 public referendum.

### Outcomes

The community mobilization forced Meridian to promise not to develop the mine until it obtained the consent of the community—which the company has never received. To this day, Meridian continues to be met with stiff resistance from Esquel residents, who successfully organized to pass a law banning open pit mining and use of cyanide in mining activities in 2003 (which was later upheld by the Argentinian Supreme Court in 2007). The potential mine has remained untouched following a three-year moratorium on mining that was issued in 2012. The mine, purchased for \$310 million and pre-developed with another \$40 million, has yet to yield any returns to Meridian. The World Resources Institute estimates Meridian's lost profits from failure to mine Esquel at \$1.81 billion. Finally, the company recognized in its annual report that troubles in Esquel depressed its stock value, illustrating the devastating ripple effects that conflict with the population in one community can have across the entire corporate body.

### Follow-up

There was no follow-up, as vociferous community resistance ensured that the project never got underway.

This case study is a summary drawn from Steven Herz, Antonia Vina, and Jonathan Sohn, *Development Without Conflict: The Business Case for Community Consent*, World Resources Institute (2007), 27–32. [http://www.wri.org/sites/default/files/pdf/development\\_without\\_conflict\\_fpic.pdf](http://www.wri.org/sites/default/files/pdf/development_without_conflict_fpic.pdf). The information in the "Outcomes" section about Esquel residents resisting Meridian, the court decision, and the three-year moratorium is from Earthworks and No Dirty Gold, "Esquel," No Dirty Gold campaign website, January 20, 2012, <http://nodirtygold.earthworksaction.org/voices/esquel>.

## The benefits of engaging communities

While it should go without saying that respecting human rights is both a moral and legal obligation for the private sector, a positive business case can be made as well. Consumers and employees alike seek principled companies, evidenced by the growing market for ethical products and the ability of business to attract and retain highly qualified candidates by advertising their responsible human rights practices.<sup>46</sup> In fact, business and human rights expert Andrew Savitz explains the ever-increasing emphasis on stakeholder approval as “perhaps the single most important element in what we have called the Age of Accountability”:

Sustainability ... means embracing and partnering with your stakeholders rather than assuming they are adversaries to be defeated, skeptics to be lectured to, or, at best, temporary allies to be held at arm’s length. Only by making stakeholder engagement a systematic and permanent element of your management style can you hope to shepherd all the resources you and your company depend on—environmental, social, and economic—to achieve lasting success in today’s interdependent world.<sup>47</sup>

The business advisory organization known as Business for Social Responsibility (BSR) has likewise recognized the importance of satisfied stakeholders and has outlined four company benefits of conducting strong HRIAs, noting that they:

- Meet expectations and address pressure from key stakeholders;
- Manage reputation, operational, legal, and financial risks;
- Engage, retain, and motivate staff; and
- Demonstrate leadership and management standards.<sup>48</sup>

Businesses have much to gain from satisfying stakeholders, including those impacted by company operations.

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<sup>46</sup> Roling and Koenen, *Human Rights Impact Assessments: A Tool*, 5–6.

<sup>47</sup> Andrew Savitz, *The Triple Bottom Line: How Today’s Best-Run Companies Are Achieving Economic, Social, and Environmental Success—And How You Can Too* (2006), 79–80.

<sup>48</sup> Business for Social Responsibility (BSR), *Conducting an Effective Human Rights Impact Assessment; Guidelines, Steps, and Examples* (2013), 6, [http://www.bsr.org/reports/BSR\\_Human\\_Rights\\_Impact\\_Assessments.pdf](http://www.bsr.org/reports/BSR_Human_Rights_Impact_Assessments.pdf).



## THE ADDED VALUE OF COMMUNITY-BASED HRIAS

### An array of benefits

There are several types of HRIAs, and no uniform HRIA model fits all situations. Rather, HRIAs must be tailored to the particular context.<sup>49</sup> Although various tools are at the disposal of companies for assessing risks related to their investments, very few are designed specifically to help communities affected by investment projects identify the impacts of private industries on human rights.<sup>50</sup> Too often, company-led HRIAs start with due diligence concerns, and focus on risk mitigation for the companies rather than focusing on the risk to communities. While such a focus is a valid business motivation, this top-down approach is unlikely to be satisfying from the standpoint of people affected by company activities, and is likely to generate proposals and incentives for action that are not necessarily geared toward protecting and respecting human rights. The focus on due diligence will naturally emphasize company risks over human rights risks for communities.<sup>51</sup> Instead, a bottom-up approach that “builds counter-veiling power” and more “empowered participation” stands to cultivate far better human rights outcomes for local communities faced with new corporate neighbors.<sup>52</sup> Nevertheless, company-led HRIAs are a significant step forward and provide an opportunity for a different kind of conversation between companies and communities.<sup>53</sup>

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<sup>49</sup> Harrison, *Measuring Human Rights*, 5; James Harrison and Mary-Ann Stephenson, *Human Rights Impact Assessment: Review of Practice and Guidance for Future Assessments*, Scottish Human Rights Commission (2010), 5, <http://www.scottishhumanrights.com/archive/HRIAresearchreport>.

<sup>50</sup> Oxfam America, *A State of Fear*, 10.

<sup>51</sup> This situation is the case—even if companies have the best of intentions—by virtue of the fact that companies are approaching due diligence from where they sit and not from the community’s viewpoint.

<sup>52</sup> Chris Jochnick, “Challenging Corporate Power Through Human Rights,” in *Business and Human Rights: Beyond the End of the Beginning*, ed. Cesar Rodriguez-Garavito (forthcoming), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2501084](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2501084).

<sup>53</sup> Watson, Tamir, and Kemp, “Human Rights Impact Assessment in Practice.”

In addition to their ability to empower local communities, community-based HRIAs are more likely to identify serious human rights risks that companies overlook.<sup>54</sup> Such oversights are not necessarily the result of malfeasance, but simply a failure to consider the myriad ways in which local communities interact with their environment or the access to information that a community may have that a company does not. Because a company cannot possibly know every last source of food, water, and livelihood that local populations use without high levels of community engagement, the risk of understating its operational impacts without thorough community participation in impact assessments is high.

#### Other efforts to engage communities in HRIAs: Sectorwide impact assessments (SWIAs)

Rather than looking at specific projects, SWIAs analyze the actual and potential human rights impact of an entire industry. Such analysis paints a broad picture of how a business sector affects populations both in the immediate vicinity of operations and in the cumulative impacts on those who are farther away but nevertheless affected. Communities capitalize on SWIA findings by using them to engage in project-level discussions.

For more information, see the Institute for Human Rights and Business website, <http://www.ihrb.org/our-work/swia.html>.

Furthermore, it is clear that companies cannot be left to police themselves: “Self-regulation ... ha[s] been largely ineffective in shaping corporate behavior as [businesses] lack independent monitoring and enforcement mechanisms and are thus subject to critiques of greenwashing.”<sup>55</sup> Rather, empowered rights-holders are able to serve as a counterweight by participating in safeguarding their rights, monitoring, and ensuring that grievance mechanisms are both appropriate and utilized.<sup>56</sup> In fact, even “international human rights tribunals have recognised that impact assessments conducted by economically interested parties often are not trustworthy indicators of likely human rights impacts. Attention to who is to conduct human rights impact assessments, under what conditions, and on the basis of what standards is an area of critical concern in the human rights context. It remains markedly underspecified in the Ruggie [Protect, Respect and Remedy] framework.”<sup>57</sup>

<sup>54</sup> Watson, Tamir, and Kemp, “Human Rights Impact Assessment in Practice,” 126.

<sup>55</sup> Galit Sarfaty, “Shining Light on Global Supply Chains,” *Harvard International Law Journal* (forthcoming), 7, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2512417](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2512417).

<sup>56</sup> Jochnick, “Challenging Corporate Power Through Human Rights.”

<sup>57</sup> Tara J. Melish and Errol Meidinger, “Protect, Respect, Remedy and Participate: ‘New Governance’ Lessons for the Ruggie Framework,” in *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation*, ed. Radu Mares (2012), 335

Community-based HRIAs pick up on many of these otherwise-ignored human rights concerns. The Getting It Right methodology “is fundamentally different from the other models in that it is a tool by which local civil society organizations can assess the specific human rights impacts of foreign investment projects on local communities. It is not primarily intended to be used (or commissioned) by businesses themselves.”<sup>58</sup> Nevertheless, its methodology and approach can be instructive for businesses and investors, and the guidance that follows in this paper is drawn from the tool’s methodology and the studies conducted using it.<sup>59</sup>

#### Other efforts to engage communities in HRIAs: Cultural impact assessments

Cultural impact assessments can play an important role in a larger HRIA initiative. These evaluations identify cultural values associated with a particular area or resource that stand to be impacted by a proposed activity. Typical impacts include changes to areas with cultural heritage, changes to landscapes with spiritual significance, new migration patterns, and altered power dynamics and relationship networks. Needless to say, community input is vital to a legitimate cultural impact assessment, as companies will not be as well-positioned to understand the nuances of these intangible impacts.

For more information, see the Mackenzie Valley Environmental Impact Review Board website, [http://www.reviewboard.ca/reference\\_material/cultural\\_impact\\_assessment.php](http://www.reviewboard.ca/reference_material/cultural_impact_assessment.php).

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<sup>58</sup> Harrison, *Measuring Human Rights*, 11.

<sup>59</sup> As an example of the tool’s methodology being used beyond community-based HRIAs, the Bank on Human Rights, a grassroots coalition of CSOs that pushes development institutions to respect human rights, included aspects of the Getting It Right Tool in recommendations to the World Bank Safeguards Policy group.

### Case Study 3. Mining in the Philippines: Uncovering HR impacts that the company had overlooked with a community-based HRIA

#### Background and Impacts assessed

This Filipino case study highlights the impacts of a Canadian mining project—TVI—on the rights of indigenous and local communities living on the island of Mindanao in the southern Philippines, in particular the Subanon people. The HRIA was conducted by a coalition of local and international organizations representing legal experts, indigenous communities, church-based groups, and community groups. The HRIA process focused on the right to self-determination, to security, to an adequate standard of living, to adequate housing, to education, and to favorable work conditions. The report noted that the research for the HRIA took 10 months.

#### Stakeholders engaged

The HRIA research team conducted eight focus groups and interviewed 97 individuals from the community, including indigenous leaders, women, elders, fisherfolk, farmers, and small-scale miners. The HRIA team also met with 35 key informants including TVI employees for in-depth interviews. TVI Resource Development, a subsidiary of TVI Pacific and the operator of the mine, participated in several interviews and facilitated a site visit for the assessment team during the investigation process. It shared several documents, including the environmental impact assessment. The researchers also met with representatives of the key Philippine government agencies involved with the mine, including the National Commission on Indigenous Peoples, the Mines and Geosciences Bureau, and the Department of Environment and Natural Resources. The team also met with officials from the Canadian Embassy.

#### Outcomes

The central finding of the HRIA report was that the investment has had a negative impact on the ability of the Subanon people to enjoy the human rights of self-determination, human security, an adequate standard of living, adequate housing, work, and education. According to the HRIA report, the investment project has divided the indigenous community and affected the Subanon people's right to self-determination by depriving them of their right to maintain their traditions and cultural practices. The right to adequate housing has also been affected, as the community endured forcible evictions. Many families were displaced, and several claimed that the relocation process was inadequate and not properly compensated. The investment project also affected the right to an adequate livelihood for local rice farmers and In terms of outcomes, the HRIA report was used in filing the complaint for the Subanon people to the United Nations Committee on Elimination of Racial Discrimination (UNCERD) and provided useful recommendations to the government of the Philippines and the company.

The HRIA process provided a great opportunity to build local capacity as several

communities received trainings on human rights, indigenous rights, and legal trainings that instructed community leaders on how to document human rights violations and prepare affidavits.

Rights & Democracy, *Human Rights Impact Assessments for Foreign Investment Projects: Learning from Community Experiences in the Philippines, Tibet, the Democratic Republic of Congo, Argentina, and Peru* (2007), [http://publications.gc.ca/collections/collection\\_2007/dd-rd/E84-21-2007E.pdf](http://publications.gc.ca/collections/collection_2007/dd-rd/E84-21-2007E.pdf).

### Picking up hidden human rights concerns through increased participation

The community-based approach adds value by ensuring robust community participation. A distinct feature of the Getting It Right tool is its ability to engage all willing stakeholders at a profound level. To begin, the tool starts with educating communities about their rights and translating the impacts that the community endures as a result of corporate operations into the language of human rights. In a recent HRIA workshop, one participant shared an anecdote relating to an HRIA conducted on a mining project in the Philippines (Case Study 3) using the Getting It Right methodology, where a communication gap arose in a “know your rights” training session. Using creative and culturally appropriate techniques, the partner was able to translate legal concepts into the tangible changes the community underwent as a result of the company’s operations, thus making it relatable for the community.<sup>60</sup> In addition, the Getting It Right tool’s adaptable methodology enables it to be implemented across a range of contexts; because community empowerment is a key aim of community-based HRIAs, the methodology used needs to be flexible enough to meet the needs of the particular community and particular project.<sup>61</sup>

### Toward more robust engagement

Community-based HRIAs avoid a major pitfall of company-led HRIAs: tepid community participation stemming from lack of trust. Legitimate concerns in conducting HRIAs include the limitations in drawing out community concerns because community members may be reluctant to speak frankly when approached by companies or their hired consultants.<sup>62</sup> This renders “consultation” unproductive:

A recurring criticism of impact assessments is that they seem merely to go through the motions of stakeholder consultation. This may be because a

<sup>60</sup> Columbia Center on Sustainable Investment, Sciences Po Law School Clinic, and Columbia Law School Human Rights Institute, “Human Rights Impact Assessments of Large-Scale Foreign Investments: A Collaborative Reflection,” Roundtable Outcome Document (2014), 5.

<sup>61</sup> Columbia Center, Sciences Po, and Columbia Law School, “Human Rights Impact Assessments of Large-Scale Foreign Investments,” 6.

<sup>62</sup> Melish and Meidinger, “Protect, Respect, Remedy and Participate,” 33.

regulatory body does not scrutinize the nature of consultations held by a company in order to ensure proper community engagement. In other instances, companies may simply invite a limited group of community representatives to a meeting, rather than seeking more open engagement.<sup>63</sup>

Because the Getting It Right tool is specifically designed for use by affected communities and their support organizations, it reduces the trust barriers that often exist among vulnerable communities. Finally, “the aid of a support organization is not required,”<sup>64</sup> as the tool is freely available to any community in a digital format.<sup>65</sup>

### **Participation strengthens the community with its capacity-building potential and by generating a sense of ownership**

Community-based HRIAs also facilitate both the substance and process of community engagement by equipping local community members with the skills to address potentially long-term business operations in their communities.<sup>66</sup> A community-based HRIA is therefore both a capacity-building exercise and a social process that empowers communities to claim and assert their rights and engage with companies and governments in meaningful ways. Ultimately, ownership must rest in large part with affected communities to assess and document the potential human rights impacts investment projects may generate, thereby putting communities on a more equal footing with the public and private actors involved.<sup>67</sup>

In promoting the Getting It Right tool, Oxfam seeks to increase the ability of communities and their support organizations to articulate their rights and engage from a place of knowledge and power in decision-making with companies, investors, and governments. Independent community-based human rights impact assessments are essential to the execution of the Guiding Principles and to the sustainability of major investments.<sup>68</sup> At the same time, however, businesses can adopt aspects of the approach, such as collaborating with communities and their local organizations in a way that can allow for greater community participation, as in the Nestlé-Fair Labor Association assessment of Nestlé’s cocoa supply chain.

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<sup>63</sup> De Schutter, Ramasastry, Taylor, and Thompson, *Human Rights Due Diligence: The Role of States*, 27.

<sup>64</sup> Watson, Tamir, and Kemp, “Human Rights Impact Assessment in Practice,” 119. Although the tool is designed for anyone to use, thus far Oxfam is unaware of any community conducting an HRIA without the aid of a support organization.

<sup>65</sup> Although some affected communities may not have access to the digital tool, civil society organizations and NGOs can provide support to these communities in carrying out the assessment. The tool is web-based but also available on a thumb drive.

<sup>66</sup> Columbia Center, Sciences Po, and Columbia Law School, “Human Rights Impact Assessments of Large-Scale Foreign Investments,” 9.

<sup>67</sup> Oxfam, *COBHRA: Key Messages*, 2–3 (emphasis in original).

<sup>68</sup> Oxfam, *COBHRA: Key Messages*, 3 (emphasis in original).

## Case Study 4. Nestlé's cocoa supply chain: Company growth through collaboration

### Background

In November 2011, the Fair Labor Association (FLA) commissioned a team of 20 local and international experts to conduct an assessment of Nestlé's cocoa supply chain in the Ivory Coast. The assessment team included representatives from the Centre de Recherche et d'Action pour la Paix (or CERAP, the Center for Peace Research and Action), Abidjan, Ivory Coast; Afrique Secours et Assistance; Human Resources Without Borders; the Sustainable Livelihoods Foundation, and the FLA. The HRIA took place in five phases from November 2011 to May 2012.

### Impacts assessed

The goals of the assessment were to map stakeholders in Nestlé's cocoa supply chain, map Nestlé's cocoa supply chain in the Ivory Coast, and assess the labor risks in Nestlé's cocoa supply chain with a particular focus on child labor. FLA's assessment builds on existing research and focuses not on counting the number of children working in the industry, but rather on evaluating the root causes and means available to build a robust monitoring and remediation system.

### Stakeholders engaged

The assessment team consulted with a number of government institutions, civil society organizations and local associations in the Ivory Coast. The team visited seven Nestlé suppliers representing 79 percent of the volume of beans or cocoa products purchased by Nestlé from the Ivory Coast in 2011. The team conducted individual and group interviews; participated in on-site observations of processing facilities, buying centers, cooperatives, nurseries, and farms; undertook a documentation review of The Nestlé Cocoa Plan and review of documents at the suppliers, cooperative, and farm level; and made observations in the villages and camps. In the course of three field visits, the assessment team visited 87 farms and interviewed a representative sample of 466 men, women, and children on the farms. Overall, more than 500 interviews were conducted during the assessment.

### Outcomes

The report identifies gaps in Nestlé's internal management systems and their effect on labor risks in the supply chain.

### Follow-up to HRIA

The HRIA was thorough in developing recommendations to the government of the Ivory Coast on how to address human rights violations and to Nestlé and other industry members on how to mitigate risks to workers throughout the global supply chain. The report also identified further areas for research such as labor standards,

risk assessments, the supply chain, and, importantly, the role communities can play in Nestlé’s internal monitoring program. And Nestlé in turn published its action plan, which responded to FLA’s recommendations.

Fair Labor Association (FLA), *Sustainable Management of Nestlé’s Cocoa Supply Chain in the Ivory Coast—Focus on Labor Standards*,  
[http://www.fairlabor.org/sites/default/files/documents/reports/cocoa-report-final\\_0.pdf](http://www.fairlabor.org/sites/default/files/documents/reports/cocoa-report-final_0.pdf).

## IMAGINING A HYBRID APPROACH

### Filling a void with dual-lead HRIAs

Despite their many benefits, community-based HRIAs will not fully realize human rights goals if their findings are not embraced by the companies whose operations impact local communities.<sup>69</sup> Without some level of corporate buy-in, even the most thorough community-based HRIAs will underachieve in improving human rights outcomes. Such is the case with the International Federation of Human Rights’ (FIDH’s) community-based HRIA in the Brazilian mining industry: while the HRIA demonstrates exemplary community engagement, the lack of continued corporate participation dampened its eventual benefits and ability to mitigate the mine’s destructive human rights impact. This outcome stands in contrast to Case Study 4 above, in which the company-led HRIA enabled Nestlé to absorb HRIA lessons that could be redeployed in other supply chain sites.

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<sup>69</sup> Although governments can also modify investment projects through concessions and regulations, governments are often overly influenced by business investments or weak in their ability to do so.



## Case Study 5. Vale mining in Brazil: Thorough community-based HRIA, but company fails to internalize lessons

### Background and impacts assessed

International Federation for Human Rights (FIDH), Justiça Global, and Justiça nos Trilhos used the Getting It Right tool to evaluate the impacts of mining and steel activities connected with Vale's operations in two communities in Açailândia, Brazil. In particular, the assessment analyzed industry impacts on the rights to health, life, security, adequate housing, access of information, effective remedy, and a healthy environment. The investigation process began in July 2010 and concluded in November 2010.

### Stakeholders engaged

The NGOs executed their research diligently, conducting qualitative interviews and questionnaires in virtually every local household affected by the mining operations in Açailândia. This technique ensures that less-prominent families in the community have the opportunity to voice their opinions, and the HRIA provides a strong example of an assessment that engages with often-ignored populations. FIDH, Justiça Global, and Justiça nos Trilhos also worked with women as "focal points" in each community to improve outreach to female respondents. The organization thus achieved both a breadth and depth of actors whose views on the human rights impacts of steel and mining operations would be incorporated into the assessment. The report maps an extensive list of parties involved in Açailândian mining, detailing each actor's role and powers, and thus paints a comprehensive picture of a complicated and vast network of stakeholders.

### Outcomes

The assessment highlighted how iron plant emissions caused serious health problems, how the project aggravated poverty and insecurity, and how difficult it is to access adequate reparations. The assessment also included recommendations to local civil society groups, steel companies, and other business in the iron supply chain, and to public administration and judicial institutions at the state and federal levels.

### Follow-up to HRIA

The three NGOs sought follow-up conversations with Vale, Maranhão State Steel Industry Association (SIFEMA), and the other five steel companies from April 2011 through September 2011 to seek additional information and get clarification on various points, including measures taken to address the social and environmental impacts on the two communities. Vale responded in May 2011, and the company's clarifications were subsequently incorporated into the report. The report noted that despite meeting with representatives of SIFEMA in September 2011, it has proven

extremely difficult to develop a sustained dialogue with the association and the relevant big iron companies. Upon publication of the report, FIDH, Justiça Global, and Justiça nos Trilhos planned to meet with all stakeholders to discuss the findings and recommendations of the report with the hope that the report's recommendations would serve as a basis for future discussions with all interested parties.

FIDH, *Brazil: How Much Are Human Rights Worth in the Brazilian Mining and Steel Industry?* (2012), [http://www.fidh.org/IMG/pdf/report\\_brazil\\_2012\\_english.pdf](http://www.fidh.org/IMG/pdf/report_brazil_2012_english.pdf).

Community-based HRIAs offer many benefits as a result of their intense community involvement, and businesses following best practices must also strive to incorporate meaningful community participation. In order to truly identify impacts on human rights, meaningful stakeholder engagement is key. But what does meaningful engagement actually entail? For starters, community participation should be broad (diversity of people), comprehensive (addressing a range of possible impacts), and deep (such that it engenders a thorough understanding of the issues) enough that the company understands how severe its operational impacts are or may be experienced by all potentially affected individuals or groups, and can tailor its prevention, mitigation, and remediation approaches accordingly.<sup>70</sup> Thorough community participation takes time as it involves identifying the various groups within a community, including the most vulnerable and often-ignored populations, and building capacity within the community to understand what the consultation actually entails while being culturally acceptable and in the native language. This process will necessarily demand more than one-way communication; the company must be willing to engage in an active dialogue with community members and respond to their concerns.

### Potential hybrid frameworks: processes and benefits

To capture the benefits offered by both forms of HRIA, one possibility is for the drafting of an agreement to conduct a community-based HRIA process that runs in parallel with a company-led HRIA, with the findings from each informing the other's outcomes. Another possibility requires even further collaboration, in which parties conduct an HRIA together that equitably involves all stakeholders in the research process and recognizes the unique strengths that each brings. The HRIA could begin with a research topic of importance to the community and have the aim of combining community knowledge with company action in order to achieve social change.<sup>71</sup> This proposal is not to say that each actor will have identical responsibilities in a hybrid approach—business maintains the primary responsibility to protect, respect, and

<sup>70</sup> Nordic Trust Fund/World Bank and Shift, "Human Rights Due Diligence in Development," 5.

<sup>71</sup> Oxfam, *COBHRA: Key Messages*, 3.

remedy human rights violations—but rather, the parties should collaborate to increase the likelihood that these rights are respected.

Either of these hybrid approaches, both of which take advantage of community- and company-led HRIAs, may be able to bring together the benefits of both approaches. While the exact parameters of a hybrid approach that involves joint ownership over the process have yet to be fleshed out, co-ownership over impact assessments—in which community members have a prominent voice in highlighting their concerns, while active company participation enables them to assimilate HRIA knowledge into the organization’s DNA—could enable communities and companies to realize human rights goals in the short-term (e.g., avoiding adverse human rights impacts in this particular project) and the long-term (e.g., improving company interaction with local communities). In addition, ensuring that companies are co-leading the HRIA increases the likelihood that they will address the findings that come out of the assessment. That makes them more beneficial to communities than purely community-based HRIAs, whose findings are often ignored or denied by the company. A hybrid approach likewise benefits companies’ bottom lines, as it diminishes the likelihood of costly community conflict. While this hybrid approach could pave the way for a new form of due diligence and community engagement, Oxfam recognizes that community-based HRIAs will always be necessary to counter company projects where companies simply refuse to engage communities in a proper process. And no doubt, a process co-owned by communities and companies could be difficult to achieve, as many communities are extremely reluctant to work directly with companies and vice versa.

## Case Study 6. Marlin Mine, Guatemala: Nearing a hybrid approach

### Background

Four years after Goldcorp opened the conflict-ridden Marlin Mine in Guatemala, a group of shareholders pressured the company to conduct a human rights assessment. The mining project had been subject to significant contestation since it commenced operation in 2004 as adjacent communities had mobilized in resistance to the project. Goldcorp hired external consultants to conduct the impact assessment; these consultants borrowed an HRIA blueprint from the Danish Institute for Human Rights, which was modified as appropriate. The assessment was coordinated by a multistakeholder steering committee composed of a shareholder group representative, a Guatemalan representative, and a Goldcorp representative who jointly oversaw the HRIA's implementation. To increase transparency, the steering committee set up a website that posted meeting information, press releases, procedural information, and follow-up activities after the report. The assessment commenced in October 2008 and consisted of five phases implemented over an 18-month period.

### Impacts assessed and stakeholders engaged

Investigators sought input from a broad range of stakeholders (e.g., land users, women, local authorities, contractors, mine workers, youth, local businesses, professionals, organizations, and the government) on a broad range of issues (e.g., security, land and water pollution, lack of economic remuneration, workers' rights, health complications, lack of consultation and information dissemination, and many more). Between November 2008 and June 2009, the assessors conducted 189 individual interviews, nine group interviews with 84 participants, eight informal discussions, and 10 focus groups with 95 participants. In parallel, the assessors conducted a corporate policy and management systems review examining policies that address human rights (explicitly or by intent). The priority areas identified by stakeholders included consultation, environment, land acquisition, labor, economic and social investment, security, and access to remedy.

Although initially supportive of an independent assessment of the Marlin mine, civil society groups soon grew critical of the process through which the assessment was to be implemented. The composition of the steering committee, which included representation by the company but not the communities, represented one central point of contestation. The second issue of criticism focused on the goal of the assessment, particularly in relation to the role of free, prior, and informed consent principles and the question of whether the assessment should focus on Goldcorp suspending its operation of the Marlin mine. As a result of these differences, many local and international civil society groups did not support the assessment.

## Outcomes

The Marlin mine HRIA highlights some of the challenges of implementing a hybrid HRIA, particularly in areas of strong anti-mining resistance. Despite being comprehensive in its design, the HRIA fell short in several aspects. In terms of timing, the study faced the disadvantage of not being conducted for several years after operations got underway, which had led to years of clashes and distrust between the company and the local population.

The lack of civil society and community support reduced the ability of the investigators to fulfill their mandate. Due to this shift, the HRIA's recommendations reflect the judgments of the assessment team rather than those of the affected communities. This outcome underscores the importance of reaching out to all actors who may be impacted by company operations, so as to prevent any from feeling disenfranchised. Nevertheless, negotiated solutions in which all stakeholders are satisfied can be difficult to achieve, which poses challenges for HRIAs seeking a hybrid approach.

## Follow-up to HRIA

The HRIA spelled out concrete short- and long-term recommendations to improve the mine's human rights impact across a spectrum of areas. While follow-up to the report proceeded for about two years, it has since ground to a halt. This stoppage may be in large part because shareholders' concerns were temporarily placated, meaning both investors and the company shifted attention to new issues.

- Developing a formal, comprehensive human rights policy for Goldcorp;
- Undertaking a follow-up assessment on a periodic basis;
- Addressing information gaps;
- Undertaking human rights assessments for new projects and acquisitions throughout Goldcorp's global operations;
- Expanding human rights and cultural trainings to all Marlin mine employees; and
- Reviewing responsibilities and incentives for human rights at the mine.

On Common Ground Consultants Inc., "Executive Summary," in Human Rights Assessment of Goldcorp's Marlin Mine (May 2010), [http://www.hria-guatemala.com/en/docs/Human%20Rights/OCG\\_HRA\\_exec\\_summary.pdf](http://www.hria-guatemala.com/en/docs/Human%20Rights/OCG_HRA_exec_summary.pdf); see also Megan Quek and Matthew Daly, "Goldcorp: The Human Rights Assessment at the Marlin Mine in Guatemala," UN Global Compact website, [https://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/Business\\_Practices/Goldcorp.pdf](https://www.unglobalcompact.org/docs/issues_doc/human_rights/Business_Practices/Goldcorp.pdf).

As it relates to some of the negative consequences of company-led HRIAs, having community participants either conduct their own parallel HRIA or co-own the process could ensure greater buy-in from the community in terms of findings and outcomes. It could also increase the likelihood of key community stakeholders participating in the process and thus identifying the true human rights impacts prioritized by those members. Case Study 6 highlights a process that sought to incorporate members of the community in its implementation. Although many of the benefits of a hybrid approach surface, some of the challenges—agreement on the findings, difficulty in negotiating a solution that satisfies all stakeholders, and attempting to conduct HRIAs too late in the project cycle—also come to light. Although a hybrid approach could create a more collaborative process at the outset of a project between communities and companies, such a methodology has not been tested and raises questions of funding, governance, and transparency, and whether communities would still remain on equal footing with companies. For example, in adhering to free, prior, and informed consent, would communities, in fact, be able to stop or prevent projects from moving forward? Thus, while a hybrid HRIA currently exists as a potential model that could allow stakeholders to overcome the shortcomings found in purely community- or company-led HRIAs, the precise steps to be taken have yet to be formulated. Despite these open questions, it is clear a hybrid approach would need to incorporate the Getting It Right tool's objective of reaching past mere impact analysis and empowering communities by providing human rights knowledge and training to community members. Finally, even if a hybrid approach is taken up by companies, there will always be projects where companies refuse to engage communities, acknowledge their impacts, or properly address them. In such instances, the Getting It Right tool will continue to serve communities in their quest for human rights realization.

## Pros and cons of HRIA approaches

	Company-led HRIAs	Hybrid approach HRIAs	Community-based HRIAs
Pros	<ul style="list-style-type: none"> <li>• The company internalizes HRIA skills, increasing the likelihood that these findings will carry to other projects.</li> <li>• The HRIA alerts a company's business partners and suppliers to these issues, paving the way for more future human rights-related conversations.</li> <li>• The HRIA is likely better-resourced.</li> <li>• The recommendations are more likely to be adopted.</li> <li>• The HRIA is likely to be conducted more quickly than other models.</li> </ul>	<ul style="list-style-type: none"> <li>• The HRIA accounts for the human rights concerns of the community.</li> <li>• Because the company feeds into the process, recommendations are more likely to be adopted.</li> <li>• The approach builds trust between the community and the company.</li> <li>• This type of HRIA legitimizes both parties.</li> <li>• The hybrid HRIA leads to win-win solutions in which both parties are satisfied by outcomes.</li> <li>• The approach diminishes the likelihood of violent conflict.</li> </ul>	<ul style="list-style-type: none"> <li>• Because the community voice is central to the HRIA, it is more likely to capture human rights concerns that companies overlook.</li> <li>• The HRIA empowers community members who participate in the process by translating needs and impacts into human rights language.</li> </ul>
Cons	<ul style="list-style-type: none"> <li>• The company may fail to engage the local population. This lack of information, decision-making power, and capacity often saps company-led HRIAs of legitimacy and ability to mitigate human rights impacts. Furthermore, if too few community members are consulted, the business will fail to understand the full impact of its operations.</li> <li>• Those companies that do engage the local population often do so inadequately, speaking to too few people, ignoring feedback, or overlooking marginalized groups—all of which can cause division in the community.</li> <li>• Companies are incentivized by profit, meaning there will be a disproportionate focus on financial risks.</li> <li>• The HRIA process is often under severe time constraints resulting in little capacity-building for the community to engage properly.</li> </ul>	<ul style="list-style-type: none"> <li>• The hybrid approach requires a longer time to conduct because it seeks more stakeholder voices.</li> <li>• As a corollary to the longer time required, a hybrid HRIA is likely to be more expensive than other forms of HRIAs.</li> <li>• Given their divergent motivations, negotiations between the company and the community can be challenging.</li> </ul>	<ul style="list-style-type: none"> <li>• It is less likely that a company will adopt the recommendations of a community-based HRIA.</li> <li>• Companies will not learn from the HRIA process, diminishing the likelihood that they will carry these lessons to other project sites.</li> <li>• Community-based HRIAs are difficult to finance.</li> <li>• These types of HRIAs can also lead to divisiveness if all groups within a community are not involved in the process.</li> <li>• The long process often means results come too late to mitigate situations.</li> </ul>

### The upshot of financial constraints

As with so much else in the development field, academic debates over best practices must eventually run up against the realities of resource constraints. HRIAs are expensive, and community-based HRIAs are often championed by cash-strapped NGOs. Their high cost prevents NGOs from funding all communities that are willing and able to conduct HRIAs. And yet, community-based HRIAs, are one of the few avenues available to communities to document and assert their rights within investment projects. At the same time, businesses cannot be relied upon to fund truly independent company-led HRIAs, as the findings are prone to skew in favor of the commissioning company or would be perceived as such. A parallel process of a community-led and a company-led HRIA or a hybrid approach is perhaps the most expensive HRIA model of all, as it seeks a large pool of stakeholder input. How, then, could such an approach be funded?

Creating a neutral fund subsidized by third parties—such as philanthropies, business associations, governments, or other donors—can help practitioners avert these issues. If those with no direct stake in the outcome bankroll an HRIA, its findings are more likely to be viewed as legitimate. An independent “business and human rights” fund could prove an invaluable means for carrying out the costly but critically important community and hybrid HRIAs.<sup>72</sup> Until that time, however, companies are encouraged to seek out NGOs or independent donors who can fund parallel community-based HRIAs or otherwise ensure that meaningful community participation is a major component of their company-led HRIAs.

## CONCLUSION

HRIAs do not have to be a zero-sum game in which the benefits that flow to one stakeholder must detract from another. Incorporating robust community voice into HRIAs will yield positive human rights outcomes and can also improve a company’s bottom line. Yet, as many of the case studies demonstrate, corporate resistance to real community engagement persists. Few companies truly give communities the prerogative to steer the human rights discourse related to the project. Even businesses that give information, consult with the community, and ensure that historically invisible members are included need to focus more on collaboration and empowering the community. For example, Shift, an organization promoting the implementation of the UNGP, notes that companies disproportionately focus on the “pitch” level of engagement, characterized by the one-way communication of

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<sup>72</sup> Chris Jochnick, “How Can Campaigners Tap Corporate Largesse Without Undermining Their Credibility? Unlocking Millions for Advocacy,” [oxfamblogs.org](http://oxfamblogs.org), December 12, 2013, <http://oxfamblogs.org/fp2p/can-corporate-campaigners-tap-corporate-largesse-unlocking-millions-for-advocates/>.



information selected, presented, and controlled by the company. Affected stakeholders may feel that they are being sold on the purported benefits of a project.<sup>73</sup>

Fortunately, these gaps are not found across all corporate community engagement models. Select investment projects empower individuals in specific ways, such as through skills training or providing job opportunities. There is also the less quantifiable, albeit critical, capacity-building factor that emerges from heightened community engagement. These instances of mobilization strengthen the community. But despite these positive examples, major gaps remain when it comes to real collaboration and empowerment. Thus, although companies have been using HRIAs as a means of engagement, the methodologies often fall short of realizing the collaboration, community empowerment, and respect for human rights that communities seek. Though implementation challenges remain, fusing community- and company-led HRIA methodologies or conducting parallel processes could enable companies to minimize human rights infringements perceived by local communities, while internalizing the lessons into their organization for use in future operations. Still several issues remain in ensuring that community ownership of the process is not diminished.

## RECOMMENDATIONS

With these lessons in mind, Oxfam offers several key recommendations for the various actors: companies, governments, and investors and international financial institutions.

### Companies should:

- Ensure that any HRIA process be thorough and that meaningful community participation informs the company's human rights conclusions. This recommendation means reaching beyond traditional leadership to ensure that the voices of vulnerable groups like women, children, the elderly, and minorities have been afforded an opportunity to be heard.
- Be willing to take on board the findings of external HRIA processes toward the existing project, internalize lessons learned from HRIAs, and apply this knowledge to future projects while keeping in mind contextual differences.
- Consider reaching out to an NGO that could fund a community-based HRIA while conducting their own company-led one, or consider collaborating in a co-owned process.

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<sup>73</sup> Shift, *Stakeholder Engagement and the Extractive Industry Under the OECD [Organization for Economic Cooperation and Development] Guidelines for Multinational Enterprises*, Discussion Paper (June 2013), 14, [http://shiftproject.org/sites/default/files/Discussion Paper Stakeholder Engagement and the Extractive Industry.pdf](http://shiftproject.org/sites/default/files/Discussion%20Paper%20Stakeholder%20Engagement%20and%20the%20Extractive%20Industry.pdf).

- Support a business and human rights fund that can be used by communities for HRIAs.
- Participate thoroughly in any community-based HRIA assessing the impacts of a company project and provide relevant materials and access to the site and staff.

### **Governments should:**

- Endorse the UNGP.
- Construct national action plans that endorse and encourage companies to participate in community-based HRIAs, and require companies to undertake the rigorous stakeholder engagement process, such as the one embedded in the Getting It Right tool.
- Create a business and human rights fund that can be used for community-based HRIAs.

### **Investors and international financial institutions should:**

- Require community-based HRIAs for projects prior to investment, and require companies to pursue high levels of stakeholder engagement and FPIC for communities; these requirements will facilitate financial stability and respect for human rights.
- Support a business and human rights fund that can be used for community-based HRIAs.

Oxfam also recommends that those conducting HRIAs take into account the following three elements: scope, timing, and participation and transparency.

### **Scope:**

- The HRIA must assess the full scope of human rights impacts, taking into account both actual and potential impacts, including unintended consequences of business operations. Although issue-specific assessments can be valuable, companies must not lose sight of doing thorough due diligence as well.
- If companies conduct multiple HRIAs, they should cover a significant cross-section of communities and regions that are representative of the overall composition of the company's business operations and supply chain.

- Comprehensive HRIAs should include a holistic supply-chain analysis. A holistic analysis includes examination of the key business partners (such as contractors, suppliers, other third-party organizations, and associated facilities) that play a role in various stages of the project life cycle.
- HRIAs should be grounded in an understanding of the legal, political, and cultural dynamics within the home and host countries. Special attention should be paid to any factors that indicate red flags for structural drivers of human rights abuses, such as a failure on the part of the government to recognize a workers right to collectively bargain.

### Timing:

- Ideally, an HRIA should be conducted prior to start-up of a private investment project to provide the community with the greatest opportunity to influence the project including exercising its right to FPIC and preventing potential rights violations.
- HRIAs and due diligence are continuous processes that must be conducted throughout the life cycle of a project. They also must continue after the project has concluded to ensure that no residual adverse human rights impacts occur; the length of time will depend upon the specific operations.

### Participation and transparency:

- Before consultation begins, it may take considerable time to gain the community trust that would enable constructive dialogue on human rights considerations. Enlisting local experts with context-specific community knowledge may facilitate productive engagement.
- Consultations may place stakeholders in difficult or compromising positions. Inviting expression of human rights concerns in certain contexts can place individuals at risk of backlash from local authorities or stakeholders involved in business activities. As such, it is important to create safe spaces for dialogue while drawing on local expertise to advise on local cultural sensitivities.
- Ideally, a combination of community- and company-led HRIAs may be necessary to engender meaningful, substantive conversation that leads to human rights concerns being effectively addressed. Businesses should disclose information to stakeholders in an accessible way, and should adapt human rights language to the local context. For example, technical information should be communicated in an accessible format and in the local language(s). Interactions should be conducted in a culturally sensitive way. This objective includes ensuring that assessment teams include men and women with the necessary language skills.

- Those carrying out the HRIA should communicate international human rights standards to members of the local community, and should translate these rights into the accompanying needs (e.g., the right to food can be expressed as the need for access to clean sources of food and water).
- Stakeholder mapping should precede an HRIA. This mapping process entails identifying all potentially affected communities and individuals, indigenous populations, local NGOs, government officials, company representatives, and company workers whose rights may be affected by corporate operations. Working with local partners during the mapping process can facilitate identification of the complete range of individuals, groups, and organizations that may impact or be impacted by the company's operations.
- HRIAs should aim to capture a sufficient and representative sample of community members in consultations.
- HRIAs should take care that the voices of vulnerable or marginalized groups and individuals are adequately represented, as they are often at risk of being disproportionately affected by business activity.
- Assessment teams should be gender-balanced and women's voices should be a strong component of community engagement.

### Constructing effective HRIAs:

- Due diligence leads to change through generation of concrete, constructive, and actionable recommendations for companies, government, and communities.
- Community considerations should be taken into account when prioritizing human rights impacts and risks, and the HRIA should consider the basis of severity and ability to remediate when developing recommendations or follow-up actions.
- HRIAs should identify government obligations related to business activities.
- Companies should embed human rights principles and due diligence into business and community operations.
- HRIAs should be linked with grievance processes, or create grievance mechanisms if they do not already exist.
- HRIA findings should be shared with key internal and external stakeholders including rights-holders, lenders, regulators, and investors.

## ANNEX: CASE STUDY COMPENDIUM

Below, we provide examples of a spectrum of HRIA models, each with different strengths and weaknesses.

### Low engagement in HRIsAs

#### Marshalls PLC human rights impact assessment, India, 2010

##### Background and stakeholders engaged

Marshalls PLC is a British stone and concrete manufacturer. In 2013 it published an HRIA relating to its sourcing in Kota, India. Evaluation of the HRIA is difficult because it does not describe the methodology used. It appears that no community engagement or interviews with stakeholders occurred, and the company points to the wider Indian context to explain the human rights issues encountered, with no acknowledgment of the role of companies sourcing there.

##### Impacts assessed

According to the report, the scope of the HRIA included an assessment of the quarries, of how community engagement and consultation could be enhanced, and of whether and how Marshalls' activities in Kota impact the human rights of individuals employed in the supply chain and the human rights of the wider community, with a specific focus on worker rights. However, no details are offered as to how any of these areas were assessed or what was found.

##### HRIA outcomes and follow-up

The document's six-sentence "key recommendations and findings" exclusively highlight countrywide (or even global) cultural or political problems without explaining how Marshalls can address them beyond "acknowledging and understanding" that they persist. The company even hedges on its commitment to respect legal obligations, writing, "Marshalls works to uphold local laws [and] promote international standards." One clear positive is that the company recognizes the importance of respecting women's and children's rights. However, its discussion of these rights stops short of a meaningful analysis or a call for action.

Marshalls PLC, *Human Rights Impact Assessment Programme India* (2013), [http://www.marshalls.co.uk/sustainability/publications/pdfs/Human Rights in Action Series HRIA INDIA.pdf](http://www.marshalls.co.uk/sustainability/publications/pdfs/Human%20Rights%20in%20Action%20Series%20HRIA%20INDIA.pdf).

## High but brief engagement

### Kuoni, Kenya HRIA pilot project, 2012

#### Background and impacts assessed

Kuoni Group is a travel service provider that offers tours, destination services, and visa processing assistance. Because tourism stands to impact the host country's environment and society, Kuoni and independent adviser Tourism Concern (TC) undertook a pilot HRIA to scrutinize the effect on Kuoni's services on local communities. The project was led by the corporate responsibility team of Kuoni, based in Zurich, Switzerland, and supported by the management consultancy TwentyFifty Ltd. Additionally, Private Safaris East Africa Ltd. (PSL), which is part of the Kuoni Group, also participated by managing the logistics of the country visit and reaching out to business partners in Kenya to be involved in the assessment.

The areas covered in the assessment included employee rights and protection; security and safety of personnel and tourists; customer protection and information; screening, selection, evaluation, and monitoring processes for suppliers, contractors, and business partners; women's and children's rights and protection; community impacts and engagement; and anti-corruption.

#### Stakeholders engaged

The Kenya pilot project report reflects a genuine commitment to impartiality: Kuoni worked with local partners to understand the Kenyan context and advise on the assessment process; independent partner TC selected the stakeholders, helped design the assessment methodology, and conducted stakeholder meetings; and Kuoni incorporated feedback from seven independent advisers. The impact assessment also sought feedback from a range of actors, including those that would presumably be quick to criticize the company (e.g., NGOs, surrounding communities, indigenous peoples' representatives). It also paid special attention to children, a group companies routinely overlook when carrying out HRIAs.

#### HRIA duration, outcomes, and follow-up

The HRIA concluded with actionable and realistic next steps in each problem area, such as how Kuoni can play a role in combating child sex tourism or in promoting labor rights. While the report is generally impressive, Kuoni's country visit to Kenya was carried out over a nine-day period, an inadequate window for such an assessment. Nor does conducting focus groups with child sex workers seem like a responsible approach: despite the presence of a social worker, expecting candid answers from children who have likely suffered from severe trauma is unrealistic at best and irresponsible at worst.

Kuoni, *Assessing Human Rights Impacts: Kenya Pilot Project Report* (2012), [http://www.kuoni.com/docs/assessing\\_human\\_rights\\_impacts\\_0.pdf](http://www.kuoni.com/docs/assessing_human_rights_impacts_0.pdf).

## Community-based HRIAs

### Centro de Estudios Aplicados a Derechos Económicos, Sociales y Culturales (CEADESC), Total E&P Bolivia and Muyupampa, Bolivia

#### Background and impacts assessed

From 2007 to 2008, the Centro de Estudios Aplicados a Derechos Económicos, Sociales y Culturales (CEADESC) assessed the impact of a natural gas exploration—known as the Project of a Seismic Magnetotelluric and 3-D Gravimetric Survey in Bloque Ipati-Aquio (PPS3D-BIA)—that was implemented by French subsidiary Total E&P Bolivia. CEADESC studied the impact of the exploration across five communities on the ancestral territory of the Muyupampa Guaraní people in the Luis Calvo province, in the Chuquisaca department of Bolivia. The assessment found human rights violations in all four areas identified as priorities by the affected communities: the right to free, prior, and informed consent; the right to reparations of damages; the right to work; and the right to water.

#### Stakeholders engaged

The team conducting the assessment was formed by CEADESC staff members, representatives of the affected grassroots communities, and the Concejo de Capitanes Guaraníes de Chuquisaca (Chuquisaca's Council of Guaraní Captains). The team interviewed various stakeholders, including the affected indigenous communities, the company, and relevant Bolivian state institutions.

#### Outcomes

The final report proposed several recommendations to Bolivian state institutions, Total E&P, and to the leadership and members of the affected communities as to how to hold the company accountable for the aforementioned human rights violations.

#### Follow-up to the HRIA

Since the implementation of the first community-based human rights impact assessment, CEADESC was slated to conduct a follow-up study in early 2015 to understand the continued impacts of the Total E&P natural gas project on the Muyupampa Guaraní communities. Although the Bolivian leadership of Total E&P has recently transitioned, Oxfam France and CEADESC reached an accord with company headquarters in France allowing the NGOs and community access to information and to the operation site, both of which will enable them to update the 2011 COBHRA report and open a new dialogue on improving company practices in the affected communities. At the same time, the follow-up assessment team will also be evaluating the company's policies according to the UN Guiding Principles on Business and Human Rights and producing recommendations on how to improve company alignment with these principles.

Centro de Estudios Aplicados a los Derechos Económicos, Sociales y Culturales (CEADESC), *Total E&P Bolivia y Sus Impactos en los Derechos Humanos del Pueblo Guaraní de la Capitanía de Muyupampa: El Caso del Proyecto de Prospección Sísmica del Bloque Ipati-Aquio*, [http://www.ceadesc.org/wp-content/uploads/2011/08/Total\\_EP\\_-\\_EIDH.pdf](http://www.ceadesc.org/wp-content/uploads/2011/08/Total_EP_-_EIDH.pdf). 2011)

## Corriente Resources Inc., Ecuador, 2009

### Background and impacts assessed

This HRIA looks at the activities of a Canadian company, Corriente Resources Inc., in the Amazonian provinces of Morona Santiago and Zamora Chinchipe. The Mirador project was in an advanced exploration phase at the time the HRIA was carried out. While the Mirador project was initiated by Corriente Resources, a Chinese conglomerate purchased 100 percent of Corriente's common shares in 2010. The HRIA was conducted by the human rights organization Ecuadorian Ecumenical Commission for Human Rights (Comisión Ecuatoria de Derechos Humanos, or CEDHU). CEDHU is a funding member of the Frente Ecuatoriano de Derechos Humanos and is one of the 178 member organizations of the International Federation of Human Rights (FIDH). The HRIA focused specifically on the right to free, prior, and informed consent of the affected community, the right to land and property, the right to water, and the right to security.

### Stakeholders engaged

The HRIA team conducted interviews, meetings, and observation in the two affected provinces with individuals who had declared being in favor of the mining project, as well as those who were against these initiatives. The team also interviewed representatives of Corriente Resources, as well as local and national officials.

### Outcomes

The HRIA report highlights the lack of participation of affected populations in environmental management, as well as the resulting impacts on the right to self-determination of peoples. Shortcomings include the failure to conduct free, prior, and informed consent with indigenous groups regarding the occupation of their lands and territories. The HRIA also documents the impacts on the right to adequate housing and livelihood on small-scale farmers and indigenous communities caused by the displacement of numerous families from their land. It likewise illustrates the potential effect of environmental impacts on the right to water. Finally, the investigation sheds light on the repression and criminalization of opponents to the investment project in the provinces of Zamora and Morona Santiago. The final report of the assessment included recommendations to government officials, the companies involved, the Chinese conglomerate, Canada, China, international human rights bodies, and mining companies in general.

### Follow-up to the HRIA

Following the release of the HRIA, the Office of the Auditor General of Ecuador published an audit report reiterating FIDH's conclusions on the socio-environmental impacts of the first large-scale mining project in the Ecuadorian Amazon. Trainings were carried out with affected communities. Finally, a complaint was filed before the Canadian Organization for Economic Cooperation and Development (OECD) National Contact Point.

CEDHU and FIDH, in collaboration with Rights & Democracy, *Intervención Minera a Gran Escala en el Ecuador y Vulneración de Derechos Humanos: Caso Corriente Resources*, [http://www.cedhu.org/index.php?option=com\\_content&view=article&id=91&Itemid=7](http://www.cedhu.org/index.php?option=com_content&view=article&id=91&Itemid=7) (2011)



## Assessing human rights impacts in tobacco supply chains, North Carolina, 2010

### Background and impacts assessed

From 2010 to 2011, the Farm Labor Organizing Committee (FLOC), which is affiliated with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), conducted a study to assess the tobacco industry's impact on the human rights of farmworkers in the fields of North Carolina.

### Stakeholders engaged

The FLOC research team spoke with hundreds of farmworkers throughout the season and conducted 86 interviews with 103 workers located across five counties in the state. Ten of the world's largest tobacco companies were contacted for the study, but only two, key manufacturers involved in North Carolina's tobacco supply chain, Philip Morris International (PMI) and Philip Morris USA (PM USA), participated in an interview. The team also reached out to other stakeholders for interviews, including growers, local nongovernmental organizations (NGOs) that work with the farmworker community, and relevant government agencies.

### Outcomes

The assessment identified widespread violations of internationally recognized human rights and state and federal laws, including lack of fair wages, unsafe and unhealthy working conditions, inadequate housing, and lack of freedom of association. Moreover, it found that even though both of the companies interviewed had developed policies for good agricultural practices that set standards for labor management and farm safety that all growers from whom they buy tobacco must follow, they failed to include farmworkers in the development of these standards and in their assessment programs.

The final report of the assessment included recommendations to tobacco product manufacturers, the North Carolina state government, and the US federal government on how to adopt an industrywide approach that holds tobacco companies more accountable for conditions in the fields.

### Follow-up to the HRIA

Following the launch of the report, Oxfam America and FLOC were able to get 14,000 people to call on R.J. Reynolds to meet with farmworkers. The call for support resulted in the company's first face-to-face meeting with FLOC in 2012. Although just a first meeting was accomplished, the report played a crucial role in raising the voices of farmworkers and in getting Reynolds Tobacco to engage in conversation with FLOC.

Oxfam America, *A State of Fear: Human Rights Abuses in North Carolina's Tobacco Industry* (2011), <http://www.oxfamamerica.org/static/media/files/a-state-of-fear.pdf>.

## High levels of community engagement, but focused on limited types of adverse human rights impacts

### Aguas Argentina SA, Buenos Aires, Argentina, 2006

#### Background and impacts assessed

This HRIA looked at the impacts of the largest privatized water concession in the world, Aguas Argentina SA, a consortium of European and Argentine companies that operated the water and sewage systems in Buenos Aires and surrounding areas. The research team studied the performance of both Aguas Argentinas and the Republic of Argentina over the life of the contract, which was terminated by the Argentine government in early 2006—due to noncompliance—before the end of the HRIA study. The study was conducted by two Argentine nongovernmental organizations, Asociacion Civil por la Igualdad y la Justicia (ACIJ) and Centro de Estudios Legales y Sociales (CELS). The team focused exclusively on the human right to water.

#### Stakeholders engaged

The company and the government regulator were consulted in the process, but their participation was limited because the company was reticent to collaborate, questioning the impartiality and credibility of the research team. The report noted that it took many months to arrange meetings with these actors and that neither entity completed the questionnaire designed by the team within a reasonable amount of time. Moreover, the company wanted to sign a mutual collaboration agreement that would allow it to add its comments to the final report. Many of the people consulted within the office of the regulator did not want to speak on its behalf, preferring to give only their personal views.

#### Outcomes

The findings of the HRIA show that the public-private partnership had negative impacts on the affordability, availability, and safety of the water, as well as its accessibility without discrimination. Furthermore, the process revealed that the obligation to provide information and effective regulation was not respected.

#### Follow-up to the HRIA

CELS and ACIJ, along with other human rights and environmental organizations, filed an amicus curiae brief to the Tribunal of the International Centre for the Settlement of Investment Disputes (ICSID) in an investment arbitration concerning access to water and sanitation in Buenos Aires, Argentina. It should be noted that it was the first time that this body accepted briefs from civil society organizations. Further information on the brief is not provided in the report.

Rights & Democracy, *Human Rights Impact Assessments for Foreign Investment Projects: Learning from Community Experiences in the Philippines, Tibet, the Democratic Republic of Congo, Argentina, and Peru* (2007), [http://publications.gc.ca/collections/collection\\_2007/dd-rd/E84-21-2007E.pdf](http://publications.gc.ca/collections/collection_2007/dd-rd/E84-21-2007E.pdf).





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