



Impacts to human rights can be assessed separately or within ESIA processes. A rights-based approach needs to be applied.



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# FASTIPS

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# Human Rights in Impact Assessment

Business activities promoted by governments, companies, and financial institutions have the potential to impact the enjoyment of human rights of communities, workers, and consumers. Human rights include the freedoms and entitlements listed in international and regional instruments including the International Bill of Human Rights and the ILO Fundamental Conventions on Rights at Work.

The UN Guiding Principles on Business and Human Rights (UNGP), launched in 2011, are the authoritative global framework on the business and human rights nexus. Initially a soft-law instrument, elements of the UNGP are developing into mandatory regulations worldwide. The UNGP explain the duty of States regarding business impacts on human rights and clarify that businesses have the responsibility to respect human rights, including conducting human rights due diligence, a process which has assessing and addressing negative human rights impacts at its core. This has sparked the development of new types of impact assessment specifically focusing on human rights (HRIA), but also raised the question as to how human rights can be integrated into other existing types of impact assessment, such as Environmental and Social Impact Assessments (ESIA). While these types of assessments are more established in international standards and national legislation, they oftentimes fall short in explicitly identifying, addressing, or considering human rights impacts. A human rights lens is thus needed to ensure these assessments accurately identify the full range of risks.

## STAND-ALONE HRIA VERSUS INTEGRATING HUMAN RIGHTS INTO OTHER TYPES OF IMPACT ASSESSMENT

There are a number of potential benefits to integrating human rights into existing types of impact assessments. These include:

- Mainstreaming attention to human rights in the process.
- Building on and utilizing existing impact management structures.
- Avoiding consultation fatigue of stakeholders.
- Facilitating analysis of the interrelatedness of environmental, social, and human rights impacts.
- Building on the respective strengths of the different disciplines involved.

Certain situations may warrant a stand-alone impact assessment, for example when an ESIA has been conducted without including human rights or when there are indications that a deep dive on human rights would be warranted. Examples of context-specific triggers for a stand-alone HRIA include:

- Conflict-affected areas, or regions with poor human rights records or systemic human rights abuses.
- Communities vulnerable due to extreme poverty, natural disasters, and climate change.
- Systemic gender discrimination or discrimination against vulnerable groups.
- Presence of Indigenous Peoples in or around the project area.
- Projects that involve significant resettlement and/or economic displacement.
- Projects that involve impacts on or restrict access to natural resources and areas critical for water provision, food security, income generation, and cultural identity of communities.
- Projects that induce migration and/or rely on migrant work forces.
- Complex land tenure arrangements, a weak land rights regime, or a history of displacement and resettlement.
- Allegations of human rights impacts or abuses related to the project, the project area, or its business partners.

### WITHIN EMERGING HRIA PRACTICE, SEVERAL DIFFERENT APPROACHES HAVE BEEN DEVELOPED, INCLUDING:

- HRIA of business projects and activities
- Sector-wide impact assessments (SWIA)
- Community-based HRIAs
- Child rights impact assessments (CRIA)
- HRIA in the field of development
- HRIA of international trade and investment agreements
- Impact assessments conducted for public authorities
- Assessments on health and human rights
- Gender impact assessment

## FIVE IMPORTANT THINGS TO KNOW

1. Human rights impacts should be assessed from the perspective of risk to people, not risk to business. Potentially affected people must be engaged meaningfully and directly in the identification and assessment of impacts. A gender lens should be applied in the identification of impacts.
2. Human rights harms cannot be “offset” by positive impacts, unlike environmental impacts such as emissions. Businesses have a responsibility to address a human rights harm even if they have other positive impacts on human rights.
3. In an assessment that takes a human rights-based approach, relevant internationally-recognized human rights standards are the central benchmark for all human rights aspects. All human rights should be considered, not only a few specific rights.
4. HRIA requires a finer disaggregation of data of those impacted (e.g., by gender, ethnicity, age, contractual relationship, etc.) to better understand how impacts affect them and to identify whether discrimination takes place.
5. All adverse human rights impacts should be addressed. Where necessary to prioritize actions, the determining factor is the severity of human rights consequences.

## FIVE IMPORTANT THINGS TO DO

1. **Team:** Establish multi-disciplinary assessment teams that include human rights expertise, capacity to interview relevant vulnerable groups and knowledge of the local context, culture, and languages.
2. **Engagement:** Ensure that participation and engagement is inclusive, active, free, meaningful, non-discriminatory, and accessible. Support individuals and communities to have greater ownership over the topics and processes with which they are involved and that affect them. Ensure engaging people with divergent views.
3. **Scope of impacts:** Assess actual and potential impacts not only caused by project operations but also impacts the project may be contributing or linked to, for example through its supply chain or business relationships and its products or services, as well as cumulative and legacy impacts.
4. **Reprisals:** Evaluate the risk of retaliation against those affected in advance and structure the engagement accordingly. Assessors should make themselves available (by phone, encrypted messaging apps, or through credible local leaders or organizations) to learn of threats and reprisals.
5. **Transparency:** Be transparent about the impact assessment process, findings, and impact management, without revealing sensitive information that could put persons at risk.

## FURTHER READING

OHCHR, UN *Guiding Principles on Business and Human Rights*, [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).

OHCHR, UN Working Group on Business and Human Rights, *Corporate human rights due diligence – identifying and leveraging emerging practice*, <https://www.ohchr.org/EN/Issues/Business/Pages/CorporateHRDueDiligence.aspx>.

*Handbook on Human Rights Impact Assessment*, edited by Nora Gotzmann, <https://www.e-elgar.com/shop/gbp/handbook-on-human-rights-impact-assessment-9781788119993.html>.

Danish Institute for Human Rights, HRIA Guidance and Toolbox, <https://www.humanrights.dk/tools/human-rights-impact-assessment-guidance-toolbox>.

Nomogaia, HRIA tools: <http://nomogaia.org/tools/>.

Oxfam, Community-based human rights impact assessment initiative: <https://policy-practice.oxfamamerica.org/work/private-sector-engagement/community-based-human-rights-impact-assessment-initiative/>.

Esteves, A.M., Factor, G., Vanclay, F., Götzmann, N. Moreira, S. (2017). Adapting social impact assessment to address a project's human rights impacts and risks. *Environmental Impact Assessment Review* 67 (2017) 73–87, <https://doi.org/10.1016/j.eiar.2017.07.001>.

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