

# Human Rights Impact Assessments

A tool towards better business accountability

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## Executive Summary

The UN Special Representative for business and human rights, Professor John Ruggie has suggested a three pillar framework for policy development on business and human rights: The obligation of states to protect human rights, business responsibility to respect human rights, and the establishment of adequate remedial mechanisms for victims of human rights violations. An important contribution to the operationalisation of the second pillar can be made by voluntary initiatives of the business community itself. The final report of the UN Special Representative is expected to be published in 2011.

In the meantime, the European Commission, in liaison with the Coordination Committee of the European Multi-stakeholder forum on CSR<sup>1</sup> of which CSR Europe is a member, has initiated two important projects:

- A contract with the CSR High-Level Group of Member States Representatives including a research on Supply Chains and Human Rights.
- A study by the University of Edinburgh on the “legal framework of Human Rights and the environment applicable to European enterprises operating outside the European Union”. This study seeks to provide a basis for possible measures to further operationalise John Ruggie’s “Protect, Respect and Remedy” framework on the EU level.

It is in this context that CSR Europe is happy to present its study on Human Rights Impact Assessments. Impact Assessment instruments are emerging as innovative tools by which companies can systematically analyze and manage the human rights implications of their activities. Both human rights organizations and the business community promote this concept as a way to induce company learning and operationalise human rights in companies. As the instrument matures, it can significantly contribute to a workable conceptualization of business responsibilities for human rights.

This report aims to:

- Provide an overview of the state of affairs of Human Rights Impact Assessment instruments and methodologies<sup>2</sup>, including an analysis of how Human Rights Impact Assessments can contribute to the Business and Human Rights agenda.

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<sup>1</sup> [http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/multi-stakeholder-forum/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/multi-stakeholder-forum/index_en.htm) .

<sup>2</sup> An overview of the main HRIA providers and instruments can be found in the table on p.13

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- Explore how the development of Human Rights Impact Assessments might be taken further.

To help policy-makers, NGOs and the business community make further progress; the report identifies a number of areas for further improvement:

- Since impact assessments are resource and time-intensive, practical solutions need to be developed on how to implement them most efficiently. Concrete tools and approaches will make the concept more easily accessible and incentivize its uptake by the wider business community.
- The lack of clear definitions and standards regarding business obligations for Human Rights so far limits the objectivity and comparability of such tools. Closer alignment of the pro-active approaches to Human Rights (impact assessment tools) with the responsive aspects (reporting on Human Rights Indicators) increases the opportunities for benchmarking and mutual learning.
- The use of Impact Assessment tools raises issues of transparency, accountability and disclosure. Companies undertaking such an assessment fear that disclosure of their shortcomings might open the floor to litigations. Open dialogue between policy-makers, the business community and NGOs is needed in order to develop practical and constructive solutions.

Since the issue of Business and Human Rights will have a high priority within the renewed EU strategy on CSR<sup>3</sup>, and considering the increased interest of business to take a pro-active approach in this area, CSR Europe will engage with its members and key stakeholders in order to explore how it can best contribute to the dialogue on these issues and to the development of practical tools.

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<sup>3</sup> To be adopted by the European Commission at the beginning of 2011

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## 1. Introduction: The challenge of business and human rights

Businesses often must make complicated choices when navigating between the requirements of the global market, undemocratic governments, local communities and an increasingly demanding international public. This is especially true when it comes to business operating in developing countries. Awareness is rising of the need for business to carefully consider the human rights implications of their activities. However, such considerations so far take place with political, legal and practical hurdles to overcome.

Historically, human rights have been conceptualized as obligations of states towards their citizens. It is therefore primarily their duty to establish appropriate regulation and prevent violations within their territory. However, such a view does not seem sufficient in a globalized world. On the one hand, some of the most critical business operations take place in developing countries where governments often are unable or unwilling to fulfill their human rights obligations. On the other hand, territorial-based responsibilities are ill-matched to the transboundary structures of today's global corporations.

Debates are therefore on the way, both in international law and in the business community, about how to fill the gap and improve human rights compliance as well as increase legal certainty for business. In his "Protect, Respect and Remedy" framework<sup>4</sup>, UN Special Representative for business and human rights Professor John Ruggie has outlined a common basis for further policy debate. Its three pillars - the state responsibility to protect human rights, business responsibility to respect human rights, and the development of appropriate remedy mechanisms for human rights violations - reflect the complementary roles of business and governments in the realization of human rights.

Legal scholars are debating a number of options to improve business accountability for human rights. However, a significant expansion of the legal basis is not easy, both for legal and structural as well as for political reasons<sup>5</sup>. It is therefore crucial that efforts do not concentrate on the legal framework alone. An effective human rights regime must incorporate the capacities of all actors involved to its full extend. Business is increasingly acknowledging its responsibility and working to develop appropriate solutions. Human rights impact assessments (HRIA) are a promising step towards this goal.

## 2. Aim of this paper

The European Commission has been actively supporting Professor Ruggie's work as part of its overall commitment to promote responsible business practice. In this context, it is currently assessing the existing legal framework at EU and member state level to identify potential areas of improvement.

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<sup>4</sup> Ruggie 2010

<sup>5</sup> Weber 2009, p. 35

The present paper is meant as a contribution to these efforts, by showing what can and is already being done to increase human rights accountability from the business perspective. It provides a concise overview over the state of affairs of HRIA methodologies. Outlining strengths and weaknesses of the approach, it will analyze which contribution HRIA can make to the business and human rights agenda, and how its development might be taken further. Thus it is aimed at making a useful contribution especially to the operationalization of the second pillar in Professor Ruggie's framework.

### 3. The relationship between business and human rights

Human rights compliance is crucial for business success in a number of ways. First of all, businesses need to make sure they comply with legal obligations in order to avoid costly litigations. Increasingly, this risk expands beyond the often feeble regulation in the host country: A Fafo Institute study of 16 countries found an emerging "web of liability" for companies to be prosecuted for international crimes under national jurisdiction<sup>6</sup>. The risk for civil liability, too, is increasing, as illustrated by the more than 50 cases brought against companies for alleged extraterritorial human rights violations under the US Alien Tort Claims Act. In December 2009, a Dutch court for the first time declared itself competent to take on a case about alleged damage to the environment and to inhabitants caused by oil spills against Shell Nigeria<sup>7</sup>.

Legal scholars are currently debating how the legal basis for such cases can be expanded. Especially the idea of establishing explicit extraterritorial obligations of states is being discussed<sup>8</sup>. A first attempt at defining direct human rights obligations for business was made with the UN draft "Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights" in 2003<sup>9</sup>. They have not been adopted but the subsequent appointment of Professor Ruggie shows that international interest in the issue is high.

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<sup>10</sup>. 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 their reputation.

On the other hand, there is also a positive business case<sup>11</sup>: Responsible human rights practice allows companies to tap the growing market for ethical consumption – a trend

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<sup>6</sup> Ramasastry and Thompson 2006, p. 27

<sup>7</sup> <http://www.reuters.com/article/idUSTRE5BT1WL20091230>, accessed on 7 March 2010

<sup>8</sup> For a literature review, see Weber 2009

<sup>9</sup> UN Economic and Social Council document E/CN.4/Sub.2/2003/12/Rev.2

<sup>10</sup> Amis, Brewer and Ersmarker 2005, footnote 1

<sup>11</sup> Strandberg Consulting 2009, p. 4

that persists even through the current economic crisis. It also helps attract highly qualified personnel and increases its motivation and reduces turnover. Finally, appropriate human rights policy is required as a feature of risk management by a growing number of financial investors, including, but not limited to, Socially Responsible Investment markets.

Businesses are increasingly aware of these issues. A study by Professor Ruggie found that most Fortune 500 companies have set out basic human rights principles or management practices<sup>12</sup>. Corporate interest in human rights can also be seen from the growing number of voluntary business initiatives that explicitly address human rights issues. However, few companies so far have comprehensive systems in place, and more work is needed to fully develop the necessary concepts and instruments.

#### 4. Key challenges

The greatest challenge for companies wanting to adequately deal with human rights is the great complexity of the issues involved. Business activity can impact human rights in numerous, often interconnected ways, and the scope of company responsibility, both legally and with regards to stakeholder expectations, has so far not been defined precisely.

First of all, there is the question of which human rights companies should be responsible for. So far, most business policies have focused on human rights connected to their work force and their supply chains. Still, there is a broad variety of human rights that company activities might have an influence upon. Intelligent and creative approaches might be needed in this regard.

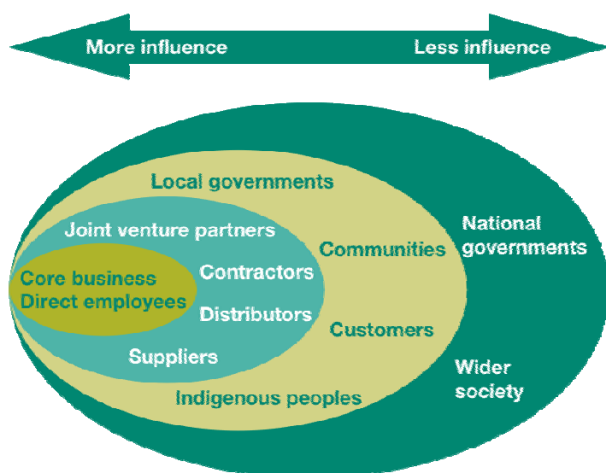
Secondly, while there is some consensus that companies should be responsible for human rights within their “spheres of influence”, this concept has so far not been clearly defined and is therefore somewhat difficult in legal terms<sup>13</sup>. A framework developed by the International Business Leaders Forum and International Finance Corporation<sup>14</sup> depicts these spheres as four concentric circles of decreasing company influence:

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<sup>12</sup> Ruggie et al. 2006, p. 3

<sup>13</sup> Ruggie 2007, section 9

<sup>14</sup> IBLF/IFC 2007, p. 3



**Figure 1: Spheres of Influence**

Source: IBLF

While most major corporations have policies in place regarding internal issues such as employment and non-discrimination, issues become more complicated in areas where efforts are dependent on the cooperation with third parties – a challenge which, for example, the numerous initiatives for ethical supply chain management are currently working to overcome.

These issues are rendered even more complicated by the various dilemmas involved, for example conflicts between international human rights standards and local norms: A non-discrimination employment policy might run counter to traditional female roles in society, and granting freedom of speech might create conflicts with local regimes and in the end even endanger employees. Rights might also conflict between different stakeholders.

Finally, the presence of business can have important impact on the wider political context, for example when collaboration morally supports or even provides financial means to oppressive regimes. A particularly important issue of companies is the risk of complicity in human rights violations, which some national courts by now accept as grounds for legal litigations<sup>15</sup>. Increasingly this includes cases not only where companies consciously knew, but also where they should have known that they were contributing to or profiting from human rights violations. The exact legal definition of complicity is still evolving. So far, it is mostly applied with regards to international crimes. However, the risk of moral or reputational risks can be just as important.

Companies wanting to understand and adequately deal with the human rights impact of their operations are therefore faced with numerous and complex issues, that often do not come with easy answers. Adequate frameworks and instruments on a global level-playing field are therefore needed to allow managers understand the scope of their human rights obligations and adequately deal with the dilemmas involved.

<sup>15</sup> Ruggie 2007a, pp. 14f

Such frameworks must also be well-adapted to the overall business structure. Human rights cannot just be an issue dealt by CSR experts, but needs to be systematically taken into account in decision making at all phases of a project cycle, increasing awareness and expertise throughout the whole company.

## **5. Benefits and specific focus of HRIA**

### **5.1 Comprehensiveness and rights-based approach**

As has been outlined above, human rights comprise complex issues and business responsibilities which have not fully been defined yet. The exact nature of the challenges can vary significantly, depending on the industry, type of operations, host country, local conditions and many other factors. Rather than defining a particular list of necessary elements, HRIA therefore take a rights-based approach: Starting from the Universal Declaration of Human rights and the two international human rights covenants, as well as additional legal and soft-law provisions, each right is examined for its potential relation with business operations, direct or indirect. A key difference to other HR tools is therefore comprehensiveness. While companies often have HR 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 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.

### **5.2 Stakeholder Consultation**

A key element highlighted in all HRIA is the role of stakeholders. Companies are asked to systematically identify all relevant stakeholders groups and then create procedures to engage with them in an open and transparent manner in order to gain a full picture of stakeholder expectations. This can include focus groups, interviews or meetings with relevant organizations. Their input is particularly important, as human rights impacts can hardly be defined and measured in as scientific a manner as, for example, environmental impacts. The subjective perspectives of stakeholders must therefore be adequately considered.

An emphasis is put on dialogue and transparency: Stakeholder relations are seen as an ongoing relationship to develop. They must be carefully fostered in order to create trust and maintain a long-term license to operate. Stakeholder consultations are more than an information gathering exercise.



### 5.3 Integration with overall management system

Any human rights policy is only as good as its implementation. Efforts need to be well-integrated with overall management structures in order to be effective. Some HRIA tools therefore include comprehensive sections not only on the initial analysis, but also give detailed accounts on how human rights can be taken into account across the whole management system, so that assessment results are systematically taken into account in decision making, continuously monitored and well-reflected in reporting.

The core methodology of HRIA is so flexible that it can be applied in a whole range of circumstances. Essentially the same steps can be used to assess a specific project or the overall business operations in a country. While impact assessments should ideally be carried out ex-ante in order to establish the feasibility of a project and avoid human rights violations from the outset, it can also be applied at later stages of the project cycle. Some providers specifically highlight such a “quick start” option, taking into account businesses’ different stages of development regarding human rights policy, and their need to get started from where they are.

As HRIA build on established methodologies for EIA and SIA, there is already precedence as to how they can be integrated with existing management structures. Companies can build on or combine them with existing impact assessments exercises to increase efficiency. Opinions vary on whether HRIA should be carried out as a separate exercise or might just as usefully be integrated into existing EIA/SIA systems. In the end, the importance lies in the practicability of the approach rather than in the formality: Integration may be possible as long as a comprehensive, rights-based analysis can be ensured.

### 5.4 Flexibility and process orientation

As has been outlined above, business engagement with human rights is an evolving issue that in many areas still needs definition. HRIA therefore typically focus on process rather than specific outcomes. They provide guidance as to how to carry out a comprehensive analysis and provide tools to facilitate the different steps. Rather than setting up specific lists of criteria, they encourage companies to refer to the available standards and guidelines and select appropriate references as suitable for the specific circumstances regarding the country and industry they operate in. Database tools like the Human Rights Compliance Assessment offered by the Danish Institute for Human rights yearly update their indicators in light of user feedback and the latest developments. Such an approach leaves HRIA comparable yet adaptable, and leaves enough space for the system to evolve as the human rights agenda moves along.

### 5.5 Integration of HRIA with other HR instruments

In this sense, HRIA must be seen not so much as an alternative to other HR tools for business, but as an additional analytical tool. Besides the UN declaration and its covenants, it encourages companies to also systematically consider soft-law

requirements set out by international organizations like the OECD or ILO as well as obligation entered under voluntary initiatives or certification schemes.

HRIA assist businesses in operationalizing commitments made, for example, under the Global Compact. The systematic analysis can help them understand the concrete implications of the ten principles – especially the first two principles which directly address human rights – and identify appropriate measures. At the same time, such public commitments add a layer of accountability to the HRIA, which is initially just a tool for company self-assessment and learning. Similarly, a company can use HRIA to manage the requirements for certification under the SA 800 workplace standard or to ensure compliance with principles required by social investors.

## 5.6 Accountability and Reporting

Finally, HRIA point a way towards more business accountability for human rights. Providers stress the necessity to regularly engage with stakeholders and openly communicate about the company's progress. The systematic analysis helps companies comprehensively account for their own activities. As more companies take up the practice and methodologies evolve, increased standardization will also facilitate comparison and benchmarking between businesses, increasing mutual learning.

## 6. Concrete HRIA providers and their concepts

A number of approaches are currently being developed by scientific institutes, NGOs and business initiatives. Foci and approaches differ, but the rapid development of such methodologies over the past ten years points to a keen interest, both from business and stakeholder perspectives.

### 6.1 Danish Institute for Human Rights: Human Rights Compliance Assessment<sup>16</sup>

The most comprehensive available tool for companies to check their human rights performance is the Human Rights Compliance Assessment (HRCA) launched by the Danish Institute for Human Rights, a national human rights institution. An interactive online database with about 350 questions covering more than 1000 indicators allows registered users to systematically assess the human rights impact of particular projects or overall business operations. The analysis is based on more than 80 human rights treaties and ILO conventions covering internationally recognized human rights and criteria updated on a yearly basis. Indicators cover policy, procedure and performance for each area. After completion of the questionnaire, companies receive a report outlining key areas of compliance and non-compliance and offering suggestions for strengthening the most crucial areas. The analysis can be adapted to specific sectors and operators. Numeric scores are provided to allow companies to track their performance.

The tool was developed in a six-year consultations process with NGOs and the business community to ensure that it sets high standards while staying close to business reality. It

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<sup>16</sup> <https://hrca.humanrightsbusiness.org/>

currently has more than 500 registered subscribers in 58 countries. A reformatted version with additional features, including the creation of a compliance rating and a reorganization of indicators in line with Global Compact reporting categories, is currently tested and should become available in 2010. The Institute's complementary country risk assessments will also be included into the new format, so that companies can adapt the analysis to the specifics of their particular host country.

As an analytical tool, the HRCA of the Danish Institute for Human Rights is currently the most developed and comprehensive as well as the most referred to human rights impact assessment available.

## 6.2 BLIHR: Human Rights Matrix<sup>17</sup>

Initially developed as a simple excel spreadsheet, the Human Rights Matrix by the Business Leaders Initiative on Human Rights (BLIHR)<sup>18</sup> has now developed into a comprehensive online tool. The tool defines a set of human rights essentials that any business should meet, as well as additional "beyond essential" measures that could be taken by companies wanting to take efforts further. This division is particularly useful for companies starting to engage with human rights, helping them to focus and prioritize their efforts.

Indicators are divided into areas and sub-areas mirroring typical business functions. For each area, guiding questions are provided for companies to assess their performance. A color-coded results monitor then shows the state of affairs and highlights key areas of improvement. Performance of different business areas or across time can be directly tracked and compared.

Different people can simultaneously contribute to the analysis, facilitating collaboration across business areas. Similarly, human rights responsables can upload relevant supporting documents directly into the data base. The tool can therefore be used as a common platform for everyone involved in human rights to store and share information in one place. Different types of reports can be printed out for easy distribution within the company.

The matrix is accompanied by a comprehensive web-based „Guide for Integrating Human Rights into Business Management“<sup>19</sup> outlining how human rights can be integrated across the management system, ranging from strategy development and policy, to implementation in processes and procedures as well as integration of human rights in training, communications and reporting. The Matrix is embedded as a key analytical tool in this overall context.

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<sup>17</sup> <http://www.humanrights-matrix.net>

<sup>18</sup> BLIHR was a program that ran from 2003 -2009 to help lead and develop the corporate response to human rights. It was a business-led program involving 14 corporate members with the principal purpose to find "practical ways of applying the aspirations of the Universal Declaration of Human Rights within a business context and to inspire other businesses to do likewise". The work on the matrix is now continued within the Global Business Initiative on Human Rights ([www.global-business-initiative.org](http://www.global-business-initiative.org))

<sup>19</sup> <http://www.integrating-humanrights.org>

### 6.3 IBLF/IFC/Global Compact: Guide to Human Rights Impact Assessment and Management<sup>20</sup>

Rather than providing a particular analytical tool, this approach focuses on guiding the process of carrying out an impact assessment. It was initiated by the International Finance Corporation, the International Business Leaders Forum and the UN Global Compact. The eight-step guide is available in paper and online. For each step, it outlines what kind of aspects need to be considered within a Human Rights Impact Assessment, what type of information needs to be collected and where it may be found. Guidance includes multiple examples, case studies and “practical tips” about how to best go about the exercise, as well as extensive annexes outlining available resources.

The guide is very much focused on processes, acknowledging that the specific issues and needs will vary according to context. For concrete guidance and indicators, it invites companies to integrate the tools and standards developed by other providers. The guide is conceptualized particularly for forward looking analysis, where all likely impacts of a project need to be considered and a checklist-approach would be less appropriate.

The guide is currently being road-tested. Companies participating have different options to comment, exchange experiences and find additional resources in the intranet section of the dedicated website.

### 6.4 Nomogaia: A methodology for human rights impact assessment<sup>21</sup>

Founded in 2008, the US-based nonprofit research and policy organization is dedicated to „clarify corporate role in human rights protection and facilitating corporate responsibility for the communities impacted by capital projects“. Based on a number of in-the-field case studies of human right impact assessment, it has compiled a guideline document for companies. Similar to the IBLF approach, it defines twelve steps, starting with lists of presumptive impacted rights, presumptive rightholders and presumptive special topics (such as conflict zones, indigenous communities or AIDS) that are then successively refined in a process of research and stakeholder engagement.

## 6.5 Further tools

### 6.5.1 Tools for conflict sensitive business practice

Specific tools have been developed for industries that have traditionally faced particular problems regarding human rights.

In 2002, the Global Compact developed a „Business Guide for Conflict Impact Assessment and Risk Management“<sup>22</sup> designed to help business, especially small and medium enterprises, to deal with the challenges of operating in conflict-sensitive areas. It includes guiding questions and templates for initial conflict risk and impact

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<sup>20</sup> <http://www.guidetohria.org>

<sup>21</sup> <http://www.nomogaia.org/HRIA/HRIA.html>

<sup>22</sup> Global Compact undated

assessment, a step-by-step guide to stakeholder analysis and specific impact assessments guidelines on human rights, international humanitarian law, labor and environmental issues.

Building on these efforts, International Alert, a London-based NGO specialized in peace building, developed its own set of guides. In 2005/6 it published three separate guides for what it considered the most crucial industries operating in conflict areas, namely extractive industries, engineering contractors and project financing services<sup>23</sup>. Its toolbox includes a screening tool for early identification of conflict risks as well as two frameworks for conflict risk and impact assessment at macro- and at project-level. An overall introductory document links these tools to the different stages of a typical project cycle.

These tools do not present full human rights impact assessments in the above-defined, rights-based sense of the word, but take into account a wide range of issues with relation to rather specific business settings. While the tools cannot easily be made operational in other contexts and human rights are included as a subset rather than comprehensively covered in a rights-based framework, they can provide important, hands-on guidance for businesses in these particular settings, and therefore make an important contribution to the successful application of impact assessments as a way to increase responsible practices in what are some of the most complicated and sensitive business settings.

### **6.5.2 Community-initiated human rights impact assessment**

In its effort to help NGOs working with local communities effectively safeguard their human rights against irresponsible business practice, the independent human rights organization “Rights and Democracy” founded by the Canadian Parliament in 1988 has developed a tool box for the assessment of foreign investment projects on local communities<sup>24</sup>. A step-by-step guide, available on CD-ROM, guides activists through the development of a comprehensive impact assessment report, and provides advice on how to use the report to demand change and appropriate community involvement of the violating business.

While the methodology is primarily meant to empower civil society actors, its principles can also inform the conduct of companies aiming for appropriate community involvement. It also provides an example of how human rights impact assessment may develop into a tool of common understanding between business and society – as a way for business to analyze and address the human rights implications of its activities, but also as a framework for outside stakeholder to evaluate company performance and hold business responsible to its commitments and to international standards.

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<sup>23</sup> International Alert 2005, Banfield and Tripathi 2006, Banfield and Tripathi 2006a

<sup>24</sup> Rights and Democracy 2008

Table 1: HRIA providers and instruments - overview

Provider/ Instrument	Purpose/ target group	Description of tool	State of development
Danish Institute for Human Rights: Human Rights Compliance Assessment (2004)	To help businesses comprehensively assess human rights compliance	<ul style="list-style-type: none"> <li>Interactive online questionnaire covering &gt; 1000 HR indicators</li> <li>Score report outlining areas of (non-) compliance and suggestions for improvement</li> </ul>	<ul style="list-style-type: none"> <li>developed in a six-year consultation process with business and NGOs</li> <li>currently &gt; 500 registered users</li> <li>best practice guide available<sup>25</sup></li> </ul>
Business Leaders Initiative for Human Rights: Human Rights Matrix (2005, revised 2010)	To help business assess and monitor their human rights performance	<ul style="list-style-type: none"> <li>Interactive online tool assessing HR impact of business against a set of indicators, divided between “essentials” and further measures</li> <li>dash-board style online interface allows for continuous monitoring of progress</li> <li>supporting business guide outlining how to integrate HR into business practice</li> </ul>	<ul style="list-style-type: none"> <li>developed in a business-led program from 2003-2009</li> <li>business guide includes various case studies</li> </ul>
IBLF/IFC/UN Global Compact: Guide to Human Rights Impact Assessment and Management (2007)	To help businesses integrate human rights impact assessment into the management cycle	<ul style="list-style-type: none"> <li>comprehensive guidebook describing how to develop systematic HR impact assessment and management in an eight-step process</li> <li>includes extensive case studies, best practices and references</li> </ul>	<ul style="list-style-type: none"> <li>draft guide presented in June 2007</li> <li>currently undergoing extensive road-testing process including company trials, discussion fora and public consultation</li> </ul>
Nomogaia Foundation: Methodology for human rights impact assessment (2010)	To help business develop appropriate HRIA processes	<ul style="list-style-type: none"> <li>guidebook describing an eight-step process to carrying out a HRIA; initial analysis of presumptive key factors is successively refined through research and stakeholder engagement</li> </ul>	<ul style="list-style-type: none"> <li>foundation operates since 2008</li> <li>methodology developed and tested through the foundation’s field projects</li> </ul>
International Alert: Guides for conflict-sensitive business practices (2005/6)	To assist companies in dealing with challenge of operating in conflict-sensitive areas	<ul style="list-style-type: none"> <li>practical guide highlighting key challenges, including discussion of HR issues</li> </ul>	<ul style="list-style-type: none"> <li>field tested by different companies in Columbia, no detailed reports available</li> </ul>
Rights and Democracy: Guide to assessing the impact of foreign investment on HR (2005, 2008)	To help local activists address HR impacts of foreign investment projects	<ul style="list-style-type: none"> <li>step-by-step guide leading community groups through the process of conducting an HRIA as a basis for grassroots activism</li> </ul>	<ul style="list-style-type: none"> <li>methodology developed over three years (2004-2007)</li> <li>tested in a number of case studies in Philippines, Peru, Argentina, DRC, Tibet, Ecuador, Bolivia, Cameroun and the US</li> <li>best practice report available<sup>26</sup></li> </ul>

<sup>25</sup> Lenzen and d’Engelbronner 2007

<sup>26</sup> Rights and Democracy 2007

## 6.6 Conclusion

As summarized in table 1, each of the above-mentioned approaches has its particular strengths and weaknesses. All are relatively new, and experience will have to show which proves to be the most practicable. Three things are interesting to note: First of all, the rapid development of a number of approaches in a relatively short time proves the keen interest in this new instrument, both by human rights organizations and the business community. Relatedly, all tools have been developed with significant input from both sides. HRIA therefore seem to be well suited to further the human rights agenda in a way that meets the interests of different parties involved. Finally, it is interesting to note how much the different tools reference each other. Almost all the guides provide extensive links to other available tools and standards, and outline the way in which their particular approach can be linked to other efforts. While none of the tools is probably fully refined yet, one can to a certain extent see all of them as complementary elements in a common endeavor, each adding its particular strength to the mix.

## 7. Outlook

HRIA concepts are promoted simultaneously, and often in close cooperation, by the NGO and business community. The rapid development of this instrument over the past five to ten years shows that it provides a promising way forward that can meet the requirements of both NGOs and the business community. However, tools are obviously still under development, and the issues complex, so improvements and further development are needed in a number of areas:

### 7.1 Refining the tools

Although HRIA aim to be comprehensive in principle, in reality businesses still face resource constraints. Significant amounts of time, money and people are needed to carry out a proper analysis. Companies are therefore asking for further guidance on how and when exactly an HRIA should be carried out<sup>27</sup>. Additional tools might also need to be developed in order to allow for different levels of analytical depth, in accordance with a company's capacities. The Human Rights Compliance Assessment "quick check" option and the distinction between "essential" and "beyond essential" elements already point into this direction.

Such developments are particularly crucial for the benefit of small and medium sized enterprises who will have limited resources available for impact assessments<sup>28</sup>. At the same time their activities are usually closely interrelated with a wider economic network, and therefore particularly in need of guidance, for example on supply chain issues. Addressing these needs, *Aim for Human Rights* has started a trial in the

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<sup>27</sup> IBLF/IFC undated, p. 15

<sup>28</sup> IBLF/IFC 2009, p. 7; Ruggie 2007b, section 38

Netherlands where SME work with a reduced version of the Human Rights Compliance Assessment<sup>29</sup>. The Human Rights Impact Resource Center has now dedicated a specific website to SME where they can find information regarding those issues most crucial to them<sup>30</sup>.

Generally, further development is needed regarding the operationalization of human rights in different sectors. So far, a lot of work has been done in a few particularly vulnerable areas. Detailed guidelines are available for the extractive industries, and for companies operating in conflict zones. A number of codes and standards tackle specific issues such as workers' rights. However, many areas remain where business responsibilities aren't outlined as clearly and practicable solutions are lacking. Sectoral initiatives or issue-based alliances will be best suited to develop appropriate concepts.

## 7.2 Transparency and Accountability

A somewhat unresolved debate regards the necessary level of transparency. Human rights activists demand full disclosure of HRIA results to allow for adequate public scrutiny. The concept itself stresses the need to engage in open dialog to gain stakeholder trust. Regular and transparent information about company activities and progress is a prerequisite for eye-level consultations.

However, the solution is not always straightforward. For once, companies fear that disclosure of shortcomings might open the floor for litigations. This point is particularly sensitive since no clear definition of business obligations is available and interpretations are continuously evolving. However, it could be argued that uncovering shortcomings is exactly the point of carrying out the analysis in the first place and should actually contribute to mitigation of such risks<sup>31</sup>.

More complicated to solve are issues where carrying out a HRIA conflicts with local norms. The very process of stakeholder engagement might be regarded as foreign, and many of the human rights issues uncovered might compromise local authorities as much as the company itself. The usual recommendation in the guidelines therefore is to be "as open as possible", but standard practices still need to evolve.

In the medium term, there is of course a strong case for human rights impact assessments to develop into more formalized undertakings, similar to current environmental and social impact assessments. This also counts for stakeholders like financial institutions to increasingly require HRIs as prerequisite for funding<sup>32</sup>.

First attempts are also already made at integrating HRIA more closely with CSR reporting initiatives. Analysis of a Global Reporting Initiative (GRI) working group on human rights reporting found that companies so far mostly describe policies and procedures, but that information is lacking on performance and impact. HRIA could help to generate such information and put quantitative and qualitative indicators into a

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<sup>29</sup> <http://www.aimforhumanrights.org/themes/human-rights-and-business/human-rights-impact-assessment/human-rights-and-small-and-medium-enterprises/>

<sup>30</sup> <http://www.humanrightsimpact.org/themes/business-centre/hria-for-smes/>

<sup>31</sup> Ruggie 2009, section 83

<sup>32</sup> Lenzen and d'Engelbronner 2009, p. 40



meaningful context<sup>33</sup>. The Danish Institute for Human Rights has already reacted to this need by aligning its analytical structure with GRI reporting categories. Both its HRCA and the Human Rights Matrix include features for coding and comparison, even though these are so far primarily designed for internal information rather than external benchmarking.

A further institutionalization of HRIA is dependent on clearer common understanding, both of the scope of business responsibilities and on standard assessment methodologies. Similarly to the environmental field, reliable systems would be needed to ensure that analysis is objective and comparable<sup>34</sup>. As highlighted in this report, clear-cut legal definitions are so far unavailable and most likely also unfeasible. As a common effort both from the business and stakeholder community, HRIA have the potential to significantly contribute to the development of commonly acknowledged standards and procedures. With growing experience, the most practicable options will crystallize, opening the way towards more formalized systems of accountability.

HRIA explicitly aim at providing the full picture of complex interrelations. One of its key strengths lies in raising awareness for human rights and deepening understanding of business impact. While public scrutiny is sometimes needed to push business towards continuous improvement, premature calls for “objectivity” and quantification might also limit the scope for experimentation and learning.

### 7.3 Implementation Challenges

A key challenge in implementing instruments like the Human Rights Impact Assessments lies in the complexity of the subject. A comprehensive analysis has to integrate expertise from a number of different areas: Problems such as emissions or pollution fall into the responsibility of environmental departments. Supply chain issues are mostly handled by the procurement departments, whereas workers’ rights – traditionally an important part of business human rights agendas – are primarily dealt with in human resources. Essentially, human rights are too complex to locate within a single department, and at the same time of such importance that they should be dealt with as a strategic issue at the leadership level.

Additionally, companies must decide whether to integrate Human Rights Impact Assessments into existing instruments such as Environmental Impact Assessments (EIAs). This might be preferable from an efficiency point of view as it avoids duplicating parts of the processes within the company, but it also poses challenges regarding the assignment of such a complex task within the management structure. Corporate Social Responsibility (CSR) departments might be the best equipped to deal with human rights as a cross-cutting issue and administer overall analytical tools such as Human Rights Impact Assessments. However, assigning responsibilities within the organization is only part of the challenge. Each individual manager needs to be aware of the human rights implications of his or her activities. Training and systematic awareness raising programs would certainly be beneficiary in this context.

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<sup>33</sup> Global Reporting Initiative 2009 , p. 12

<sup>34</sup> Nomogaia Foundation 2009

## 8. Recommended further reading

The development of Human Rights Impact Assessments is one contribution towards solving the complex challenges related to business and human rights. Readers wishing to gain further insight into the broader context of these debates may be interested in the following publications:

- **John Ruggie, Special Representative of the UN Secretary General on Business and Human Rights, Report 2010**

John Ruggie submitted his latest report to the Human Rights Council in April 2010. The Report is a crucial step in the process that began in 2006 when Professor Ruggie started to systematically build what would finally become his highly respected “Protect-Respect-Remedy” framework. The report refines these concepts and lays the foundation for the operationalization of the framework from 2011 onwards. Next year, a final report will present guiding principles for governments as well as business on how to practically to approach the Protect-Respect-Remedy framework.

The progress of Professor Ruggie’s work can be followed at <http://www.business-humanrights.org/SpecialRepPortal/Home>

The latest report is available at: [www.reports-and-materials.org/Ruggie-report-2010.pdf](http://www.reports-and-materials.org/Ruggie-report-2010.pdf)

- **Fafo Institute for Applied International Studies, Anita Ramasastry and Robert C. Thompson: "Commerce, Crime and Conflict - Legal remedies for Private Sector Liability for Grave Breaches of International Law", 2006**

This publication gives an overview of the legal framework in 16 countries regarding the liability of businesses for grave breaches of international law.

The publication can be downloaded from: <http://www.fafo.no/pub/rapp/536/536.pdf>

- **Danish Institute for Human Rights, The Challenge of Integrating Human Rights into the Financial Sector, 2010**

This report presents the results of a research project towards adapting the DIHR’s Human Rights Compliance Assessment (HRCA) tool to the financial services sector, including the process of identifying the framework and collaborating partners for the development, testing and rollout of such a tool.

The publication can be downloaded from: [http://humanrightsbusiness.org/files/11111/file/values added human rights and the financial sector dihr.pdf](http://humanrightsbusiness.org/files/11111/file/values%20added%20human%20rights%20and%20the%20financial%20sector%20dihr.pdf)

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