

Developing a Model for a Multi-Stakeholder Human Rights Impact Assessment

Organizations: Columbia Center on Sustainable Investment (CCSI), the Danish Institute for Human Rights (DIHR), and the Sciences Po Law School Clinic

- 1. Proposed Project:** The project seeks to develop and test a practical model for a comprehensive multi-stakeholder human rights impact assessment (MS HRIA) of private sector projects.
- 2. Context and Rationale:** According to the *UN Guiding Principles on Business and Human Rights*, businesses should respect human rights by using a process of due diligence. While the UN Guiding Principles do not require businesses to conduct human rights impact assessments (HRAs), they do require businesses to assess their human rights impacts.¹ HRAs offer one way of assessing the human rights impacts of private sector projects. HRAs are most frequently used to systematically investigate and measure the potential or actual impacts of a project on the human rights of people affected, or potentially affected, by a company's operations. They have become increasingly prominent in recent years, particularly as companies focus on conducting human rights due diligence and communities seek to better understand the actual or potential impacts of business activities on their lives and livelihoods. Different tools and guidance on how to undertake HRAs have been developed, and practitioners – including lawyers, civil society organizations, and consultants – have begun to reflect collaboratively on their experiences and continuing challenges.

One specific challenge that has been identified is the frequent lack of trust between communities and companies, which often extends to distrust of HRAs that they have not initiated, rendering the results highly contentious and potentially ineffective. Although the methods and standards for HRAs have evolved over the years, communities and companies frequently view any HRIA led or commissioned by the other “side” to be biased or unconvincing. Company-led HRAs are often conducted with little to no involvement of civil society organizations, except as part of standard stakeholder consultations. Likewise,

¹ UN Guiding Principle 18 sets broad parameters for the assessment of human rights impacts, including noting that the processes a business applies for assessing human rights impacts should: “(a) Draw on internal and/or independent external human rights expertise; (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.” UN Guiding Principle 18 commentary notes further that the process should “pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalisation, and bear in mind the different risks that may be faced by women and men.” There are also notes regarding the timing of the assessment of human rights impacts (at regular intervals because human rights situations are dynamic) and regarding consultation with “potentially affected stakeholders” (directly where possible, seek reasonable alternatives where not).

community-led assessments are often considered biased and overly critical towards the company in question. Because of this, while HRIAs have the potential to build dialogue between different sets of stakeholders, they sometimes fail to do so, and in the worst cases might contribute to greater distrust between parties.

In recognition of these potential problems, some HRIA practitioners have begun to examine how to better include a range of stakeholders in the HRIA process and how to deepen their involvement in terms of their input to the HRIA methodology and process beyond standard (and often inadequate) consultation processes. To date, however, there has not been a full-fledged attempt to design and implement a multi-stakeholder HRIA that brings together representatives from a company and a community on equal footing to develop and undertake an assessment together from the start, or that involves state actors in notable roles. Nor has any rigorous model or methodology arisen to help stakeholders do so.

This project seeks to develop a robust model for a multi-stakeholder human rights impact assessment (MS HRIA) that can assist stakeholders in jointly undertaking an HRIA that is considered credible by all sides and can help to address the power imbalances that often exist between companies and communities around private sector projects. The project builds on a roundtable organized in April 2014 by CCSI and the Sciences Po Law School Clinic, at which participants identified the development of multi-stakeholder HRIAs as one potential way forward in addressing common challenges. The project team will conduct research, develop practical guidance and a model, and assist a set of stakeholders in piloting the model. This pilot, in turn, will allow the project team to further refine the model before disseminating it more widely to interested stakeholders.

A practical model for an MS HRIA that has been tested by stakeholders could be potentially groundbreaking, providing a new way for companies and communities to work together to understand and address the potential or actual human rights impacts that may arise from a specific project. The guidance provided by the model could support a range of stakeholders seeking better and more effective ways of protecting both rights and reputations.

- 3. Beneficiaries:** The intended beneficiaries of a model for undertaking multi-stakeholder human rights impact assessments include communities seeking greater accountability around business activities that may affect them, companies interested in ensuring that their projects do not adversely affect the human rights of communities, employees who are employed by companies or employed in the companies' supply chains, civil society organizations that support communities or companies in addressing and mitigating negative human rights impacts, and potentially even host governments seeking to meet their obligations to protect human rights and working to ensure that business activities do not negatively affect local communities.