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**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251
OF 15 MARCH 2006 ENTITLED “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**

Summary

The present report is submitted pursuant to Commission resolution 2005/69, which asks the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises to develop materials and methodologies for undertaking human rights impact assessments for business activity (paragraph 1 (d) of the mandate), and Council decision 1/102. While the Special Representative of the Secretary-General indicated in his interim report that developing such materials and methodologies would be beyond the mandate's time and resource constraints, this report describes principles and characteristics of human rights impact assessments for business, including similarities to environmental and social impact assessments, and provides updates on current initiatives.

* The present report has been submitted late in order to reflect the most recent information.

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Impact assessment, simply defined, is the process of identifying the future consequences of a current or proposed action.

International Association for Impact Assessment

I. FRAMING THE ISSUE: HUMAN RIGHTS IMPACT ASSESSMENTS - RESOLVING KEY METHODOLOGICAL QUESTIONS

1. The societal impacts of business activity are complex. Such impacts can be positive and negative, direct and indirect, singular and cumulative, highly specific to local circumstances, and have multiple interrelated factors.

2. It is important to understand how business activity impacts human rights, so that those who are most directly involved and affected - including local communities, Governments, and employees - can intervene to enhance positive effects, avoid or mitigate negative impacts and risks, and contribute to the fulfilment of human rights. Such interventions are most effective and least costly when implemented in anticipation of rather than in reaction to changes brought on by business activity.¹

3. This philosophy is well-developed in the area of environmental and social impact assessments (ESIAs), which are now considered routine for projects with a significant physical footprint and are often required by national law or financing institutions, particularly in the extractive industries.

4. ESIAs examine the business activity and its direct impacts. This often raises issues of human rights, for example the right to an adequate standard of living.

5. However, the ESIA approach of studying the direct impacts of a business can miss human rights violations that are embedded in a society, such as where freedom of association is discouraged or explicitly denied, or where the right to privacy is not respected (for example in the case of customers or employees). These issues will shape how the company operates locally, and place the business squarely in the middle of significant conflicts between international standards and local practice - where the company could be either seen as committing or being complicit in human rights violations, or in conflict with local staff or government officials.

6. In light of this realization and the growing salience of business and human rights issues generally, a number of organizations are experimenting with human rights impact assessments (HRIAs) for private sector projects.

7. Paragraph 1 (d) of the mandate asks the Special Representative of the Secretary-General to develop materials and methodologies for undertaking human rights impact assessments. The Special Representative in his interim report stated that this task is beyond the resource and time constraints of the mandate but committed to monitoring ongoing efforts.

¹ The term “impact assessment” is also often used to describe activity ranging from ex post evaluations to compliance checks. This paper takes the term to mean *ex ante* activity, although ongoing assessments of various kinds should be a part of good business practice.

8. In July 2006, the Special Representative posted a discussion paper on HRIAs on his web page at the Business and Human Rights Resource Centre,² framing the subject and posing a number of questions for discussion. This paper comprises the findings of the Special Representative on HRIAs, including feedback on the discussion paper, updates on the various HRIA initiatives, and results of further research and consultation.

9. First and foremost among the Special Representative's findings on the subject is that it is too early to offer a definitive evaluation of HRIAs for business, because to date only the summary of one such assessment has been made public (for BP's Tangguh liquefied natural gas project in Indonesia), although other companies have undertaken private or related exercises. Shell's application of the Human Rights Compliance Assessment tool with the Danish Institute for Human Rights is one noteworthy example. Therefore, many of the assertions in this paper will necessarily be theoretical until there are more examples in the public domain.³

II. SIMILARITIES TO ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS

10. Since environmental and social impact assessments (ESIAs) are relatively well established in business (albeit in a small number of industries), it is worth first highlighting those elements of ESIA methodology that HRIAs should include. The next section will describe the distinctiveness of HRIAs.

11. Like ESIAs, HRIAs should describe the proposed business activity, whether it is a new investment or a significant change such as expansion, changes in supply contracts, or a new policy (for example to do with local procurement or recruitment). HRIAs should consider the full business life cycle, for example from construction through closure for large infrastructure projects, or from new market entry for information and communications businesses.

12. HRIAs should catalogue the legal, regulatory and administrative standards to which the activity is subject. This should include the relevant national and local laws and regulations of the home and host countries; requirements of project financiers; and internal company policies.

13. HRIAs should describe human rights conditions in the area surrounding the business activity - the boundaries of which should be agreed through consultation and initial scoping - before significant activity begins. Engagement of human rights experts and local stakeholders is critical to this step.

² See the Business and Human Rights Resource Centre, <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>.

³ See BP's Tangguh project, <http://www.bp.com/tangguh>, and Shell's work with the Danish Institute, <http://www.shell.com/humanrights>, "The Human Rights Compliance Tool". See also the International Center for Corporate Accountability's 2005 audit of Freeport in Indonesia, <http://www.icca-corporateaccountability.org/>.

14. After describing those baseline conditions, HRIAs should put forth a view of what is likely to change because of the business activity. This is a difficult and subjective exercise; one approach is to construct multiple scenarios, while another might predict outcomes based on varying levels of intervention. An HRIA might also consider community perceptions of what is likely to change; even though a new petrochemicals plant might produce no local pollution, community fears about air or water quality will necessitate action by the company.
15. HRIAs should then prioritize the human rights risks that the proposed business activity presents and make practical recommendations to address those risks. Such recommendations could include actions that can be taken by the company alone, such as modifying project design, but also options for collaboration with Governments, local communities, civil society organizations and other companies in the area.
16. Those recommendations should be incorporated into a management plan that includes provisions for monitoring the baseline indicators and revisiting the issues raised during the HRIA process. The management plan should include regular consultation with affected parties.
17. HRIAs should discuss applicable good practice, for example in the same business sector or region, or from similar situations in other industries or areas.
18. HRIAs should involve experts in the industry, local context, and human rights, whether such experts lead the HRIA or are heavily consulted. Both internal and external personnel should be considered: independent third parties may bring external credibility but may not have local or industry knowledge, while internal staff may not be familiar with human rights issues and best practices outside their sector. The credibility of independent assessors has been challenged when the company pays for their work (as it has been for auditors of corporate reports), but in the absence of other neutral sources of funding there is no other option, and the assessment should be judged on its merits.
19. Ideally, HRIAs would always be published in full but reasonable potential risks must also be considered and may force a partial or summary publication. For example, where the human rights record of State security forces is poor, companies may be reluctant to publish an HRIA that details that record, out of concern that this could create political or legal risks for the company - or in extreme cases, endanger staff.⁴
20. The process of carrying out an HRIA can be as or even more important than a final report. An impact assessment can serve as a convening mechanism to bring representatives of the company, community, and government together in dialogue. It is critical that HRIAs are based on consultation carried out in a manner that promotes genuine dialogue and relationship-building.⁵

⁴ Correspondence with Gare Smith of the law firm Foley Hoag in Washington, DC, May 2006.

⁵ There are many resources on stakeholder engagement, for example *The Stakeholder Engagement Manual* by UNEP, AccountAbility and Stakeholder Research Associates Canada (<http://www.unep.fr/outreach/home.htm>) and the Collaborative for Development Action

21. As valuable as the HRIA process can be, it is not an end in itself. Just as with any risk and impact assessment tool, it is how those involved use the findings and engage with the process that matters - little credit is given for simply going through the exercise.

III. DISTINCTIVENESS OF HUMAN RIGHTS IMPACT ASSESSMENTS: A DIFFERENT APPROACH

22. The clearest difference between HRIAs and ESIAAs is that, while following the impact assessment methodology and principles described above, HRIAs should be framed by the International Bill of Rights, which consists of the Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.⁶

23. In addition to the legal and regulatory requirements described in paragraph 12, HRIAs should catalogue the relevant human rights standards, including those set out in international conventions to which the home and host countries are signatories (perhaps also noting human rights conventions those countries have *not* ratified), other standards such as indigenous customary laws and traditions (for example those that govern the distribution and ownership of land), and international humanitarian law, where there might be armed conflict.

24. If the proposed business activity already has associated investment treaty obligations, host government agreements, or contracts with government agencies and suppliers, HRIAs should examine whether human rights protections have been adequately built in.⁷

25. But an HRIA should not be merely an additional section in an ESIA, or an ESIA reorganized under different headings. Rather, grounding an impact assessment in the human rights framework implies a different approach.

26. HRIAs should deviate from the ESIA approach of examining a project's direct impacts, and instead force consideration of how the project could possibly interact with each and every right. For example, the ESIA approach might not result in any discussion of freedom of expression, whereas an HRIA could envision a community protest against the project being suppressed by State forces. While there is currently no global consensus about the roles and obligations of companies under international human rights standards, this exercise can be undertaken without normative assumptions, like scenario planning or other similar exercises.

(http://www.cdainc.com/publications/cep_issue_papers.php). There are also resources specifically on conflict-sensitive interviewing, such as Simon A. Mason, *From Conflict to Cooperation in the Nile Basin*, August 2004, available at <http://www.css.ethz.ch>.

⁶ See the Office of the United Nations High Commissioner for Human Rights, <http://www.ohchr.org/english/law/index.htm>.

⁷ See, for example, Amnesty International, *Human Rights on the line: The Baku-Tbilisi-Ceyhan project*, May 2003, available at <http://www.amnesty.org.uk/content.asp?CategoryID=10128>.

27. HRIAs might draw upon the Human Rights Based Approach (HRBA) used by development agencies such as the United Nations Development Programme. The HRBA codifies the primacy of the Universal Declaration of Human Rights and other international human rights instruments as both the goal and the guiding principles for programmes and policies. While it would not be appropriate to assume that realization of human rights is the goal of a particular business activity, there are two elements of the HRBA that could prove useful in HRIAs for business: (a) guiding principles, and (b) a discussion of rights-holders (or claim-holders) and duty-bearers.⁸

28. There does not appear to be a single set of guiding principles for the HRBA, but sources generally refer to principles such as empowerment, participation, non-discrimination, prioritization of vulnerable groups, and accountability. It could be suggested that any impact assessment could be considered an HRIA if it demonstrates HRBA principles, regardless of its label. But again, experimentation is needed to know whether this is reasonable.⁹

⁸ For a discussion of the Human Rights Based Approach and list of additional resources, see <http://www.humanrightsimpact.org/hria-conference-06/workshop-human-rights-based-approach/> and <http://www.amnesty.ie/amnesty/live/irish/action/default.asp?page=3802&rec=20&pos=1>. In particular, see United Nations, *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies*, 2003 (available at http://www.undp.org/governance/docs/HR_Guides_CommonUnderstanding.pdf).

⁹ As another example of HRBA principles, Hunt and MacNaughton (2006) proposed the following:

- (1) Use an explicit human rights framework;
- (2) Aim for progressive realization of human rights;
- (3) Promote equality and non-discrimination in process and policy;
- (4) Ensure meaningful participation by all stakeholders;
- (5) Provide information and protect the right to freely express ideas;
- (6) Establish mechanisms to hold the State accountable;
- (7) Recognize the interdependence of all human rights.

Hunt and MacNaughton were writing specifically about HRIAs conducted by *Governments* to assess the impact of proposed policies on the right to health; principles two and six would be particularly difficult to achieve for business. (Paul Hunt, United Nations Special Rapporteur on the right to the highest attainable standard of health, and Gillian MacNaughton, *Impact Assessments, Poverty and Human Rights: A Case Study Using The Right to the Highest Attainable Standard of Health*. Submitted to UNESCO 31 May 2006.)

29. The HRBA requires an analysis of the rights-holders and their needs and entitlements and the corresponding duty-bearers and their obligations. This analysis is meant to include an assessment of the causes of the non-realization of rights, and of the capacity of the rights-holders to claim their rights and the duty-bearers to fulfil their obligations. Such an analysis could be extremely helpful to private sector investment. While it may seem obvious that the rights-holders are local residents and the duty-bearer is the State, a company could find itself assuming the role of duty-bearer in areas of weak governance - and indeed, communities must also respect the rights of company employees. Adopting the HRBA could prove helpful for gaining clarity and agreement on respective roles and responsibilities.

IV. CURRENT INITIATIVES

30. A number of HRIA tools for private sector projects are currently in development. They all take a different perspective and approach, each of which may prove helpful in a particular type of project or region.

31. The International Business Leaders Forum (IBLF), the International Finance Corporation (IFC), and the United Nations Global Compact are jointly producing a guide to HRIAs for business. The guide is intended to outline a process by which operational managers can identify human rights implications and challenges, and annotate other relevant sources of information and expertise. The guide is due to be published in March 2007, then tested by companies in different sectors and finalized in 2009.¹⁰

32. The Canadian non-governmental organization (NGO) Rights and Democracy is piloting a draft HRIA methodology in five case studies, each in a different country with a different set of critical issues. The methodology comprises a ten-step approach accompanied by a 75-page questionnaire and emphasizes interviews with the Government, the corporation, the workers and the affected community. In contrast to the guide described above, this HRIA is being carried out primarily by local NGOs, although the intent is to create a tool that can be used by any stakeholder. The pilot period is due to end in 2007.¹¹

33. International Alert has produced a publication, Conflict-Sensitive Business Practice: Guidance for Extractive Industries (CSBP), which they are currently piloting in Colombia and elsewhere. Focused on helping companies understand and minimize conflict risk and actively contribute to peace, the guide describes a process designed to promote strong relationships with local and national stakeholders, shared decision-making, good communication, and participatory analysis. CSBP includes risk and impact assessment and screening tools, as well as specific

¹⁰ See the International Finance Corporation, http://www.ifc.org/ifcext/enviro.nsf/Content/OurStories_SocialResponsibility_HumanRights.

¹¹ See the Canadian Rights and Democracy Initiative, <http://www.dd-rd.ca/hria>.

guidance on “flashpoint issues” such as indigenous people, dealing with armed groups, transparency, and security, and identifying legal standards and best practices. CSBP also includes a discussion of the limitations of ESIAAs.¹²

34. The Human Rights & Business Project of the Danish Institute for Human Rights has produced two tools to help companies understand and manage their human rights impacts and risks: (a) country risk assessment reports that identify areas where companies are at risk of committing human rights violations, directly or indirectly, with recommendations; and (b) a comprehensive diagnostic tool that assesses to what degree a company’s policies, procedures, and practices comply with international human rights standards. Both tools are being used by several companies.¹³

35. The Humanist Committee on Human Rights (HOM), a Dutch NGO, has created a Human Rights Impact Assessment Resource Centre (HRIRC). The HRIRC is a platform for exchange of information and experience from sectors including business and development, catering to experts and non-experts alike. HOM is applying the aforementioned Danish Institute tools with companies and civil society organizations, and in November 2006 convened a conference on HRIAs.¹⁴

36. Additional tools are being developed by companies and industry groups: BHP Billiton is piloting a Human Rights Self Assessment toolkit; Anglo American has created a Socio-Economic Assessment Toolbox; Statoil is undertaking a human rights “concretization” project to define and embed the company’s human rights responsibilities; and the International Council on Mining & Metals Community Development Toolkit includes assessment tools. Additional examples of business tools and processes can be found in the Business Leaders Initiative on Human Rights’ second report: A Guide to Integrating Human Rights into Business Management.¹⁵

¹² See International Alert, http://www.international-alert.org/our_work/themes/extractive_industries.php.

¹³ See the Danish Institute for Human Rights, <http://www.humanrightsbusiness.org/>, where a short version of the compliance tool can be accessed for free.

¹⁴ See the Humanist Committee on Human Rights, <http://www.hom.nl/>, and the Human Rights Impact Assessment Resource Centre <http://www.humanrightsimpact.org/>.

¹⁵ See BHP Billiton, <http://hsecreport.bhpbilliton.com/2005/repository/community/ourApproach/humanRights.asp>; Anglo American, <http://www.angloamerican.co.uk/corporateresponsibility/socialresponsibility/sear/>; the International Council on Mining & Metals, http://www.icmm.com/library_pub_detail.php?rcd=183; and the Business Leaders Initiative on Human Rights, <http://www.blihr.org>.

V. OUTLOOK

37. Impact assessments for private sector projects are currently discussed almost exclusively for projects with large physical footprints, but in recent years industries such as technology and finance have come under fire for not paying adequate attention to the human rights issues of their operations. There do not appear to be any HRIAs for these industries in the public domain yet, but hopefully this will change in the near future as there is no question that any industry can have significant impacts on human rights, positive and negative. One of the case studies in the Rights and Democracy HRIA pilot described in the previous section is in the technology sector.

38. Similarly, the companies known to undertake HRIAs or comparable exercises are large multinationals. As HRIAs for business become more common, both the costs and the benefits of the exercise should become clearer, hopefully leading other business enterprises to experiment with HRIAs. It should also become clear which approach would be most appropriate for which sort of company, depending on the scale and nature of the business. A medium-sized enterprise should not be expected to allocate the same amount of funding and staff time to an HRIA as a multinational, but smaller companies could apply the same methodology with one expert rather than a team, and place more emphasis on secondary research - although consultation with affected communities is still critical.

39. HRIAs are not currently required by any law, lending institution, or standard - most certainly since they have yet to be clearly defined. But it should be reasonable to expect that HRIAs will be undertaken for significant prospective investments in conflict zones or areas where human rights abuses have been prevalent. When in doubt, a diagnostic tool or preliminary HRIA (comprising secondary research and a few expert opinions rather than extensive consultation) can determine whether a full HRIA is necessary.

40. Given the proliferation of public information on human rights, including the numerous specialized resources for business (e.g. the Maplecroft maps, the Business and Human Rights Resource Centre, the aforementioned Danish Institute and HOM tools, and business-specific research by Amnesty International and Human Rights Watch), there is no excuse for any company, lender or investor to claim to be unaware that their investments could impact human rights.¹⁶

¹⁶ See Maplecroft maps, <http://maps.maplecroft.com>; the Business and Human Rights Resource Center, <http://business-humanrights.org>; Danish Institute op. cit.; Amnesty International and IBLF, *Business & Human Rights: A Geography of Corporate Risk*, 2002, <http://iblf.org/resources/general.jsp?id=69>.

Additional resources

International Alert (C. Crossin and J. Banfield), *Conflict and Project Finance: Exploring Options for Better Management of Conflict Risk*. Background paper, January 2006.

International Alert and Engineers Against Poverty, *Engineering Contractors and their Clients*, September 2006.

International Association for Impact Assessment, *Social Impact Assessment: International Principles*. Special Publication Series No. 2, May 2003.

International Finance Corporation, *Addressing Social Dimensions of Private Sector Projects*. December 2003.

The Halifax Initiative, *Risk, Responsibility and Human Rights: Assessing the Human Rights Impacts of Trade and Project Finance*. Revised Discussion Paper, July 2004.

OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones, 2006.
