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Citizen consumer and civic Action Group

# Human Rights Impact Assessment – concepts, approaches and methods

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**Abstract:** This document discusses the concepts, approaches and methodologies used in conducting human rights impact assessments. The different phases and stages of HRIA are introduced, and the first three stages are discussed in some detail. The report attempts to relate the generic information available in the literature to the specific context of the HRIA project initiated by CAG at Kodungaiyur, to the extent possible at this early stage of the project as of February 2018.

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## HRIA – objectives and distinguishing features

### *Objectives*

Human rights impact assessment (HRIA) is an instrument to assess the impact that specific policies, programs and projects have on human rights in particular contexts. The primary goal of HRIA is to help maximize positive effects and prevent negative impacts on rights. HRIAs can be used to ensure that human rights considerations are recognized as relevant to projects from the outset. They are integral to continuous assessment and monitoring, as well as after-the-fact assessment of possible impact. Projects designed to address human rights often include an HRIA, but more significant perhaps is the need for HRIA as a vigilance mechanism to monitor those activities and interventions that subversively, indirectly, or unintentionally impact human rights.

Formal impact assessments range over more than forty domains. Of these, Social (SIA), Environmental (EIA) and Health (HIA) impact assessments are most commonly resorted to in projects that may impact society, the environment and/or the well being of people. For some projects, these are mandated by regulations. When law does not require them, they are sometimes done proactively, but most often they are undertaken when there are matters of concern – namely, when negative impacts are either expected or already evident.

Although HRIAs are not new, it is only in the last decade or so that they have gained increased importance as an integral dimension of impact assessments. One of the

key drivers for HRIA has been the recognition that development projects aimed at making positive contributions to societies worldwide can cause widespread, long lasting and deep-cutting negative impacts on the environment and on humans. Such impact can often threaten fundamental human rights, especially for already vulnerable sections of society. The UN principles on Business and Human Rights have brought explicit recognition of the impact of business practices on Human Rights<sup>1</sup>. This in turn has led institutions and human rights organizations to recognize that HRIAs should become integral to development projects.

That said, the situation on the ground is that human rights impacts are often not accounted for in planning, or execution. While EIAs and SIAs have become established practice in the context of businesses and global development agendas, multi-national and trans-national business practices, HRIA is only resorted to when (usually negative) impacts become evident during implementation, or in some cases, several decades after a project has been implemented.

### ***Distinguishing features***

HRIAs can be done standalone, or as part of an integrated assessment that includes other types of assessments. While integrated assessments have their advantages, proponents of HRIA say that a standalone assessment is warranted in situations where there are known or suspected violations of human rights as this centers and weights rights issues over all other issues in a given context. Also, some of the distinguishing characteristics of HRIA make it a powerful tool to employ standalone.

First, HRIAs are based on international legal frameworks that are binding on ratifying states, and which have resonance in the constitutions and legal frameworks of nation states and regions. As a 2013 study by the World Bank and the Nordic Trust states, “HRIAs are explicitly based on an objective legal standard of assessment drawn from human rights law, chiefly treaties. This introduces distinct normative, moral and legal elements into the assessment process since HRIAs depart from an openly normative position and do not necessarily accept the existing factual scenario or status quo as acceptable or legitimate”.

This point cannot be emphasized enough. Status quo and normativity are not the positions from which human rights issues can or should be fought, even if these are judged sufficient for SIAs and EIAs. Concepts such as equality, accountability, participation and transparency have well-developed, differentiated and nuanced jurisprudence within the Human Rights framework, implementable at different levels by international law, regional agreements, domestic law, UN special charters and expert bodies. These represent the foundational framework for HRIA, distinguishing it from other types of impact assessments that may have very

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<sup>1</sup> See A Human Rights Primer (Ranganathan (CAG), 2018) for a discussion.

different operational and/or regulatory frameworks. When there is known or suspected violation of Human Rights, it is hence better to do a standalone HRIA as it orients the investigation towards the possibility of drawing on a network of human rights institutions and invoking the full range of Human Rights interventions available to the particular context, in order to implement the recommendations of the assessment.

Secondly, HRIAs are also important because they explicitly invoke the language of duty bearer and rights holder and they are integral to promoting a culture of accountability. Thirdly, HRIAs ensure that a comprehensive assessment of impacts is done for a range of rights, thus making sure that direct and indirect impacts are also recognized and assessed. In particular, HRIAs consider political, economic, civil, social, and cultural rights in an inter-related and interdependent manner, which makes HRIAs much more likely to detect indirect impacts than other types of assessments.

One caveat is important here. HRIAs typically do not include environment assessments. That is, they are not designed to assess impact on environment per se. Rather, they focus on environment only to the extent it has direct and immediate impact on human rights. If environmental damage is known or suspected to be an issue, it may be necessary to supplement the HRIA with a distinct EIA (environmental impact assessment), and to design the HRIA to explicitly take advantage of the outcomes of the EIA to argue for proactive protection of basic human rights (such as right to clean water and sanitation, right to health, right to safe working environment etc. as applicable).

Similarly, the World Bank review (2013) notes that HRIAs do not usually emphasize economic considerations. If livelihoods are likely to be threatened in any given context, special efforts have to be made to ensure that the HRIA toolkit design pays adequate attention to questions of livelihood and economic security.

From this discussion, it becomes apparent that HRIAs should be scoped in dynamic relation to project context. When not much is known about the field situation, there may be a necessity for using iterative planning and reconnoitering field visits, before finalizing the design of the different phases of the HRIA.

## **HRIA design – essential elements, methods, phases and stages**

As HRIAs have gained in importance and currency, a need arose to develop methodologies and toolkits for undertaking HRIA in different thematic areas. This section of the report is intended to serve as a comprehensive guide for designing an HRIA. It introduces the different phases of HRIA and the processes and actions that have to be undertaken in each of these phases. While this report focuses on generic

approaches to HRIA, an effort has been made to point to dimensions that may be particularly useful for undertaking HRIA in the domain of Solid Waste Management<sup>2</sup>.

The Danish Institute of Human Rights has taken a lead role in developing HRIA toolkits as well as Human Rights Education toolkits for different domains. Their methodologies and toolkits form a primary resource for this report.

### ***HRIA – essential elements***

The essential elements of HRIA are, the use of a normative human rights framework, public participation, equality and non-discrimination, transparency and access to information, accountability, inter-sectoral approach and international policy coherence. In order to give substance to these terms, specific attention must be given during project definition as well as reporting to address how the project incorporates these essential elements. This is important especially if the HRIA report is intended as a baseline for invoking international, and/or national human rights networks and regulatory frameworks. Each of these elements is discussed below.<sup>3</sup>

### **Normativity**

The normativity of the human rights framework depends on whether the duty bearer is public/state institution, or private. While the former have direct responsibility that is often legally binding on them, for the latter, community-derived responsibility is invoked, which is much less legally binding. As many human rights issues arise in development projects undertaken by transnational corporations, there has been push to develop and/or tighten up norms for the duties of private actors (especially business corporations) towards right bearers, not withstanding citizenship. The need for this push is underscored by the fact that even in the case of public action, the normative principles can be a matter of interpretation, debate and contestation. There is need for sustained efforts towards

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<sup>2</sup> Any domain related pointers are necessarily speculative at this stage. Context sensitive design can be done only when conducting reconnaissance on the field. The CAG HRIA project fieldwork has been focused primarily on the waste value chain part of the project at the time of writing (February 2018), and no recce has been done to assess human rights impacts in Kodangaiyur, the primary field site for the project.

<sup>3</sup> The material in this section has been synthesized from several sources, the most important of which are included in the bibliography. Due diligence was also done on thinking through the literature, and making connections in the context of the HRIA project at CAG. The material in this section hence represents significant interpretation and contextualization by the author of this report.

policy transformation that can aspire to hold business corporations accountable for their direct or indirect impact on Human Rights worldwide.<sup>4</sup>

### **Public participation**

Public participation in HRIA is achieved primarily through sustained stakeholder engagement. At the next level, If HRIAs are done with EIAs or SIAs before a project is commissioned, a public meeting or public comment period may be mandated. But for standalone HRIAs and those undertaken while a project is in progress or already implemented / functioning, there may be no mandatory requirements for public participation. In such cases, regular outreach events that percolate into the community and fan out to the public are ways to ensure public participation. Human Rights Education (HRE) is integral to eliciting public participation. This is an important dimension of HRIA and institutions such as the Danish Institute for Human Rights have developed toolkits, multimedia, online as well as in person courseware on Human Rights Education. Hence an HRIA project must include the development of materials aimed at community engaged HRE.

### **Equality and non-discrimination**

Equality and non-discrimination is a core principle in HRIA, distinguishing it from many other kinds of impact assessments. Several of the covenants and additional protocols that extend the Universal Declaration of Human Rights serve this principle, also reflected variously in regional, domestic law and principles. Throughout the design and execution of HRIA, constant vigil must be maintained on situations that cause and/or further exacerbate inequity and discrimination, especially for already marginalized, vulnerable populations<sup>5</sup>.

### **Transparency and access to information**

Transparency and access to information can be understood from at least two different perspectives in the context of HRIA. The first applies to public and private institutions implicated as duty bearers in the HRIA. The second applies to the processes, procedures, tools and outputs produced in the course of the HRIA itself. In both these cases, the project design must include specific details of how this

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<sup>4</sup> An HRIA at Kodungaiyur should be able to yield direct evidence of product practices of transnational corporations having negative impact on Human Rights far downstream of their production centers. The project could then leverage this with the International Human Rights community to push for tighter regulations around producer liability.

<sup>5</sup> In Kodungaiyur, at least three categories of discrimination are immediate candidates for investigation – issues of caste, gender, and children’s rights. Aside from this, the precarity of informal waste workers livelihoods, and their lack of access to many of the basic rights and markers of citizenship make HRIA an essential tool for this project. Such evidence based HRIA will be essential to establishing the impacts of business practices on human rights through the lens of waste.

essential element of HRIA will be addressed. The HRIA report will likewise need to explicitly address this dimension, for it to be judged effective<sup>6</sup>.

### **Accountability**

Accountability is a fundamental dimension of investigating the impact of Businesses on Human Rights in the context of development. Some of the major strides in Human Rights thinking have arisen from the need to tighten up accountability that crosses public/private, producer/supplier/consumer distinctions, and nation/state borders. The business practices of transnational corporations cause impacts to human rights far upstream, and far downstream, from their sites of production. Whether in mining for raw material, laying pipelines for supply, global tourism and global property development, or disposal of their goods way downstream, the global footprint of transnational business practices requires rethinking accountability as a concept in international law. Although the UN principles on Business and Human Rights is a key milestone in recognizing this need, much more needs to happen in this domain in order to keep pace with the far reaching and deep cutting impact of global development agendas on humans and environment worldwide.<sup>7</sup>

### **Inter-sectoral approach**

In terms of inter-sectoral approach, adequate attention to the inter-dependencies and relative importance of economic, political, civil, social, and cultural rights makes an HRIA complete. Often in the case of suspected violations of civil, social and cultural rights, economic impacts may be sidelined in HRIAs in comparison with other kinds of impacts. If such is the case, then the HRIA design as well as reporting must explicitly address why this might be strategic as well as important, in the given context.<sup>8</sup>

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<sup>6</sup> In the context of Kodungaiyur, some of the more obvious ways to think about transparency and right to information is to trace the requirements placed on Businesses by the Solid Waste Management Rules 2016, (and other applicable local, national and international regulations) to file reports with regulatory bodies such as the TNPCB, CPCB etc. A mapping of key public and private entities and their information obligations will be essential to this exercise. A related line of questioning is to ask what mechanism (if any) enable or enforce duty bearers to make such information available to rights bearers, civil society organizations and concerned citizens.

<sup>7</sup> The need to bridge this gap is recognized as one of the biggest contemporary challenges in ensuring equity and justice as part of sustainable development goals. An evidence-based HRIA at Kodungaiyur could be leveraged towards filling this strategic and important gap.

<sup>8</sup> In the case of Kodungaiyur, an example is the possible economic impact on informal waste pickers, scrap dealers and other members of the informal waste economy, if the dumpsite were to be closed. The waste value chain project already recognizes the inter-dependence of different elements by defining “value” as something more than economic value. By qualifying and mapping the word “value” explicitly in terms of associated Human rights, the inter-sectoral approach to HRIA may be made more explicit.



***HRIA methodologies***

HRIA is fundamentally an evidence-based approach. Its effectiveness depends directly on the robustness of the methods used to gather evidence and the quality of the evidence gathered. While many studies have tended to focus on qualitative indicators, today the move is towards more quantitative data. Both the UN bodies as well National Human rights bodies have made strides in developing indicators for measuring human rights compliance<sup>9</sup>. Toolkits usually focus on a combination of survey data, in-depth case studies, secondary sources on impacts, and stakeholder perception studies.

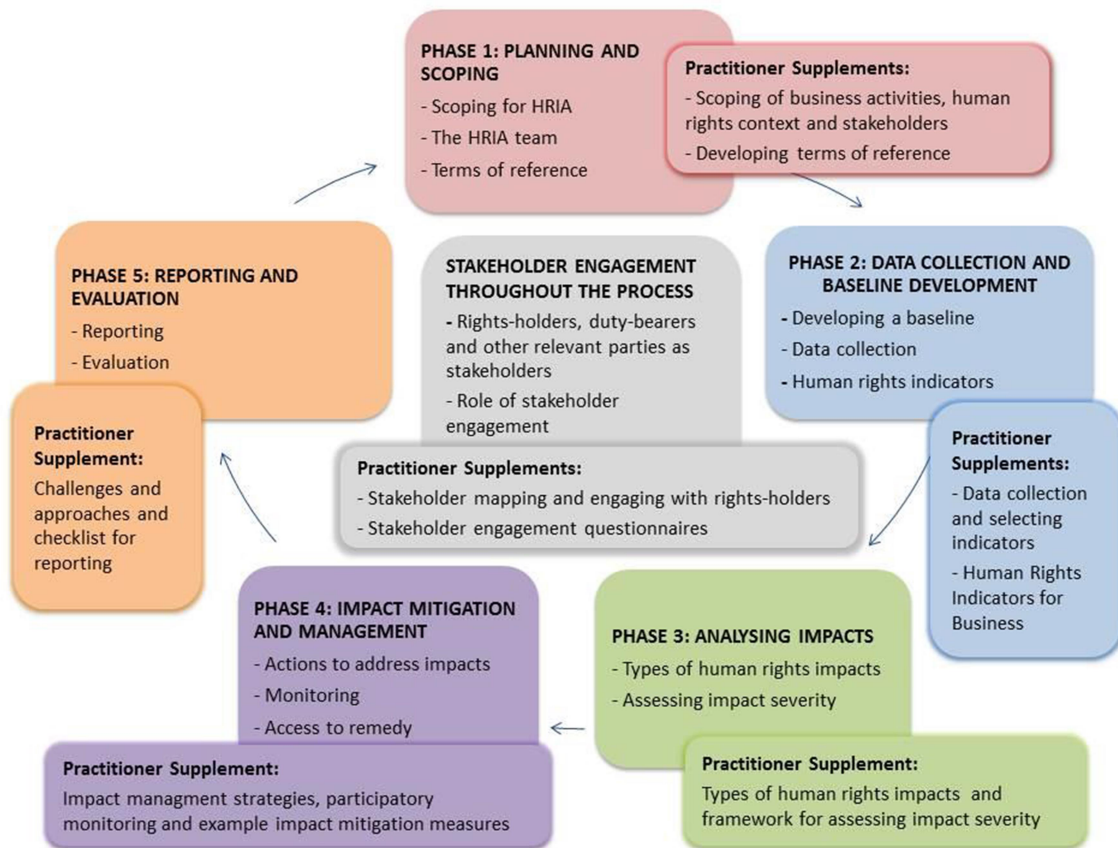
***Phases of HRIA***

HRIA typically comprises five phases; planning and scoping, data collection and baseline development, analysis of impacts, impact mitigation and management, and reporting and evaluation. The project is held together by stakeholder engagement through all the phases. The figure below represents the five different phases of HRIA, with stakeholder engagement functioning as the connecting layer<sup>10</sup>.

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<sup>9</sup> For a discussion of recent shifts in Human Rights approaches, please see Human Rights Primer (Ranganathan (CAG), 2018)

<sup>10</sup> The figure has been included from the Danish Human Rights Institute HRIA toolkit overview. Copyright permission has not been requested since this footnote reference makes clear the source.



**HRIA stages**

The five phases of a HRIA project are typically executed in nine stages, for which HRIA toolkits provide guidelines. The stages are Preparation, Screening, Scoping, Evidence gathering, Consultation, Analysis, Conclusions and Recommendations, Monitoring and Evaluation, and Preparation of the Report. I discuss the first six stages here and comment on their probable implementation for a HRIA at Kodungaiyur, a project recently initiated at CAG. For the final three stages, I have included generic recommendations based on the Human Rights Toolkit published by the Danish Institute of Human Rights, as well as to other sources included in the bibliography. Wherever possible this general discussion of toolkit materials should be sensitized and informed by the field realities at Kodungaiyur. I have derived case study specific information from the Informal Workers Trailing project (completed in December 2017, funded by the Global Green Grants Fund) at CAG, as well as the initial reconnaissance visits made to the Kodungaiyur dumpyard and its neighbouring areas identified for HRIA. At the time of writing this document, reconnaissance visits have just been initiated to understand the waste value chain at Kodungaiyur, whereas impacts of the dump yard on residential communities has not yet been investigated. Ongoing fieldwork will be integral to refining the strategies discussed in this section.<sup>11</sup>

**Preparation**

At this stage of the project, the different inter-sectorial dimensions of the project are identified; namely, the legal, regulatory, economic, environmental, social and cultural contexts of the assessment are clarified. It has to be remembered that this is a preliminary stage of the project, and more inter-sectorial dimensions may become apparent at a later stage. The legal and regulatory framework for HRIA is mapped, depending on the region, country, and domain of the project.

For the HRIA at Kodungaiyur dumpyard, the applicable regulatory frameworks include Solid Waste Management Rules, Plastic Waste Management Rules, and regulations related to air, groundwater, surface water and soil pollution. In relation to community HRIA, regulations regarding labor, housing, caste/gender discrimination, and children's rights are some of the complex legal and regulatory frameworks implicated by the project.

**Screening**

While the planning stage should open the project up, the screening phase is the exercise of reigning in the scope to what is thought to be most critical for the

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<sup>11</sup> As noted previously all observations related to the CAG HRIA project at Kodungaiyur are necessary speculative at the time of writing this report in Feb 2018. This sub-section should be used as a proforma guideline, to be revisited during recce field visits.

project. It is an important phase, as it requires focused deliberation on the dimensions of policy and/or project that are most likely to impact Human Rights. Screening refines the list of policies, procedures and regulations that have intersection with known or suspected human rights issues in the chosen context. It is also a time to rule out infeasible dimensions of the study, and to identify areas that need input from reconnaissances. Initial screening also involves mapping stakeholders, specifically with the language of human rights in mind. Preliminary identification of different types of rights holders and duty holders begins at this stage.

As the HRIA critical review underscores, it is necessary to decide in the screening stage itself which dimensions of impact are most important to investigate, as following every trail may be both infeasible and ineffective. For the HRIA project at Kodungaiyur, the choice of field site itself should be understood as a result of screening. To investigate the impact of business practices on human rights through the lens of waste, the HRIA could have focused on other sites such as transfer stations, or bulk waste producers. However, the dumpyard is known to have a 30-year history of mixed waste dumping, and has densely populated lower and middle-income communities in the vicinity, some of whom are part of the informal waste sector. Members of the community are reported to have health, safety, civic, social, cultural and other impacts due to their long-term contiguity to the dumpyard. Hence Kodungaiyur is a strategic choice for the HRIA. The focus on specific kinds of plastic waste is also a choice that should be understood as a result of screening. The strategic focus of the project is to identify Human Rights impact of businesses that contribute to widespread plastic pollution through their manufacturing, packaging and supply-chain practices.

## Scoping

This stage of the HRIA involves developing the terms of reference (TORs) of the assessment and the road map for the assessment. It involves a mix of qualitative and quantitative methods as typically one would do case studies to outline scenarios, and identify indicators to be tracked during the HRIA.

Scoping comprises at least four core activities. First, it is critical to understand the legal, political and social context of the country in which the HRIA is being conducted. It is important to understand how domestic law protects human rights and the kinds of human rights issues that typically surface in the country, in relation to the thematic domain of the HRIA. Second, the thematic area and project under assessment has to be completely understood. Thirdly, research efforts should focus on gathering information on typical human rights impacts that could arise from the thematic area and/or project being assessed. This is a very important dimension of scoping, as HRIAs have to draw on secondary literature, case studies and impact assessments done in other contexts to substantiate their analysis. Fourth, the

scoping exercise must identify rights holders and duty bearers, especially identifying vulnerable populations impacted by the project.

The scoping stage should typically be conducted iteratively, with field reconnaissance visits serving to build out and validate the terms of reference for the study. Well-chosen case studies could be a useful way to develop and refine the scope of the study. Case studies should cover both typical scenarios and vulnerable populations. In addition to case studies, initial survey data could help rule in or rule out focus areas and indicators for the study. Choice of case studies and indicators must be made strategically, keeping the goal of the HRIA in mind.

To make the connection to the HRIA at Kodungaiyur, the first step would require an understanding of the regulatory and legal framework for Human Rights in the Indian constitution and its intersection with International Law. It would also require completing the mapping of applicable regulatory and legal frameworks initiated in the screening stage. The second step would be a thorough documentation of the Kodungaiyur dumpyard and its vicinities in relation to SWM and the waste value chain, as well as a documentation of the communities contiguous to Kodungaiyur in terms of the human rights indicators chosen for the study. The third step could include research into the impacts of large-scale mixed-waste open dumpyards on the environment and on communities, as well as case studies that focus on the kinds of inequities, unfair labor practices and unsafe environment found in evidence in SWM practices at Kodungaiyur. Step four is a focused mapping exercise that identifies duty bearers and rights holders in relation to the human rights indicators chosen for tracking in the study. In relation to case studies, typical case studies should be done for the different stakeholder groups identified as impacted rights holders and duty bearers. In addition, even if a majority of rights bearers are not involved in waste picking, the informal waste worker, women involved in waste work, the child waste worker, people from particular marginalized castes and tribes could be identified as specific vulnerable groups for focus in the HRIA. Again, the choice of indicators and the focus on specific populations must be strategically aligned with the overall goal of the HRIA project at Kodungaiyur.

The scoping decision on impacts to be investigated, the kinds of indicators chosen for tracking, and the identification of rights holders and duty bearers will determine the downstream stages of the HRIA, namely, the evidence gathering, consultative processes and analysis phases.

### **Evidence gathering**

The scoping phase of the HRIA results in identifying the set of key impacts, different categories of stakeholders and terms of reference for the impact assessment. It involves a larger portion of desk research, a focus on toolkits and secondary

literature, analysis of primary field data where available, augmented by a few reconnaissance visits to the field to scope the terms of reference.

In contrast, the evidence-gathering phase involves intensive field research and stakeholder engagement. This stage can be described in terms of three main activities, namely, HRIA baseline development, data collection informed by universal human rights principles and the selection of human rights indicators to guide the process of data collection and downstream monitoring, evaluation and impact management. Each of these is discussed below.

### **Baseline development**

Baseline development is a documentation of the status of human rights in the identified field site and its communities. The Danish Human Rights Toolkit defines a HRIA baseline as “an evidence-based description of human rights enjoyment in practice, as compared with rights in international human rights instruments and domestic law, at a specific point in time”. Developing a baseline requires targeted gathering of environmental, socio-economic, political and other such data, to understand the current state of human rights enjoyment. Some HRIA literature and methods hence also refer to this phase as the ‘data collection’ or ‘evidence gathering’ phase.<sup>12</sup>

Baseline development is critical to the analysis of actual and potential human rights impacts of ongoing and proposed projects. In ex-ante HRIA, this provides basic information against which to predict the potential impact of a project. For ex-post HRIA it provides the data that can be analyzed to determine what human rights impacts have occurred as a result of a project once it has been commissioned. In either case the baseline uses benchmarks as external points of comparison. In the case of HRIA the benchmark is international human rights standards, as defined in international instruments and elaborated in jurisprudence, reports from special rapporteurs, regional human rights frameworks, and international bodies such as the UN.

Human rights indicators are integral to establish the connection between baselines and benchmarks. According to the Danish Human Rights Toolkit, indicators are specific information (quantitative and/or qualitative) on the state or condition of an object, event, activity or outcome that can be related to internationally recognised human rights norms and standards. Indicators can be used to measure human rights impacts in that they describe and compare situations, which can help with early impact identification as well as with measuring change over time (p 52). Selection of human rights indicators is hence an important dimension of setting up a baseline.

The scoping stage decides the different human rights that will be the focus of data collection and analysis. These are input to the evidence-gathering phase. However, there will almost certainly be new inputs emerging from the activities undertaken in the evidence-gathering phase. Hence, the project design has to accommodate

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<sup>12</sup> Danish Human Rights Toolkit (p 54)

feedback from the results of baseline investigation, before finalizing the list of rights for assessment in the data collection stage.

While developing the baseline, the assessment team has to bring together primary data and secondary sources in order to understand the status of human rights enjoyment. Data is collected using methods such as in depth interviews, focus group discussions, and structured questionnaires designed to investigate human rights impacts for different types of rights holders, vulnerable groups and communities. In ex-post HRIAs, it is often also necessary to look for historical data to reconstruct what the scenario might have been prior to project commissioning. The baseline development leads to the next sub-phase of evidence gathering, namely, data collection.

During baseline development and data collection, efforts must be made to integrate the rights holders and other stakeholders into the process. Community led HRIAs involve a gestational period in which a project team has to spend considerable time in arriving at a mutual understanding of rights and impacts on the community. The objective is to develop a shared understanding, and in the process educate communities on Universal Human Rights and on AAAQ (Availability, Accessibility, Acceptability and Quality), as well as channels available to them for self-representation, grievance, legal intervention and redress where applicable. Human Rights Education (HRE) is hence a major focus of institutions such as the Danish Institute of Human Rights and the UK Human Rights Commission, who have developed toolkits for HRE.

### **Data collection**

Data collection is a key phase of HRIA that implicates intense fieldwork and sustained stakeholder engagement. Deciding what data to collect is both science and art, and a deciding dimension of the effectiveness of HRIA. Identifying sources of data is a very important early activity of this phase. Intelligently designed data collection using a variety of sources can transform the ability of HRIA to uncover likely impacts.

Sources of data determine the usefulness of the baseline as well as choice of human rights indicators. The Danish Institute HRIA toolkit suggests some general types of data sources such as data provided by rights holders, events based data, socio-economic and administrative statistics, perception and opinion surveys, and data from expert judgments and human rights actors (p 54-55). This list must be inflected and augmented depending on the complexities of the project and its likely impacts.

Statistics, official records, reports and previous assessments are possible sources of data, and must be taken into account in the baseline study as well in data collection. A compilation of sources and critical review of their scope, coverage and conclusions should be undertaken so as to identify gaps in sources and opportunities for data collection. The existence of gaps underscores that the most important dimension of the data collection phase is primary data collection during fieldwork with sustained stakeholder engagement.

Data collection exercises can be taken up either for each of the human rights identified for assessment, or by thematic area, or in combination. Thus, in the case of CAG's HRIA at Kodungaiyur, one could decide to investigate right to housing, right to education, right to livelihood as distinct rights, in combination with a focus on vulnerable groups such as children, women, scheduled castes/tribes and itinerant informal labour.

Depending on the impacts chosen for assessment, the types of collection mechanisms have to be decided. The detailed design of data collection should ensure that human rights principles are taken into account in the identification of sources as well as methods used for data collection. Using human rights indicators as well as the principles of AAAQ are ways to achieve this. For example, when evaluating right to housing, we have to be aware that housing is not an absolute right. Rather, it is subject to AAAQ – namely, it should be available, accessible, acceptable and of good quality. However the interpretation of these metrics has to be done with contextually relevant information that informs what is acceptable, or accessible in a given context. Making these criteria explicit is a very important step in data collection design, as it influences not only data collection, but also monitoring and evaluation as well as risk management and mitigation of potential impacts, as applicable. It also influences the right choice of indicator to enable such tracking.

### **Human Rights Indicators**

The use of human rights indicators to measure human rights implementation, impacts and changes over time is still an evolving field. The human rights indicator framework developed by the Office of the High Commissioner for Human Rights (OHCHR) is one of the key reference frameworks available to guide HRIA design. While this framework was developed to measure rights implemented by States, the Danish Institute of Human Rights has adapted this framework for use in measuring human rights impacts of businesses. The two-step process first establishes the normative content of international human rights for the particular context, by combining international human rights treaties, conventions, general comments, special procedures, regional treaties and national jurisprudence.<sup>13</sup> The second step involves categorizing indicators as structural (policy), process (procedure) and outcome (impact) indicators. Examples are available in the Danish Human Rights toolkit supplements, and will be drawn upon as applicable in designing the indicators for CAGs HRIA at Kodungaiyur.

Indicators can be categorized as quantitative and qualitative, and data collection source types can be chosen to align with this categorization. When investigating complex impacts such as health impacts, a combination of such strategies will have to be used. Thus, for instance, a quantitative assessment of number of doctor visits, number of vacation days due to illness, loss of income due to illness, expenses on

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<sup>13</sup> See Human Rights Primer for a comprehensive discussion of international human rights instruments and the relationship to international, regional and domestic legal frameworks.



medication and doctor visits are some examples of quantitative data collected on health. At the same time, perception and opinion are also important sources of health status and health impact. When designing indicators for complex assessments such as health impacts assessment, the work done by the UK and Scottish Commission of Human Rights provide some of the well researched, evolving contemporary guidelines.

The use of indicators being an emerging field, one of the key decisions to be made in the scoping phase and evidence gathering design phase is whether, and how to select indicators for use in CAGs HRIA at Kodungaiyur. The advantages of using indicators includes a clear implementation of Human Rights principles, and a structured way to measure and monitor impacts incorporating these. However, some of the limitations of using indicators is that they cannot replace sensitive and contextual qualitative and descriptive assessments. The OCHR notes that “indicators are tools that add value to assessment with a strong qualitative dimension; they do not replace them”.

## Consultation

The effectiveness and legitimacy of HRIA is reliant on the implementation of consultative processes that are thoroughly participatory in intent and design, especially since transparency, accountability and public participation are essential elements of HRIA. Participative consultation occurs during the assessment stage, and in later stages when making conclusions and recommendations, as well as monitoring and evaluation. A demonstrably effective feedback mechanism must be implemented for consultative HRIAs, based on participatory methods developed for project and policy development. Consultation is a distinct stage in HRIA, and has some overlaps with stakeholder engagement, which is a continuous thread throughout the HRIA.

The Danish Human Rights Toolkit gives several useful guidelines for thinking about participative consultation. It emphasizes that in the context of HRIA, stakeholder engagement must pay particular attention to rights-holders, including to their rights to be consulted and to participate. Secondly, several international legal instruments and national legislations incorporate consultation and participation of rights-holders in decision-making that affects them has been incorporated. The toolkit cites several such examples from international human rights law<sup>14</sup>.

Consultation as a distinct one-time process is typical of ex-ante HRIAs undertaken by businesses. Critical literature reviews caution against these turning into a check box marking exercise to prove due diligence. From the point of view of human rights, ongoing participatory stakeholder engagement goes well beyond single point consultation. The Danish Human Rights Toolkit emphasizes that “In HRIA, meaningful participation in the impact assessment process is as important as the outcomes, and rights-holders are considered to be active agents in the impact

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<sup>14</sup> Toolkit (nnnn:pp 94 - 95)

assessment process. Whilst public participation is a standard component of impact assessment processes such as EIA and SIA, taking a human rights-based approach creates further emphasis on participation in terms of questioning and broadening the points in time at which participation occurs, the level of information sharing involved in participation and consultation activities, and empowerment and capacity building of individuals to participate in the impact assessment process. The human rights framework also facilitates drawing on human rights institutions, networks and expertise in the impact assessment itself, as well as the implementation of recommendations and mitigation measures.

The section on stakeholder engagement discusses highly differentiated mechanisms that can be adopted to better reflect the different types of stakeholders such as rights holders, duty bearers, government and legislative bodies, and local community organizations.

## **Conclusions and recommendations**

The results of the HRIA feed into the impact mitigation and management phase, where recommendations are made on future course of action. This is a crucial phase that could have different objectives depending on who conducts the HRIA and the timing of the HRIA. For ex-ante HRIAs, monitoring and evaluation is the larger part of the activity triggered by HRIA, whereas for ex-post HRIAs a variety of actions can be undertaken, such as ongoing monitoring and evaluation, advocacy and outreach, efforts to reformulate policy and initiate legislative change, mitigation, remediation, legal action and redress.

Since the interests of the different stakeholders involved in the HRIA may be different, and at times contradictory, the organization undertaking the HRIA must at all times keep the objectives of the HRIA in mind when evaluating courses of action based on results of the HRIA. Hence the downstream phase of monitoring and evaluation has to be planned for right from the planning, screening and scoping stages.

For instance, in the case of CAG's project, the impact mitigation and management strategies must be aligned with the objectives of the HRIA at Kodungaiyur. The most important objective of the HRIA is to push back on companies to take full responsibility for business practices that negatively impact human rights downstream in the Solid Waste Management cycle by contributing to plastics pollution. Plastic pollution is recognized amongst environmentalists and environmental agencies as a humanitarian crisis of an unprecedented scale and magnitude today. In particular the results of CAGs HRIA at Kodungaiyur will be used to push for stronger legislations and international pressure on businesses to eliminate harmful plastic packaging and product choices. Hence, rather than emphasize mitigation or remediation of impacted communities and sites, CAGs focus will be on advocacy, and outreach, as well as influencing policy reformulation, legislative action and perhaps even legal action based on the results of the HRIA at Kodungaiyur.

## Monitoring and evaluation

A primary goal of this stage is to monitor the effectiveness of the HRIA itself. This can take a few different forms and can happen in phases, both during and after the HRIA is completed and the report published.

One goal is to monitor and evaluate on an ongoing basis impacts identified by the HRIA. A second is to investigate whether any of the risks predicted by the HRIA materialized, and who the affected stakeholders were. A third dimension is to look for risks that were not predicted by the HRIA, and identify impacted stakeholders. Here one would focus on exceptions that may have been missed by the HRIA, or that have not been adequately addressed by the HRIA. A fourth is to monitor remedial actions, if any, as well as any recommendations and policy briefs that were inspired either directly or indirectly by the HRIA. If remediation is a goal, then the evaluation would be set up to measure expected changes and outcomes.

The emphasis on each of these may be different based on whether the HRIA is undertaken ahead of an implementation project (ex-ante) or after the fact (ex-post). The first objective will be typically undertaken during the HRIA itself, whereas most of the others will be monitored and evaluated after the formal HRIA is completed and the findings published in a final report.

CAGs HRIA project at Kodungaiyur is a case of a ex-post assessment – namely, an assessment that is done after a project has already been implemented – in this case, thirty years after commissioning of the Greater Chennai Corporation’s dumpyard at Kodungaiyur. Hence the emphasis is more on expectation of impacts, rather than prediction of risks.<sup>15</sup> Once the HRIA analysis phase begins to yield a sense of impacts, it will become necessary to revisit strategy for this phase. Ongoing monitoring and evaluation of impacts may become part of the strategy to further strengthen and extend the conclusions of the analysis phase.

A significant second phase relates to the desired outcome of the HRIA to effect change in policies and regulations related to upstream manufacturing and business practices that cause residual plastic pollution. A significant emphasis of monitoring and evaluation plans for the HRIA at Kodungaiyur will likely be directed at policy frameworks, regulatory compliance and business practices. Along these lines, one of the outcomes of the HRIA recommendations phase could be a monitoring and evaluation plan for implementation of SWM 2016 and PWM 2016 rules, especially in relation to segregation at source, as well as EPR strategies for residual plastic waste. If more stringent rules are formulated to incorporate producer liability, monitoring and evaluation might include assessment of reach and effectiveness of policy reformulation advocacy and action.

## Reporting

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<sup>15</sup> It would be fair to say that the time for risk prediction was thirty years ago, or at least a decade or more ago, when there could have been intervention to control landfill size, and mitigate potential impact of mounds of unsorted mixed waste in the landfill. Today the urgent need is to assess impact of 300 or more acres of mixed waste gathered over a thirty-year period.

Reporting is an integral and important part of the HRIA process. The standard setting toolkits include guidance on report writing. However, these toolkits are largely directed at pre-project HRIAs undertaken by business corporations and other institutions seeking to establish due diligence, rather than government and civil society organizations undertaking HRIA due to suspected violation of human rights. As a result the messaging in these toolkits emphasizes the need to publish reports in order to demonstrate intention to protect rights, rather than publishing towards advocacy, mobilization and actionable outputs. The toolkits emphasize the centrality of reporting to the HRIA, in order to follow the UN principles in spirit and practice by showing demonstrable commitment to communication, transparency, and accountability. At the same time, I believe there could be an opportunity for CAG to establish critical guidelines in reporting for CSOs, as there is a bit of a lacuna here in available toolkits. In the rest of this section I have augmented the guidance in available toolkits with perceived needs for CSOs. More insights will be gained in the course of the project towards the design of the final report.

While stakeholder engagement is aimed at communication throughout the HRIA process, the final HRIA report is a consolidated document that should address the motivation for HRIA, the main objectives of the HRIA, the design of the HRIA, as well as how it addresses the essential elements derived from the UN charter. The section on essential elements earlier in this document offers recommendations on how the reporting phase of the HRIA can explicitly address these in the written report. The HRIA stages should be described in a critical manner that highlights context specific decisions and exceptions. A complete HRIA report must include sections on the Terms of Reference, details of rights holders and duty bearers in the different contexts for the HRIA, stakeholder mapping and engagement details, chosen methodologies, details of toolkits used and/or developed for conducting the HRIA, the evidence gathered and results of analysis, monitoring and evaluation as applicable, and the findings of the HRIA.

When reporting impacts, the discussion could be based on individual rights, or meaningful themes such as “Rights of children”, “Labour rights”, “Community impacts”, “Socio-cultural impacts”, as applicable to the project. For each impact and/or theme, the type and extent of impact, actions taken and/or planned towards awareness, advocacy, legislative change, mitigation and remediation as applicable, plans for continued monitoring and evaluation, as well as responsible agencies for follow up should be discussed. If recommendations are being made to stakeholders and other authorities, these are important to highlight, as well as mechanisms put in place for follow up on impact assessment, and remediation, as applicable. The report should include details of community engagement both in conducting the HRIA as well as regular communication.

While communicating the results of HRIA, attention must be given to questions of accessibility, especially for rights holders. Accessibility considerations could include language, literacy, information complexity, format and physical and material accessibility. It may be necessary to design multiple reports designed to reach

different types of audiences, especially stakeholder groups, rights holders, duty bearers, national, regional and international legislative networks and CSOs.

Effective HRIA reports include details of case studies, as these are essential both for self-reflection and self-assessment, and for communicating the effectiveness of HRIA as an investigative and interventional tool. When case studies are included, due caution must be exercised to protect identities of individuals and communities when publicizing the results of the study. However, for internal purposes, and for purposes of monitoring, evaluation and follow up, internal reports can and should capture detailed personal data, obtaining consent where necessary so that the HRIA does not violate rights to privacy.

In general, since HRIA is an emerging practice, and is often conducted in sensitive situations, it is advisable to exercise due caution while including or excluding information from the public facing report. The Danish Institute Human Rights Toolkit guidance document recommends that if any of the HRIA findings are likely to render vulnerable populations even more vulnerable, such data can be either wholly excluded from the external report, or at least anonymized sufficiently before inclusion.

In the case of Kodungaiyur, the precarity of wastepicker occupations and lives, the existence of unauthorized tenements inside the dumpyard, any off the record micro-economies that constitute subsistence for the most vulnerable sections of the informal economy, are some likely cases where the entire project team should engage in deliberation and discussion. Due consideration must be given to how and why one might publicize data that could potentially upset the already precarious and teetering conditions of these vulnerable populations. It is not sufficient to think about this just at the time of writing the report. During scoping, evidence gathering and analysis stages, these vulnerable populations must be kept in mind, so that the HRIA is geared towards protecting their rights without undue exposure at any stage of the process.

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