



## Assessing corporate project impacts in changeable contexts: A human rights perspective<sup>☆</sup>



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### ABSTRACT

Project-level impact assessment was originally conceived as a snapshot taken in advance of project implementation, contrasting current conditions with a likely future scenario involving a variety of predicted impacts. Current best practice guidance has encouraged a shift towards longitudinal assessments from the pre-project stage through the implementation and operating phases. Experience and study show, however, that assessment of infrastructure-intensive projects rarely endures past the project's construction phase. Negative consequences for environmental, social and health outcomes have been documented. Such consequences clarify the pressing need for longitudinal assessment in each of these domains, with human rights impact assessment (HRIA) as an umbrella over, and critical augmentation of, environmental, social and health assessments. Project impacts on human rights are more closely linked to political, economic and other factors beyond immediate effects of a company's policy and action throughout the project lifecycle. Delineating these processes requires an adequate framework, with strategies for collecting longitudinal data, protocols that provide core information for impact assessment and guidance for adaptive mitigation strategies as project-related effects change over time. This article presents general principles for the design and implementation of sustained, longitudinal HRIA, based on experience assessing and responding to human rights impact in a uranium mining project in Malawi. The case study demonstrates the value of longitudinal assessment both for limiting corporate risk and improving human welfare.

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### Introduction

Since the United Nations (UN) 'Guiding Principles for Business and Human Rights' (Guiding Principles, in short) were unanimously endorsed by the UN Human Rights Council, assessment of companies' human rights impacts has been conceptualised as an ongoing process (OHCHR, 2011). This view recognises that risks to human rights change over time, "as the business enterprise's operations and operating

context evolve" (OHCHR, 2011). It is also consistent with best practice in the field of impact assessment.

Although "best practice" remains difficult to pin down in this relatively new approach to impact assessment, it is becoming clearer what components are central to human rights impact assessment (HRIA). The Guiding Principles themselves lay out procedural elements of HRIA, including a screening or scoping process; consultation with potentially affected individuals; analysis of impacts on a wide range of human rights; a management framework for preventing, mitigating or remediating adverse impacts on human rights; and a tracking process for evaluating the effectiveness of interventions, which incorporates communication with affected rightsholders. In public accounts of the current approach to corporate HRIA, principles of transparency, external verification (by rightsholders and stakeholders), and ongoing monitoring and review have become central (Harrison, 2013; Melish and Meidinger, 2012). Achieving all of these aims requires thorough investigation of myriad contextual conditions and project-related impacts. The most detailed publicly available methodology for such a process

<sup>☆</sup> This paper is dedicated to the memory of Dominic Mlenje, who passed away on 14 January 2014. Dominic was trained as a taxi driver and mechanic. During our years of collaboration his charisma, intellect and curiosity also made him a talented human rights interviewer and a vital member of our field team at Kayelekera.

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involves analysis of over 300 human rights indicators (NomoGaia, 2012; Salcito et al., 2013).

### Challenges in longitudinal impact assessment

Although project impact assessments were originally designed as *ex-ante* analyses to guide construction and early-stage operations, ongoing auditing and monitoring is now favoured to account for the dynamism of environmental, social and health systems (Bjorkland, 2013). Though standards have changed, corporate approaches largely remained the same (World Bank, 2010). The World Bank has identified several reasons why companies do not maintain sustained monitoring of impacts. For example, locally hired assessors may lack the training and capacity to monitor changes in impact and context over time. Additionally, assessment is viewed as a means to acquire permits rather than a process for understanding impacts. In other cases, management teams change in the transition from construction to operations and fail to transfer knowledge. Also, project assessment budgets, which are set to meet the terms of loan agreements, shrink after construction is completed (World Bank, 2010). Commitments made to conform with environmental and social standards set by the International Finance Corporation (IFC), Equator Principles banks and regional development banks expire after debts are repaid. In some projects, this may happen soon after operations begin (Pegg, 2009). That impact assessment was initially envisioned as an *ex-ante* requirement may also contribute to its persistence as a one-off activity instead of sustained process. Indeed, the impact assessment lexicon has no standardised term for the extraneous variables that compound (increase) or mediate (decrease) the intensity of an impact, the effectiveness of an intervention or the stability of a context (Ball et al., 2013). Indirect and cumulative impacts may develop slowly and may have a causal link to the project even as they interact with external changes in the operating context. Pre-project snapshots are not designed to capture these effects.

The absence of ongoing impact monitoring has had well-documented consequences for environmental, social and health outcomes. The degradation of river systems downstream of the Ok Tedi mine in Papua New Guinea is one of the most thoroughly documented environmental examples (Hettler et al., 1997). In social and health spheres, the failure to foresee, track and manage the spread of HIV at mine sites in sub-Saharan Africa has been similarly consequential, for human rights and for the corporate bottom line (Rosen et al., 2007; Scudder, 2005; Venter, 2005).

The consequences of inaction, and thus the need for longitudinal analysis, are particularly urgent in HRIA. In health impact assessment (HIA), most impacts result from project-induced in-migration, which can be predictably identified during the pre-construction period (Rogers and Tarzumanov, 2012; Tucker et al., 2012). Similarly, for environmental assessment, impacts can be most efficiently and cost-effectively managed during the front-end engineering design phase that occurs prior to full construction (Raissiyani and Pope, 2012). Yet even health and environment can be difficult to manage without longitudinal assessment. The health impacts associated with community resettlement change over time, and the environmental impacts of a project can be affected by common events, such as a truck driver spilling chemicals (illustrated below). This is all the more pertinent for human rights, which are sensitive to political, economic and other shocks that arise beyond the domain of a company's control. From the standpoint of civil and political rights, large extractive industry projects (e.g. mines and oil/gas developments) typically operate for 20–30 years, while political regimes rarely last that long. As Lee Raymond, the former Chief Executive Officer (CEO) of ExxonMobil once stated: “We see governments come and go” (Coll, 2013). In low-income countries, where new extractive industry exploration is on the rise (IMF, 2012), already fragile states face increasing risk of political, social and economic shocks (Haglund, 2012; Marshall and Cole, 2012). These shocks pose myriad

human rights risks, which intersect and interact with corporate activities in extractive industries.

This article draws from tools available in the fields of impact assessment and epidemiology to provide general guidance for the design and implementation of ongoing longitudinal HRIA. The evolving contextual framework of a uranium mine project in Malawi, and the measured human rights impacts and responses taken, provide an example of how such a system is useful. It demonstrates the importance of longitudinal assessment both for limiting corporate risk and safeguarding human welfare.

### Capturing context

The challenges of longitudinal assessment are neither novel nor unique to HRIA; precedent has been laid in epidemiology and in traditional impact assessments (Grimes and Schulz, 2002; Hulme, 2001; Mate et al., 2013; Pauly, 1995; Salamon, 1979). Epidemiology provides a variety of tools for identifying the “confounders” that should be considered in long-term project monitoring (Victoria et al., 2011). In the impact assessment field, new research has examined contextual instability, and cumulative impact assessment provides key guidance on the interactions among enterprises (Seitz et al., 2011, 2012).

Longitudinal research tools from epidemiology (e.g. trend analysis and survey techniques) offer particular value in HRIA, because they can be employed in a qualitative and semi-quantitative fashion. Epidemiological methods are extremely powerful and useful, but observations and interpretations are always associated with issues of chance variation, bias and confounding. Evaluating the limitations of epidemiological data is highly technical and potentially time-consuming and expensive. However, unlike in HIA, where robust incidence and prevalence rates are critical, the same level of statistical certainty is not needed to establish whether human rights are respected. For example, a single violently quashed protest may be sufficient to establish a human rights context that is not respectful of the right to freedom of expression, regardless of precisely how many protesters were affected. A quality HRIA employs a large quantity of data, covering as many as 300 indicators pertaining to the context and the project, but assessment tools do not need to be employed to perfection (Egger et al., 1998; Von Elm and Egger, 2004). Indeed, in corporate impact assessment, insisting on perfection might not result in any improvement at all. However, rigorous standards of assessment suited to the HRIA context are in clear need of explication.

As to the importance of such processes, the case for longitudinal assessment is financial as well as humanitarian, particularly in the mining sector. Human rights concerns associated with political leadership are guaranteed to change over the life of a mine, and a project is guaranteed to be immersed within those changes. Mining in Latin America provides pertinent and contemporary evidence. Gold and copper deposits in Chile, Ecuador, and Peru were explored at great cost for a decade or more while political leaders encouraged foreign investment. Between 2008 and 2013, as mining companies ramped up exploration activities, presidential politics became increasingly enmeshed in dealings with foreign mining companies. In Chile, just before the 2013 presidential elections that former President Sebastian Pinera lost, he entered the fray over the fate of the now stalled US\$ 8.5 billion Pascua Lama project (Cavallo, 2013; McHugh, 2013; Urkidi, 2010). In Ecuador, President Rafael Correa recently handily won reelection in 2013 after the country's new mining law, as implemented by his administration, proved too onerous for international operators to construct the large Fruta del Norte project, which became a US\$ 720 million write-down in mid-2013 (Buchanan, 2013; Koven, 2013; Regalado Aguirre, 2012). In Peru, former President Alan Garcia spent only one term in office after failing to rewrite mineral agreements and increase royalty rates. Voters replaced him with the more leftist Ollanta Humala, who also pledged to redistribute wealth from natural resources (Bebbington et al., 2008). In 2012, advancement of the legally approved US\$ 5 billion Minas Conga project, which was strongly supported by President

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