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Human rights impact assessment in practice: Oxfam's application of a community-based approach

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From 2010 to 2012, Oxfam America (Oxfam) supported two partner organizations to conduct pilots of a community-based human rights impact assessment tool, *Getting it Right, Human Rights Impact Assessment Guide*, to assess the effects of private investments. The tool generates a norm-based interview protocol based on human rights concerns identified with community members. The pilots were carried out in contexts where companies and government agencies had failed to respond to repeated human rights concerns. One of the two pilots, documenting migrant tobacco farmworker conditions in North Carolina, is detailed. The pilots generated three primary outcomes: (1) increased human rights knowledge and vehicles for effective claim-making among community members and support organizations; (2) increased engagement between community support organizations and companies; and (3) responsive action by companies. The final report's actionable recommendations, amplified through subsequent public outreach through media, internet and active citizenry, generated heightened response and significant initial actions by companies. Areas of future application are suggested, including more frequent application of independent community-based human rights impact assessments for significant private investments.

Keywords: human rights impact assessment; worker rights; accountability; evaluation; private sector; civil society

Introduction

From 2010 to 2012, Oxfam America (Oxfam) supported two local civil society organizations to conduct pilots of the community-based human rights impact assessment (HRIA) tool, *Getting it Right, Human Rights Impact Assessment Guide*, developed by Rights & Democracy (R&D).¹ The pilots were carried out in two Oxfam regional programmes addressing the effects of private sector activity – one in the tobacco industry in the USA and the other in a gas extraction zone in Bolivia. The pilots sought to validate and further refine *Getting it Right*. Our aim was to contribute to community-based HRIsAs being common, if not required, for major private investment projects such as plantation agriculture, privatization projects, and oil, gas and mining projects.

We used *Getting it Right* for two purposes: as an evaluative tool establishing a 'baseline'² of current human rights conditions as compared with human rights norms; and as a tool to support citizen activism using evidence-based arguments to address human rights impacts on local communities. The detailed guidance in *Getting it Right* for documenting human rights abuses, its specific focus on private sector activities and its community-based approach align with Oxfam's rights-based programming approach.

One of the two pilots, conducted by the Farm Labor Organizing Committee (FLOC) with migrant tobacco farmworker communities in the USA, is described in detail. Summary information about the other pilot, with Indigenous Guarani communities in Bolivia, is also presented. For these pilots, we define communities as those people affected by a private investment who share a common experience, relationship with the private investment, set of human rights concerns, and who have not had

a voice in the project, investment, or supply chain being analysed.

Although abusive working conditions in commercial agriculture have been widely documented (Friendly 1960; De la Vega & Lozano-Batista 2005; Human Rights Watch 2010, 2012; Farmworker Justice 2012), there is a dearth of research at the community level. The FLOC, with support from Oxfam, conducted the HRIA using the *Getting it Right* research guide and customizable interview protocol to document practices and conditions in the tobacco industry in North Carolina and their impact on migrant farmworkers' human rights. Methodological adaptations for the distinctive characteristics of migrant workers and the tobacco industry, described below, coupled with the tool's assessment against human rights norms, produced increased rights awareness among community members, and generated recommendations that have initiated a new phase of dialogue and engagement between organizations representing workers and tobacco companies.

This article reviews the role of HRIsAs in the context of private investments and the distinctive features of *Getting it Right*. We then present the approach Oxfam used and the FLOC case example. Outcomes and insights from the two pilots are presented. We conclude with suggestions for advancing community-based HRIsAs for existing or future private sector activities.

HRIsAs of corporate activities

The need for human rights accountability mechanisms for private sector activities is well argued in the scholarly human rights literature (Jochnick 1999; Proust 2001; Ratner 2001; Kinley & Tadiki 2004; Darrow & Tomas 2005; Berne Declaration et al. 2010). While the primary

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duty rests with the state to protect citizens from harm done by third parties (including domestic and transnational corporations), companies have a duty to respect rights and abide by domestic laws, which may codify international human rights treaty obligations (Ruggie 2011). Yet in practice, rights abuses by non-state actors frequently go unaddressed.

HRIAs have now emerged as a significant tool for increasing transparency, accountability and human rights realization in the context of global trade and investment (Berne Declaration et al. 2010; Harrison 2010, 2011, 2012; Melish & Meidinger 2011). In addition to the Rights & Democracy's *Getting it Right*, there are at least six other HRIA tools specifically aimed at private sector activities, the majority designed for use by private sector actors.³

Progress was spurred on by various factors (Harrison 2010, 2011), but galvanized by the actively debated 'Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights' (United Nations 2003) and the subsequent *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (Ruggie 2011). This calls on companies to carry out 'human rights due-diligence to identify, prevent, mitigate and account for how they address their impacts on human rights.'

Although the term 'Human Rights Impact Assessment' does not appear in the *Guiding Principles*, the human rights due diligence process prescribed encompasses the same HRIA process described in Harrison's review (2010, 2011) detailed below. The *Guiding Principles* state that companies' due diligence should involve 'meaningful consultation with potentially affected groups' to assess actual and potential human rights impacts, integrating and acting on findings, and tracking and communicating how impacts are addressed. States must ensure those affected by human rights abuses have access to effective remedy (Ruggie 2011, p. 22), but business enterprises should take active steps to provide for remediation through legitimate processes, such as dialogues and multi-stakeholder processes. 'Effective criteria for non-judicial grievance mechanisms' are presented (Ruggie 2011, pp. 26–27).

While civil society organizations have largely welcomed the *Guiding Principles*, they have critiqued the lack of binding mechanism for state and company compliance with the guidance.⁴ The *Guiding Principles* rely on what legal and administrative processes may exist for bringing claims of human rights abuses. Melish & Meidinger (2011) and Harrison (2012) both note the lack of provisions for external participation and independent monitoring and review. *Getting it Right* can provide a mechanism for such participation and independent review.

The *Getting it Right* HRIA tool

The *Getting it Right* private sector-focused HRIA methodology is distinct in its community-led approach. Other methodologies are designed to be implemented by companies or on behalf of financial institutions (Roling & Koenen 2010; Harrison 2011). They serve the due

diligence, as noted, as well as compliance and management needs of companies, and most provide limited guidance for consultation with affected communities. One tool by NomoGaia, a non-profit global human rights organization, distinguishes itself by providing significant guidance for field-based research and engagement, to incorporate perspectives of affected communities (NomoGaia 2011).

Of concern are limitations in drawing out community concerns because community members may be reluctant to speak frankly when approached by companies or consultants hired by them (Melish & Meidinger 2011, p. 33). Only *Getting it Right* is specifically designed for use by affected communities and their support organizations. *Getting it Right* was initially developed and piloted by R&D in 2004–2006, designed to be a freely available stand-alone tool that could be used by any community. The aid of a support organization is not required, but is often helpful for legal research, outreach to company officials, interview sample design and other tasks. A steering committee, including UN Special Rapporteur on the Right to Health, Professor Paul Hunt, and human rights experts and practitioners from the Americas, Africa, Europe and Asia, helped develop the tool. The result was an interactive tool, in CD-ROM format.

Oxfam's two pilot HRIAs were done concurrently with two additional pilots supported by the International Federation of Human Rights (FIDH), for a total of four pilots, to test the CD-ROM platform. Based on this testing, the tool was transferred to a web-based platform, which is also downloadable. With R&D's closure in 2012, the tool is now being hosted at <http://hria.equalit.ie/en/>.

How the tool works

Typically, support organizations work with community members to form an assessment team. Together, they analyse the situation to identify the specific rights of concern and tailor the approach to the project phase (ex-ante, ex-post or while underway). Based on the team's selected parameters, the tool generates a suggested interview protocol. The interview protocol contains separate questions for interviews with company, government and community actors. The questions are derived from specific human rights norms, such as the right to life, security of the person, freedom of assembly, health and specific areas of rights concern, such as water, food and housing. They include mandatory questions addressing participation and access to information; non-discrimination; gender equality; and access to an effective remedy. Optional questions may be selected, addressing specific aspects like accessibility, acceptability and availability, as in the case of the right to food.⁵

The tool guides users through the screening, scoping, research preparation, data collection, analysis and report generation process, providing best-practice guidance tips, examples from the pilot HRIAs and reference documents throughout. Interviews are conducted with community members, company staff and government officials. The information from these sources is triangulated with available evidence from official statistics, academic

studies, media reports and expert informants, as appropriate. The assessment team is prompted to compare their validated research findings against local and national laws and international human rights treaties to which their government is a party. Based on this systematic comparison, teams identify responsibilities of all parties – companies, government agencies and the community itself – and clear recommendations for remedying rights abuses or violations. Once the assessment is complete, teams may engage with companies and government officials in any number of ways, from collaborative problem-solving, to active public campaigning.

The Oxfam HRIA approach

This section presents our applied experience using *Getting it Right*. We describe the developmental evaluation approach used to monitor, learn from and adapt how we applied the tool. We detail the pilot screening and scoping process and Oxfam's partnership approach with local organizations, which set the stage for joint action based on the HRIA findings and recommendations. We describe the analysis of local context and how this shaped the research and data collection methods. We describe the report's findings and how FLOC and Oxfam actively used the report to engender constructive responses and action from companies.

Learning systems

Oxfam developed an active monitoring, learning and adaptive management approach to increase our effectiveness and systematize lessons from the pilots, drawing on principles of developmental evaluation (Patton 2011). There were three components. First, Oxfam facilitated regular calls between the assessment teams and support staff at Oxfam and R&D to provide guidance and document challenges and best practices. For instance, we identified the need for external expertise to develop the sample frame to select interview subjects.

Second, we held a workshop midway through the pilots with R&D and FIDH staff, the local civil society organizations using the tool and human rights expert advisors, to discuss challenges and capture lessons. A workshop report presents lessons on the pre-conditions and actions needed to conduct an effective HRIA of private investments (Oxfam & R&D 2010).

Third, we conducted multiple surveys and structured debriefs with Oxfam and partner organization staff. Based on these monitoring and learning processes, Oxfam created a user's guide for conducting a community-based HRIA (Oxfam America 2013). It covers risk analysis and mitigation, technical expertise requirements, financial and staff time investments and guidance for ensuring quality and transparency. Approaches for dissemination and application of the findings are illustrated with the pilots.

Screening and scoping

Oxfam's regional programme teams were invited to propose pilot HRIA candidates. We established opt-in

criteria to ensure the HRIAs would be integrated into Oxfam and partners' long-term plans to work with the communities selected. Based on this process, we identified two pilots: Bolivian Guarani indigenous communities affected by the operations of Total, a French oil and gas company, and migrant farmworkers in North Carolina working in adverse conditions with little legal protections affected by the procurement practices of several tobacco manufacturers. In Bolivia, the assessment was carried out by the Center for Applied Economic, Social and Cultural Rights (CEADESC, as it is known by its acronym in Spanish). It was hoped the HRIA could lead to government oversight and company action. In North Carolina, the farmworker union FLOC conducted the assessment, with significant technical and strategic support from Oxfam. The FLOC HRIA is now presented.

FLOC partnership

Oxfam supported FLOC to use the *Getting it Right* tool to evaluate and document practices and conditions in the tobacco industry and their impact on migrant farmworkers in North Carolina. The effort took 18 months, from initial preparations to report publication. FLOC is a labour union representing migrant farmworkers in the US Midwest and South. It represents more than 6,000 farmworkers in North Carolina under a collective bargaining agreement with North Carolina Growers Association (NCGA). FLOC had an existing campaign against Reynolds American Inc., which it had identified as one of the tobacco supply chain actors responsible for some of the most egregious abuses.⁶ FLOC thus brought a deep understanding of agricultural work and access to workers and other stakeholders in the industry to this assessment project. Both were essential to a full examination of working and living conditions in the tobacco fields and labour camps.

The project sought to shed light on the state of human rights in the tobacco fields, told from the perspectives of the farmworkers and other stakeholders involved in the North Carolina tobacco supply chain. Tobacco production involves three key actors. Farmworkers pick the leaves, and are hired by local growers. Growers typically own the tobacco fields and do initial drying and grading of the leaves. Tobacco companies, such as Philip Morris USA, purchase the leaves and manufacture, package and market the final product. Unlike previous research on farmworkers, this research set out to analyse the supply chain in a holistic manner, taking into account, for example, how contracting mechanisms affect a grower's ability to pay decent wages to farmworkers.

Framing and adapting the tool

The assessment team first developed the sample frame and tailored the interview protocol. Based on their analysis of the farmworker context in North Carolina, the team chose to focus its research on workers without legal work status in the USA, so-called non-H-2A workers. They represent 91% of the state's farmworker population and are

understood to be more vulnerable to rights abuses.⁷ While lacking foreign guest worker authorization, non H-2A farmworkers are nonetheless protected under several statutes, such as worker health and safety, housing, anti-trafficking and anti-slavery legislation. For the sample frame, the team focused on the top five tobacco-producing counties in North Carolina: Sampson, Johnston, Wayne, Wilson and Nash, because the majority of undocumented migrant farmworkers live in these counties and they were easily accessed by the assessment team. H-2A workers were not excluded from participation if they were present in the camps and agreed to be interviewed.

For the interview protocol, the FLOC assessment team identified priority rights of concern to farmworkers, based on their experience and direct consultations among farmworkers and on published reports. Concerns about housing and the contracting process outside the USA emerged as themes not adequately addressed in previous reports. After deliberations, the assessment team narrowed down to focus interview questions on six human rights:

- just and favourable work conditions;
- health;
- freedom from forced and compulsory labour;
- adequate housing;
- freedom from child labour;
- freedom of association.

Data collection

Throughout the tobacco season (from approximately May to September, 2010), interviewers visited more than 100 labour camps in the five focus counties and spoke informally with hundreds of farmworkers. Semi-structured face-to-face interviews were conducted when consent was secured. In all, the team conducted 86 interviews with 103 individuals. Most interviews were individual; some were conducted with a spouse or a few trusted co-workers to increase interviewee comfort. Participants' ages ranged from 15 to early 60s; just eight of the 103 were female.⁸ Participants came from over 34 labour camps and five non-camp sites (one hotel and four trailers rented by families). Of the 103 farmworkers interviewed for the study, 89 were undocumented, two had expired visas, seven had H-2A visas, and five had permanent resident status or were citizens. Most participating workers, 78, were Mexican citizens, while the others were Guatemalan, Honduran or US-born.

Interviews were coded for key rights abuses. The frequency of abuses, such as inadequate housing conditions, was compared across the five focus counties to identify the existence of widespread or locally specific abuses. Qualitative analysis was conducted to generate a descriptive profile of abuses with specific detailed descriptions of farmworker experiences.

Interviewing undocumented workers posed several challenges. Initially, most workers were afraid to speak with researchers, sometimes assuming that the team worked for the government. Workers hesitated to talk about their experience until they were assured there would

be no negative consequences from their employers or any government agency. For the protection of all participants, the names and camp locations of all participating workers were kept confidential and alternative names were provided for quotes and accounts used in the final HRIA report.

The assessment team also interviewed individuals in other stakeholder groups: tobacco companies, government agencies, growers and grower representatives, and NGOs. Two of the 10 major tobacco companies operating in North Carolina agreed to be interviewed: Philip Morris International and Philip Morris USA. One of the key government agencies charged with enforcing the laws affecting farmworkers, the US Department of Labor, was interviewed. Interviews were conducted with grower representatives, including the NCGA, the North Carolina Farm Bureau, and the North Carolina Agribusiness Council. Three of the 165 local growers contacted agreed to be interviewed, but preferred their names not appear in the report, to avoid jeopardizing their contracts with the tobacco companies.

Various legal aid and health service groups that work with the farmworker population in North Carolina, provided invaluable data and analysis, including statistics and contextual analysis on health, child labour and forced labour which enabled the researchers to substantiate the findings from the farmworker interviews. All stakeholders who provided data for the report were offered the opportunity to review drafts prior to its publication to ensure its accuracy. Consultations with tobacco companies are described below.

Findings: rights abuses

Interviews revealed that several internationally recognized human rights and state and federal protections of farmworkers were frequently abused. The coding analysis revealed that between a quarter to a significant majority of workers were experiencing some specific rights abuses. These abuses were substantiated by the other NGOs mentioned above.

Lack of just and favourable working conditions

One in four farmworkers – 22 out of 86 workers – reported that they were paid less than the federal minimum wage of \$7.25 per hour. Over half said their pay was not enough to meet their basic needs. A majority of workers reported regularly suffering symptoms of green tobacco sickness, an acute nicotine poisoning caused by absorption of nicotine through the skin. Symptoms include dizziness, vomiting, weakness, coughing, nosebleeds and headaches. They reported that growers fail to provide them with protective clothing or training to protect themselves from green tobacco sickness. Heat stroke is the leading cause of work-related death among farmworkers. Many workers reported not being given sufficient breaks or clean drinking water, as well as being subjected to excessive pressure by supervisors to work faster. Several participants reported working in a field while pesticides were being

sprayed, and more than one-third reported pesticide-related illnesses.

Lack of adequate housing

Nearly all of the immigrant workers living in employer-provided housing described problems such as inadequate or nonfunctional showers and toilets, overcrowding, leaky roofs, the absence of locks, lack of heat and ventilation, beds with worn-out mattresses or none at all, infestations of insects and rodents, lack of laundry facilities and inadequate cooking facilities.

Violation of the right to freedom of association

Fewer than half of the workers interviewed said they felt free to join a union. Many said they feared employer retaliation if they joined a union or sought to collectively bargain. Many pointed to fear of incarceration and deportation or of being fired as reasons preventing them from speaking out about problems. In contrast, the H-2A workers, who are covered by a collective bargaining agreement between FLOC and the NCGA, expressed greater confidence, reflecting the importance of workers' having a voice and an effective and safe grievance procedure.

Analysis and report recommendations: addressing structural drivers for rights abuses

Analysis of the interview findings uncovered two main structures within the tobacco supply chain that contributed to worker's abuses. First, the manufacturers failed to include farmworkers in their farm audits. Second, growers' low profit margins put downward pressure on farmworker wages and working conditions.

Both companies participating in the HRIA (Philip Morris International and Philip Morris USA) have policies for good agricultural practices, which set standards for labour management and farm safety that all contracting growers must follow. However, the manufacturers' programmes did not provide for consultation with farmworkers in the development of the standards, nor did they include farmworkers in their assessment programmes. Philip Morris International has said that it is working on programmes to improve its outreach to farm labour. At the time of the report, the companies consulted had no established systematic processes for assessing working conditions on farms through investigations or consultations with workers.

Changes in the tobacco industry in the last decade have made it impossible for many growers to survive on the income from their crop. Profits have shrunk, and growers cannot cover rising production costs. Growers are also unable to influence the prices the tobacco companies offer and their policies for grading harvests. For growers, the H-2A visa programme is complicated and costly, causing many to turn to labour contractors to find workers, which usually means hiring an undocumented workforce.

Because of the structural nature of the drivers behind human rights abuses, the primary recommendation of the report was the establishment of an industry-wide council of companies, growers and workers. This council, the report argued, should be empowered to set, enforce and assess compliance with standards, on wage, industrial and chemical hazards, and farm labour camp living conditions.

Using the HRIA report to drive remedies

The HRIA report has been instrumental in opening dialogue with tobacco manufacturers and bringing Reynolds to accept the report's main recommendation, to create an industry-wide council. As described below, the combination of the HRIA report, along with outreach to companies and publicity and mobilization of concerned citizens, has brought about this change.

For years, Reynolds had refused to engage with FLOC or systematically consult workers to understand farm conditions. Each year, activists would speak on farm-worker abuses at the Reynolds' shareholders' meeting. In May 2011, the report's summary findings (Oxfam America and Farm Labor Organizing Committee 2011a) were sent to Reynolds in the weeks prior to the shareholders' meeting, then publicly released a day before. Oxfam constituents sent emails to Reynolds, asking for the company to meet with FLOC. At the shareholders' meeting, Reynolds' CEO Daniel Delen announced that they accepted the recommendation to create an industry-wide council and that the Vice President for Corporate Social Responsibility would meet with Oxfam. Oxfam suspended further email action, and dialogue began between Reynolds and Oxfam. However, Oxfam stopped the dialogue a few weeks later when Reynolds would not speak directly with FLOC.

In September 2011, the full HRIA report was released by Oxfam and FLOC (2011b). It garnered media stories in local and regional press, including a Spanish-language TV profile on migrant worker living conditions. Over 1800 people viewed the Oxfam–FLOC report on the Oxfam website in the first three months. Nearly 14,400 Oxfam constituents sent emails to the VP-CSR at Reynolds calling for the industry-wide council. In response to the publicity and citizen action, Reynolds and Altria (representing Philip Morris USA) hired a facilitator to explore establishment of the council, and begin interviewing stakeholders, including FLOC. These interviews eventually led to a meeting of three of the manufacturers, Reynolds, Altria and Philip Morris International, along with the NCGA and FLOC. This was the first time that FLOC had sat across the table from Reynolds.

Reynolds, however, still refused to meet directly with FLOC. Thus, before the May 2012 Reynolds' shareholders' meeting, Oxfam mobilized 9960 constituents to email the VP-CSR, once again calling on Reynolds to sit down with FLOC. In June, Reynolds finally met with FLOC's President Baldemar Valesquez. A second meeting is planned to discuss workers' rights, in particular the right to freedom of association. State and Federal agencies have not been actively engaged by FLOC and Oxfam, and have not,

to date, responded to the report. Nonetheless, it can be said that the report and supporting actions led to a significant breakthrough in community–company relations.

Outcomes and insights from Oxfam’s approach to HRIAs

This section presents our conclusions about the value and applicability of community-based HRIAs. It compares the Oxfam pilots of the *Getting it Right* tool against core HRIA elements described by Harrison (2011). We present principles for using HRIAs to drive effective community–company accountability, emerging from our experience.

Oxfam’s pilots in comparative perspective

Based on a wide review of existing HRIA guidance and actual practice, Harrison (2011) calls for a set of minimum, core methodological elements for HRIAs that represent best practice and a basis for assessing their quality. Harrison notes that the way HRIAs are carried out is critical. Harrison’s framework offers a useful basis to compare Oxfam’s approach to conducting an HRIA using *Getting it Right* (Table I).

This comparison with Harrison’s review highlights key aspects of Oxfam’s approach and the *Getting it Right* tool that make a significant methodological and operational contribution to the HRIA field:

- (1) active collaboration between communities and support organizations and a high-profile organization, such as Oxfam, to conduct HRIA, including ‘opt-in’ criteria to assess appropriateness and readiness;
- (2) using the *Getting it Right* database of human rights questions to tailor the interview protocol for local conditions and concerns;
- (3) primary focus on perspectives and empirical data from affected communities;
- (4) a robust, structured analysis between rights in principle and rights in practice;
- (5) generation of actionable recommendations for government, companies and communities;
- (6) use of incentives and pressure for companies and states to engage with recommendations, including direct engagement, public mobilization and media;
- (7) ongoing monitoring to assess progress of proposed remedies, through existing local, national and global action networks.

Community-based vs Company-based

The Oxfam pilots demonstrate that an HRIA conducted for and with communities can be a highly effective way to identify, document and generate actionable recommendations to address human rights concerns. Less than a year since conducting the two HRIAs, the processes have catalysed significant responses by companies and increased awareness by the public and communities.

By starting with perspectives of affected people, the *Getting it Right* HRIA tool focuses on their concerns and their aspirations for human rights realization. Company-led HRIAs start with due diligence concerns, and focus on risk mitigation for the companies. This distinct – and valid – purpose is unlikely to be satisfying from the standpoint of people affected by company activities and is likely to generate different proposals and incentives for action. The focus on due diligence will naturally emphasize company business risks over human rights risks for communities. Nevertheless, company-led HRIAs are a significant step forward, and provide an opportunity for a different kind of conversation between companies and communities. As we argue in the conclusion, both community- and company-based HRIAs may be necessary to engender a meaningful, substantive conversation that leads to human rights concerns being effectively addressed.

Process matters for generating outcomes

As suggested in much of the literature on impact assessments (Harrison 2010, 2011; Roling & Koenen 2010; Bond & Pope 2012; Esteves et al. 2012; Morrison-Saunders et al. 2001), we found that the process of carrying out HRIAs is as important as the written document produced. This is true both during and after the HRIA process. The Oxfam–FLOC report (2011a, 2011b) was a critical vehicle for generating dialogue and engagement with the company. Credibility of the research process itself was important. Significant efforts were made to ensure the rigour, transparency and participatory nature of the process. We gave an opportunity for all stakeholders to engage, not just the affected communities. We learned that not only workers were harmed, but growers were also in a precarious position. The arrangements established by the manufacturers created a downward pressure on those at the bottom of the supply chain – workers and growers alike. If we had only focused on workers and not on the growers, this more complex dynamic would not have been made apparent.

Three types of results achieved through the pilot HRIAs can be attributed to the process and the report: (1) human rights knowledge generation, awareness and claim-making; (2) increased engagement among stakeholder actors; and (3) utilization of findings – that is, action on recommendations.

First, analysing local conditions from a human rights perspective has led to greater human rights awareness and clarity in claim-making. Conducting an HRIA in a participatory, deliberative and iterative manner increased rights knowledge and awareness. The FLOC assessment team shared information about human rights and resources with many people beyond those interviewed. In Bolivia, the study revealed that water quality was *not* affected by the gas extraction, contrary to community fears. This allowed the assessment and recommendations to focus on the violations that truly were resulting from the extractive activity. The HRIA also documents the current state of human rights enjoyment and awareness, providing an

Table 1. Comparison of Oxfam pilot with Harrison's core HRIA elements.

| Harrison Methodological Element | Oxfam's approach with <i>Getting it Right</i> |
|---|--|
| <p>1. Screening Decide whether a policy, practice or project merits a full assessment</p> | <p>Opt-in criteria for Oxfam programmes and local organizations:</p> <ol style="list-style-type: none"> 1. Project has known or suspected human rights issues 2. Inadequate past documentation 3. Community wants to do assessment 4. Part of a larger programme or campaign effort 5. Commitment to pursue HRIA recommendations 6. No other participatory research underway or undue risks to safety 7. Commitment to active learning from process |
| <p>2. Scoping What will be assessed and how it will be assessed:</p> <ol style="list-style-type: none"> 1. Review context and project details 2. Form assessment team (internal to government or company or external consultant) 3. Identify affected people 4. Identify possible human rights impacts 5. Identify evidence types 6. Set timescale | <ol style="list-style-type: none"> 1. Oxfam and local partner working with communities review context and identify affected people 2. Assessment team composed of local partner supported by Oxfam and experts 3. Selection of priority rights of concern 4. Use <i>Getting it Right</i> to generate interview protocols for community, company and government 5. Develop project plan, budget and timeline |
| <p>3. Evidence gathering Quantitative and qualitative, supplemented with secondary data sources</p> | <p>Quantitative and qualitative secondary data, governing legal norms.</p> <ol style="list-style-type: none"> 1. Interviews with affected people, company, government agencies, key informants using detailed, semi-structured interview questions generated from database of human rights norms in <i>Getting it Right</i>. Interviews coded for rights abuses and frequency of abuses analysed. Statistical analysis and qualitative descriptions summarized. |
| <p>4. Consultation with affected people Specific data gathering and consultation with affected groups (Harrison notes that some examples of HRIAs did not gather evidence with affected people and only consult experts)</p> | <p>(Conducted during evidence gathering, above)</p> <p>Semi-structured interviews, includes exchange of rights information and available resources</p> |
| <p>5. Analysis Human rights obligations should form basis for assessment (Harrison highlights this as a methodological challenge – it is not as obvious or simple as may seem)</p> | <p><i>Getting it Right</i> tool provides guidance for:</p> <ol style="list-style-type: none"> 1. Comparison between interview findings (rights in practice) and existing laws and treaty obligations (rights in principle) 2. Identification of duty-bearers (government, company, suppliers & contractors) and specific responsibilities |
| <p>6. Conclusions and Recommendations (Harrison notes that these are generally weak)</p> | <p><i>Getting it Right</i> tool prompts actionable recommendations for:</p> <ol style="list-style-type: none"> 1. Company 2. Government 3. Community |
| <p>7. Publication Focus on accountability of HRIA authors (Harrison notes that some do not publish, such as Yahoo! and the Danish Institute for Human Rights Compliance tool users)</p> | <p>Dissemination at various venues (e.g. UN Permanent Forum on Indigenous Peoples, American Evaluation Association Conference, community consultative forums in North Carolina and Bolivia, Oxfam and partner websites and mailing lists). Public engagement through media outreach, concerned citizen mobilization, shareholder activism. Direct engagement with companies</p> |
| <p>8. Monitoring and Review (Harrison finds that this generally is not done. Because HRIAs are informal and voluntary, there is no mechanism such as agreed action plan and monitoring process)</p> | <p>In the absence of formal monitoring and compliance structure, multiple options for fostering engagement and compliance are presented, e.g. direct outreach to company directors and Corporate Social Responsibility staff, shareholder engagement, media and citizen action (emails to company). Ongoing monitoring of progress of HRIA recommendations is integrated into long-term programme/campaign.</p> |

important baseline for evaluating programmes' future impact. Future impact evaluations can assess changes using the same research parameters.

Second, combining the assessment with active company engagement and public mobilization led to increased engagement among stakeholders. The combination increased dialogue among and between communities, their support organizations, companies and, to a lesser degree, government agencies. In both the Bolivia and USA pilots, companies and government agencies alike had previously failed to redress repeated complaints. In both cases, active engagement with companies and government actors during the HRIA process helped initiate dialogue and action. One important factor for increased engagement was the role of 'outside' actors, such as Oxfam. Companies sometimes responded first, and directly to organizations with high public profiles, rather than community members or their local support organizations. It was strategic at times to 'lend Oxfam's name' to spark a response, and then encourage direct dialogue with local organizations and communities. Similar local-to-national and local-to-global coordination also helped encourage company responsiveness in the early R&D pilots.

Third, community-based HRIAs contribute to greater utilization of findings. Inviting stakeholders to participate in the assessment, and later using the findings to engage them, generated a heightened response from companies. The combination of multiple engagement strategies – public dissemination, media, citizen activism, shareholder activism and direct communication with the company – was essential for amplifying the findings of the HRIA report.

Encouraging corrective remedies and adaptive management

Many authors note the lack of formal requirements either for conducting HRIAs or for implementing corrective actions (Harrison 2010, 2011; Berne Declaration et al. 2010; Roling & Koenen 2010; Esteves et al. 2012). As voluntary assessments, there are no formal requirements for monitoring mechanisms. In the absence of easily accessible and effective legal remedies and weak regulatory requirements for managing human rights impacts of private actors, civil society organizations must press for remedies using the non-legal tools such as persuasion and pressure.

The experience in these cases suggests that such non-legal accountability mechanisms are important, indeed quite effective, mechanisms to change company behaviour. Informal mechanisms included sharing report findings with companies before and during company shareholder meetings and publicly disseminating findings through the media and in high-profile public forums, as well as encouraging concerned citizens to send emails to tobacco company officials. These combined approaches resulted in a qualitative change in company response to community concerns. In Bolivia, for example, the community-based HRIA has sparked Total Oil to enter into dialogue with

partner organization CEADDESC and communities to address concerns raised in the report, including the possibility of carrying out additional HRIAs in collaboration with CEADDESC. Total Oil recently commissioned an external evaluation of ethical and human rights concerns of their national subsidiary, to be carried out by the private consulting firm GoodCorporation and the Danish Institute for Human Rights.

Conclusions and future use

This section presents our conclusions and suggestions for future use and development of community-based HRIAs focused on private investments. Although designed specifically for private investments, we draw tentative conclusions for other contexts, such as government policy and programmes.

Significant incentives for corrective action can result from bringing empirical evidence into the public eye, particularly when coupled with well-founded and practical recommendations for improved performance. Both the message (the report) and the messenger (communities and concerned citizens, together with support organizations like FLOC, CEASESC and Oxfam) are critical for effectively raising substantiated human rights concerns.

While the *Getting it Right* tool can be used by communities acting alone, the pilot experiences suggest that outside support may be necessary for two components. First, documenting impacts requires some degree of human rights and research capacity that small grassroots organizations often do not have. Second, elevating the findings in a way that captures company attention can require partnering with outside high-profile organizations, such as Oxfam, to be effective.

Oxfam's approach to using the *Getting it Right* tool is adaptable to a wide range of efforts to increase transparency and accountability of private sector actors. The HRIA process and report have demonstrably been strong catalysts to unlock conditions of impasse. They engender greater human rights awareness, foster increased engagement among and between stakeholders and promote greater accountability for remedying human rights abuses. Groups seeking to use *Getting it Right* or similar tools should study the available best practice guidance from applied experience (Oxfam America & Rights & Democracy, 2010; Rights & Democracy 2007; Harrison 2011; Oxfam America 2013).

Oxfam's two pilots, along with the R&D and FIDH experiences, suggest three areas that merit further exploration: (1) testing of simultaneous community-based and company-based HRIAs; (2) further application to purely domestic private investment contexts; and (3) application of *Getting it Right* for government policies and programmes such as land concessions and water allocations.

There are no known examples of simultaneous company- and community-based HRIAs focused on the same private investment. We hypothesize that, because they are community-based, HRIAs using the *Getting it*

Right tool will document some rights abuses not identified by company-based human rights due diligence exercises. Matched-pair HRIAs (company-based and community-based) could test this.

Based on the positive outcomes from the two pilots described here, we believe that companies should be required to support independent community-based HRIAs when making major investments. This could be incorporated into guidance for applying the UN *Guiding Principles on Business and Human Rights* and promoted for large-scale private investments known to have potential harmful effects. This raises questions about how this would work in practice. Could genuinely community-based HRIAs be supported by companies, or should they fund or promote independently supported community-based HRIAs to complement company due diligence processes? How could company bias be avoided while also maximizing company engagement with a community-based HRIA? The Bolivia experience may provide some useful lessons, if Total does in fact commission independent community-based HRIAs.

While *Getting it Right* was specifically developed to analyse the human rights impacts of foreign private investment projects, the FLOC pilot confirms that the tool can also apply to domestic private investments. The single national locus reduces the complexity of the legal analysis and potential remedies and accountability measures.

We postulate that community-based HRIAs would be equally relevant for analysing government policies, programmes and activities. We do not see fundamental distinctions that would render the steps and underlying principles less valid for that context. Community-based HRIAs of government actions could assess the potential and limitations of this application. Areas of promise include government policies that expand private sector activity, such as land, oil, gas and mining concessions, water rights allocations and private investment supports, particularly in agriculture. There is rich opportunity for further exploration of these challenges and possibilities.

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Notes

1. Rights & Democracy, The International Centre for Human Rights and Democratic Development, was a non-partisan, independent Canadian institution created by an Act of Parliament in 1988 to promote democratic development and to advocate for and defend human rights as set out in the International Bill of Human Rights. In March 2012, the Canadian government announced that it would close R&D. As of August 2012, the R&D website has been deactivated. *Getting it Right* is now hosted by eQuality, a not-for-profit

organization providing digital security and information management expertise to organized civil society and independent media organizations. Available at <http://hria.equalit.ie/en/index.html>

2. By baseline, we mean an evidence-based assessment of human rights in practice as compared with rights in principle as contained in international human rights instruments and domestic law, at a specific point in time.
3. See the NORAD *Handbook in Human Rights Assessment* (2001); the Halifax Initiative's proposed approach in *Risk, responsibility and human rights: Taking a rights-based approach to trade and project finance* (2004); NomoGaia's *Methodology for Human Rights Impact Assessment*; the Danish Institute for Human Rights' 'Quick Check' and Human Rights Compliance Assessment (HRCA) tool; the International Business Leaders Forum's and IFC *Guide to Human Rights Impact Assessment and Management* (2010); and the Global Reporting Initiative's March 2011 revision which includes 11 human rights standards for company self-reporting.
4. See for example, commentary on the Business and Human Rights Resource Centre website, <http://www.business-humanrights.org/Documents/UNGuidingPrinciples/Commentaries>
5. For example, on the right to water, some tool-generated questions are: 'Has your access to good and affordable water in sufficient quantity been affected since the beginning of the investment project?'; 'Has access to water for some community groups been specifically affected since the beginning of the investment project?'; 'Has women's access to water been affected since the beginning of the investment?'; 'If your right to water has been affected, did the government take any measures to redress the situation?'
6. <http://www.supportfloc.org/Pages/default.aspx>
7. There are an estimated 100,000 farmworkers in North Carolina: www.ncfh.org/enumeration/PDF7%20North%20Carolina.pdf. In 2010, there were about 8905 H-2A workers (report from North Carolina Employment Security Commission sent by email).
8. Few women work in tobacco, with many camps made up only of men. In the camps where women lived, they generally worked in other crops or did other work, such as cooking or childcare.

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