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UN FORUM SERIES – Meaningful rights-holders engagement is key for human rights impact assessments

0 comments

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This post was contributed by Alejandro González, senior researcher at the Project on Organizing, Development, Education and Research (PODER).

One of the key challenges, and indeed an important benchmark, with regard to the effective implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs) is that of meaningful consultation, dialogue, and engagement with affected, or potentially affected, rights-holders during human rights due diligence (HRDD) processes. The responsibility of business enterprises to respect

human rights means that enterprises should, on the one hand, avoid causing or contributing to adverse human rights violations (including legal and non-legal, and actual or potential, acts of complicity) and, on the other hand, proactively conduct HRDD.

HRDD includes “*assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed*” (UNGP 17). The impact on human rights that must be assessed includes those violations directly caused by businesses, those which businesses contribute to, and those directly linked to their operations, products, or services through their business relationships.

Principle 18 of the UNGPs states that meaningful engagement of potentially affected groups and other stakeholders is an essential component of due diligence processes. However, in practice communities and other vulnerable or affected groups continue to be excluded from these processes and often face obstacles to their voices being heard.

While it is true that in some cases rights-holders are informed or consulted about a particular project or business operation, they rarely have an equal-footing at the table or, most importantly, a real say in the ultimate decision about the project at hand. This lack of meaningful engagement, together with frequent power imbalances between companies and affected or potentially affected groups, has led impacted communities, civil society organizations, workers, human rights defenders, and other vulnerable groups to develop alternative participatory approaches to identify, prevent, mitigate, and seek accountability for adverse human rights impacts.

A notable example of these efforts to improve meaningful engagement and ensure actual participation of affected groups are community-led Human Rights Impact Assessments (community-led HRIAs). An HRIA is

a powerful tool used to identify, assess, and measure the potential or actual impacts on the human rights of those affected, or potentially affected, by business operations, projects, services, or products (for more information on HRIAs, click [here](#)).

HRIAs can be conducted by a wide array of stakeholders, including companies, NGOs, governments, and most importantly affected or potentially affected communities. For example, companies benefit from HRIAs as there is [growing evidence](#) that through them they can avoid corporate abuse and liability, fulfill their responsibilities to respect human rights, obtain greater clarity regarding the risks involved in their operations, improve their reputations, and save on operational and legal costs by preventing conflict.

While there is an increase in company-led HRIAs, [it is also true](#) that they often fail to engage properly with local communities.

Some obstacles to realizing genuine stakeholder participation [include](#): time constraints, logistical difficulties in convening the consultation, superficial or one-time only consultations, risk of exclusion of marginalized groups, lack of clarity about the consultation processes and their objectives, and shortcomings in transmitting the conclusions and recommendations from the consultations to stakeholders for feedback and verification.

In contrast, community-led HRIAs place communities' concerns as the starting point and the planning and implementation of the process is conducted from the rights-holders' perspective. Through this approach, community members participate in capacity-building exercises constituting an authentic organizational process whereby the communities become empowered to identify the actual or potential impacts, articulate their claims, and decide for themselves when and how to engage with company and government representatives.

Community-led HRIAs empower community members, civil society organizations, and other rights-holders as long-term accountability guarantors who can monitor whether companies respect their obligations under international human rights law.

A truly effective HRIA, whether community or company-led, must comply with the following basic elements:

- Apply human rights standards as benchmarks (considering the interrelated nature of human rights) to measure impacts, including cumulative ones.
- Guarantee meaningful participation of affected or potentially affected rights-holders at all stages of the assessment. Participation is essential so that all stakeholders consider the results legitimate and contribute to ownership and empowerment.
- Respect equality and be non-discriminatory (recognizing and addressing the obstacles involved in engaging people with different perspectives, including vulnerable groups, and when necessary incorporate capacity building to empower these groups).
- Be as transparent as possible regarding both the process and the results (all relevant information must be available with enough time and in a language understood by all stakeholders, and the results must be made public).
- Focus on accountability by clearly identifying the entitlements of rights-holders and the obligations of duty-bearers. Clear action to address impacts must be designed or identified in a mitigation plan that includes the assignment of responsibility to the corresponding party.

Regarding meaningful engagement, HRIAs should include concrete benchmarks for what effective participation looks like. These criteria should specify, for example, (1) the formats and frequency of community participation, (2) measures that ensure the

representativeness of the community, (3) measures to include the views of vulnerable groups, and (4) clarity regarding the extent of community participation in the HRIA, that is, if it was limited to consultation or if it included direct participation in decision making.

From the perspective of the Project on Organizing, Development, Education, and Research (PODER), where the author of this article works, meaningful engagement means that the affected or potentially affected communities and rights-holders decide for themselves which issues to focus on and participate actively by leading the planning, implementation, and follow-up of the process. In other words, rights-holders' active participation is the foundation of meaningful stakeholder engagement.

When conducted properly HRIAs can achieve effective implementation of the corporate responsibility to respect human rights; however, significant work needs to be done to guarantee efficient and comprehensive engagement processes with rights-holders and other stakeholders. In this respect, the following recommendations should be considered with regard to how to move forward on the issue of HRIA implementation. Some of these will be discussed in the upcoming Forum, such as:

1. Creating government and/or business funds for communities to conduct HRIAs
2. Developing models for comprehensive multi-stakeholder HRIAs
3. Drafting legislation regarding mandatory due diligence, including:
4. Regulation on disclosure and reporting of HRDD processes
5. Obligations to conduct HRIAs on Business and Human Rights National Action Plans

6. Creating a community of HRIA practitioners to share lessons learned and best practices.

Different approaches to improving business engagement with affected communities will also be discussed during the session “**Company Commitments and Community-Led Initiatives: Making Meaningful Community Engagement Best Practice.**” Let the discussions begin, not forgetting that the ultimate goal of the UNGPs is “enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities.”

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