

Can an IFC compliant ESIA also meet human rights standards?

A live issue within the business and human rights world is whether the [IFC PS](#) - the main international standard for environmental and social impact assessment (ESIA) in developing countries - also provide a firm basis for understanding and mitigating human rights risks. This is particularly relevant for businesses that adhere to the [Guiding Principles on Business and Human Rights](#).

What are the concerns?

- Do ESIA's assess risks to projects, not the risks presented by projects to people and the environment.
- Do the IFC PS reflect human rights?
- Is the ESIA process (baseline data collection; consultation, impact assessment and avoidance, mitigation and management planning) consistent with respect for human rights?

The objective of ESIA

ESIA is one of a set of studies carried out by project sponsors before large scale projects can go ahead. It sits alongside technical feasibility assessment, market studies, legal analysis etc. as one of the essential building blocks. The purpose of ESIA is explicitly identifying the environmental and social risks and impacts of the project and showing how the project is planned and will be executed to comply with laws and standards and avoid or minimise risks. The ESIA is evaluated by third parties – governments and project financiers – who will use it to determine if the project can go forward, and under what conditions.

This is different to the risk assessment that project sponsors carry out – where all the various aspects of the project are regularly reviewed by the project team to identify risks to successful execution of the project. The ESIA may figure in this risk assessment, for example, where there are delays to getting approval which would affect project timelines, or impacts have been identified for which no mitigation has been identified, such as the presence of a rare species, or people are objecting to the project and the issues have not been resolved. But technical, commercial or financial aspects often present most of the risk.

Human Rights 101

The core set of internationally recognized human rights are defined in the international covenants on [civil and political rights](#) and [economic, social and cultural rights](#); amplified by [seven issue specific conventions](#) e.g. Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Convention on the Rights of Persons with Disabilities; supplemented by the ILO '[Declaration on Fundamental Principles and Rights at Work](#)'. (NB. The two conventions and the ILO Fundamental Rights are known as the International Bill of Rights.) Most governments have [ratified](#) many but not all of these conventions.

There is a raft of advisory human rights standards, e.g. the Declaration on Human Rights Defenders, the UNICEF [Children's Rights and Business Principles](#); [standards for business to combat discrimination against LGBTI people](#) just published by UN-OHCHR ; as well as [regional human rights instruments](#), e.g. the African Charter on Human and Peoples' Rights.

Shift have produced a [useful guide](#) to core human rights and their relevance to business.

How far do the IFC PS reflect human rights?

As [IFC point out](#), many of the rights in the [International Bill of Rights](#) are included in the performance standards set in the IFC PS. But there are important differences in terminology – where the

performance standards consider people, often vulnerable people, who are *impacted*, a human rights approach considers the same people as *rights holders* whose rights are infringed. As long as impacts are fully addressed (see below for further discussion) then I am unconvinced that the difference in vocabulary has any practical differences.

However, there are some gaps in the inclusion of human rights in the IFC PS.

- Rights to privacy are not well covered, and this can be an issue, for example, in relation to disclosure of information about individuals' compensation or data collection and sharing by telecommunications companies.
- Other civil and political rights are not addressed because in most cases they are not directly relevant to business investments, e.g. right to a fair trial. (But, as discussed below, a lack of civil and political rights can create an environment where social and environmental standards for projects are hard to meet.)
- Maternity rights – CEDAW lists specific rights related to maternity that are not found in PS2. Note: SA8000 does include specific provisions on maternity leave.
- Children's rights to receive information and express opinions qualified according to the age and maturity of children. Children are not identified as stakeholders in PS 1,4 or 5 although impact assessments do sometimes include consultation with 'youth'.
- Children are not systematically identified in the PS as a potentially impacted group so a wide range of impacts may not be identified and mitigated. UNICEF has developed [Children's Rights and Business Principles](#) that mostly fill this gap (do not cover information/engagement).
- The convention against torture defines what actions constitute torture. This is an important supplement to IFC PS on security.

Is the ESIA process consistent with respect for human rights?

Most ESIA's produced today are generally not prepared in a way that demonstrates respect for human rights. The main problems are:

- Baselines
 - Human rights should be covered in the regulatory review, i.e. conventions ratified by the country, national human rights law (there are often important constitutional provisions), regional human rights instruments; other human rights instruments potentially relevant to the project.
 - The human rights context is not considered although it is a factor, like the climate, that can affect the project and the project's impacts. E.g. systemic discrimination against women will require addressing in measures to comply with PS1, 2, 4 and 5,7,8 where relevant.
- Consultation:
 - The human rights context may affect how consultation is planned and executed to ensure that any discriminated against groups are included, and that a safe environment is created where people can voice their concerns. Given the increasing [attacks on environmental defenders](#), special care is needed to engage with project opponents and ensure that effective grievance mechanisms are in place.
 - In terms of potentially relevant organizations including NGOs, human rights groups are generally separate from environmental or social development groups so need to be identified and included.
- Impact assessment – a human rights lens requires that there is a strong focus on understanding impacts on people – as individuals and as groups. Assessment methodologies can underestimate this unless there is a step in the process that looks across the whole set of impacts (including predicted minor impacts) and asks what aggregate impacts will there be on communities, or particular groups, e.g. from impacts on air quality, access to water, land take, livelihoods, etc.
- Avoiding and mitigating negative impacts - respecting rights holders implies that a rigorous approach is taken to avoiding or mitigating negative impacts on people. In practice, this is likely

to mean planning to avoid or mitigate a wider set of potential impacts e.g. where many 'minor' impacts aggregate into significant impacts on a group of people, and a wider set of impacted people or rights, e.g. indirect impacts on access to water or sanitation by existing users where a new project places significant demands on existing services.

- Monitoring – needs to include on-going monitoring of the human rights context and impacts on the project and project affected people.

Making ESIA's compatible with respect for human rights

My view, based on many years' experience with ESIA's for large scale projects and of human rights due diligence, is that ESIA's can be a vehicle for human rights due diligence as long as the gaps in content and process outlined above are addressed. There is value in integrating human rights into existing impact assessment and management processes in order to piggy back on the systems to implement impact mitigation and management plans that now exist within most organizations executing large scale projects. Stand-alone human rights assessments that are not integrated into social and environmental management systems risk staying as documents on computer files.

- For new ESIA's, this requires careful attention to terms of reference and to selection of consulting teams to ensure that human rights aspects are explicitly included.
- In some cases, it may mean additional specialist studies are undertaken as part of the ESIA process, as is already often the case with respect to other issues, e.g. biodiversity, in the assessment of large scale projects. Specialist human rights studies might include, for example, land tenure reviews or development of programmes specially to enable women to participate in economic opportunities presented by a project.
- The human rights lens can play a very valuable integrating role by looking across all the impact categories to produce an overall assessment of impacts on rights holders and evaluation of the completeness of mitigation and monitoring plans.

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