

that have historically plagued impact assessment. These challenges include: impact assessment is still largely viewed by industry and government as a technical hurdle rather than as a way to engage with affected communities; public participation and involvement, consequently, is still not getting the attention it deserves; public disclosure, timing of its release, commercial confidentiality and transparency are still highly contentious and disputed topics; measures to guarantee the quality, independence and appropriate categorization of assessments have yet to be resolved; and initial scoping and the analysis of impacts are conducted too far along into the project cycle to permit substantive changes that might avoid human rights violations.

To overcome these challenges, an impact assessment must therefore:

- stress the importance of EIA as tool for making decisions, rather than as a simple procedure;
- increase transparency by disclosing project planning and impact assessment information to affected communities and other interested parties, and
- focus more attention on monitoring outcomes, post approval.

Particular to developing a human rights impact assessment, participants also identified a number of challenges with regard to: a) legal and human rights issues (for example, the difficulty of predicting human rights violations), b) business application (the challenge of developing a simple (yet comprehensive) enough tool for companies to readily adopt); c) procedural issues (how to guarantee early and meaningful participation, appropriate timing and scope, adequate identification and engagement of stakeholders); and, d) strategic implementation approaches (whether to integrate human rights into existing environmental and social assessment models or to promote separate human rights assessments).

On this last question of integrate or separate human rights into existing models, participants largely agreed that it was neither one nor the other. Human rights represented a strong foundation on which to base an impact assessment because of their basis in international legal norms. EIAs and SIAs derived their strength from well-developed and clearly

articulated standards and methodologies. One might think therefore of building on social impact assessments by firmly rooting them in a human rights framework. Human rights would then give SIAs a moral and legal authority to tackle many of the outstanding issues that have historically challenged EIA and SIA models.

In terms of what this would mean in practice, participants made recommendations in the final session with respect to three key issues: meaningful participation and stakeholder involvement, the development of 'no go' criteria, and the need for better monitoring and compliance.

Meaningful Participation: The group that discussed the issue of meaningful participation challenged the use of the term 'stakeholder', arguing that affected communities and interested parties needed to be seen as rights holders and risk bearers. They argued that to ensure the rights of affected communities, it was necessary to do the following: develop community capacity throughout the assessment process; actively involve the affected community in developing baseline data, identifying other rights holders, defining their information and development needs, and establishing 'no go' zones; have the free prior and informed consent of indigenous communities; and establish an independent arbitrator to receive potential complaints about the participation process.

No-Go Areas: The group that discussed the issue of 'No Go' areas argued that it would be much easier to establish 'No Go' criteria for specific areas or issues (for example, marshland areas or the use of forced labour) as opposed to countries (barring any investment in a country). While there might be some obvious choices for countries, any 'objective' criteria developed to screen countries would lead to politically charged and dissenting opinions. In terms of areas, while much more research is required to develop criteria for identifying human rights 'No Go' zones (as has been done with environmental 'No Go's'), the group did make some initial suggestions. These included projects conducted without free, prior and informed consent, where the project and/or its revenues will fuel or intensify existing conflict, where the project goes into areas occupied by un-contacted indigenous peoples, and where extractive and other revenue-generating activities do not include a transparent revenue investment plan.