

Human Rights Impact Assessment for Pesticide Issues

HRIA/P

A guidebook for rights-holders and practitioners

"We are all caught in an inescapable network of mutuality, tied into a single garment of destiny. Whatever affects one destiny, affects all indirectly."

-Martin Luther King



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This Human Rights Impact Assessment Guidebook and its accompanying Assessment Report Template were developed by Emily Harden in cooperation with Environment and Human Rights Advisory. The project was supported by initiatives at Pesticide Action Network, North America. The author also acknowledges Nomogaia's work on human rights and due diligence as an influence for this HRIA/P.

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INTRODUCTION

Why a Human Rights Impact Assessment for pesticide application (HRIA/P)?

This Guidebook is intended for rights-holders—which includes individuals and communities who are or who may be affected by pesticide exposure—and human rights practitioners. In this Guidebook, those conducting the assessment will also be referred to as the assessment team. The purpose of this assessment is to predict and evaluate the impact of pesticide use on the human rights of individuals and communities in proximity to a pesticide project. The intended outcome is to enable agencies and companies to fully assume the responsibility of safeguarding these individuals and communities from abridgments of human rights standards as a foreshadowed consequence of projects where pesticide application is either planned or in progress, and to put expert recommendations into action. By outlining potential human rights violations and providing project insight through a human rights lens, this assessment will serve as a guide for upholding responsible business practices with regard to pesticide use. In addition, the HRIA/P seeks to develop a quantitative assessment of foreshadowed harm to individuals and communities, so that agencies and businesses may make informed choices with regard to the potential consequences of inaction. The human rights standards of concern and recommendations will be distributed to the public, in order to ensure that communities are fully informed of human rights standards at issue.

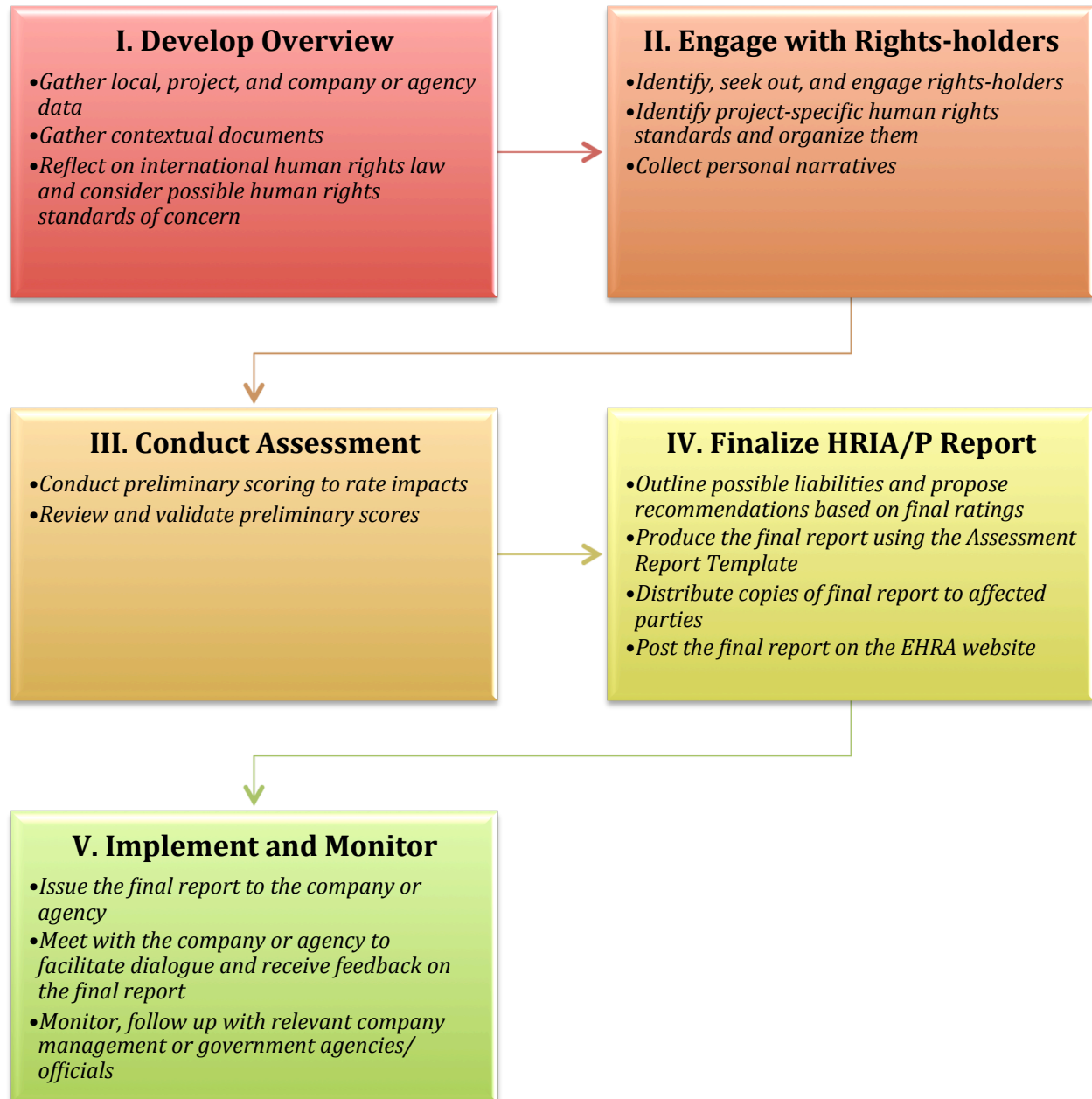
Although the examples in this guide present the case of both practitioners and rights-holders working collaboratively to develop an HRIA, and though there is value in having an independent NGO conduct the HRIA/P for an affected community, rights-holders may also access and use the Guidebook to conduct their own assessments independently. In this way, individuals and communities affected by pesticides have the agency to affect change for themselves rather than relying on collaboration with outside sources. However, it is recommended that rights-holders employ those with expertise in human rights to act in some limited advisory role in order to ensure the comprehensive inclusion of all applicable human rights standards.



TERMS AND DEFINITIONS

- **Assessment team, or assessors:** Those conducting the HRIA/P, who may include practitioners and/or rights-holders
- **Human rights standard:** A moral and legal standard articulated in international human rights documents
- **Practitioner:** A person with working knowledge of international human rights law; a human rights expert
- **Rights-holder:** An individual who is or who will be affected by pesticide exposure, and/or a community that is or that will be affected by pesticide exposure

METHODOLOGY



(Figure 1.0)

Phase I: Develop Overview

The assessment team will develop an overview of the situation in order to establish a context for conducting the HRIA/P. This includes researching past and present local, project, and company or agency factors; collecting relevant documentation; and reflecting on international human rights law by identifying international documents and potential human rights standards of concern. The purpose of this phase is to gain an understanding of the current situation by examining interrelationships between community, project, and company or agency, and to consider possible human rights standards at risk. However, contextual components will not be described in detail during this phase; details will be incorporated as relevant human rights standards are organized during Phase II.

(a) Collect Local, Project, and Company or Agency Data

Local Data
• Project location, including district, town, or city; county, and state
• Characteristics of local government, and any conflicts of interest
• Cultural and/or ethnic groups and the presence and strength of traditional systems
• Physical climate and landscape; seasons
• Major crops or vegetation
• Population characteristics such as size, demography, socioeconomics, and economic or political vulnerability
• Economic factors such as employment, income, poverty levels, assistance, and health care
• Key environmental issues
• Key health issues

Project Data
<ul style="list-style-type: none"> • Who is involved, such as the name of the company or agency, and key personnel
<ul style="list-style-type: none"> • Brief description of the project
<ul style="list-style-type: none"> • Type of pesticide(s), including a name or a list of names (if accessible)
<ul style="list-style-type: none"> • The purpose for pesticide use
<ul style="list-style-type: none"> • How does/do the pesticide(s) work, and what it/they are expected to do
<ul style="list-style-type: none"> • Methods of pesticide application
<ul style="list-style-type: none"> • Pesticide safeguards, such as protective clothing, time before safe re-entry into sprayed area, etc.
<ul style="list-style-type: none"> • When and for how long the pesticide(s) will be applied
<ul style="list-style-type: none"> • Exact location or area of pesticide application
<ul style="list-style-type: none"> • Employment/workforce size, including training and licensure of applicators
Company or Agency Data
<ul style="list-style-type: none"> • Type
<ul style="list-style-type: none"> • Size, including value, number of operations, and number of countries of operation
<ul style="list-style-type: none"> • Ownership history, such as type of projects
<ul style="list-style-type: none"> • Pesticide-related history, and complaints and/or legal actions

(Figure 1.1)

(b) Gather Documentation

The assessment team will gather any existing relevant documentation, such as:

- Feasibility and assessment documents (i.e. Environmental Impact Assessment [EIA], Health Impact Assessment [HIA], Environmental and Social Impact Assessment [ESIA], etc.)
- Full labels and Material Safety Data Sheets (MSDSs) for each pesticide product
- Any relevant legal documents
- Documented communications with key company personnel
- Documented communications with key regulatory agency personnel
- Documentation of local complaints against the project/pesticide use
- Company or agency policies, standards and guidelines
- Scientific publications regarding pesticide(s) in question and/or summaries of scientific research on pesticide products, especially in the case of high-risk pesticides such as chlorpyrifos, organophosphates, neonicotinoids, and atrazine

(c) Reflect on International Human Rights Law

This HRIA/P is based on the rights enumerated in broadly recognized international treaties, covenants, and declarations. These include, but are not limited to:

1. Universal Declaration of Human Rights (UDHR)
 - Adopted by the UN General Assembly: December 10, 1948
2. International Covenant on Economic, Social, and Cultural Rights (ICESCR)
 - U.S. signed: October 5, 1977
3. International Covenant on Civil and Political Rights (ICCPR)
 - U.S. ratified: June 8, 1992
4. International Convention on the Elimination of all forms of Racial Discrimination (ICERD)
 - U.S. ratified: October 21, 1994
5. International Labor Organization core conventions (ILO)
 - U.S. ratified: 1991—C105, 1999—C182
6. UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
 - Adopted by the UN General Assembly: September 13, 2007
7. Convention on the Rights of the Child (CRC)
 - U.S. signed: February 16, 1995
8. Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)
 - U.S. signed July 17, 1980

9. Rio Declaration on Environment and Development
 - UN Conference on Environment and Development, held: 3-14 June 1992
10. The Nuremberg Code
 - U.S.A. vs. Karl Brandt et al., verdict delivered: April 19, 1947
11. World Health Organization Declaration of Alma Alta
 - International Conference on Primary Health Care: September 1978
12. The Protocol of San Salvador
 - Adopted by the UN at San Salvador, El Salvador: November, 17, 1988
13. The Stockholm Declaration
 - International Conference on the Human Environment: 5-16 June 1972

The responsibility of governments to protect human rights domestically reflects the ethical mandate to respect ALL human rights for all persons. Therefore, the human rights of all persons should be fully and equally respected at all levels of government, including federal, state and local. Bearing this in mind, the assessment team will use gathered local, project, and company and/or agency data to develop a list of international human rights documents potentially applicable to the assessment.¹

In addition, potential human rights standards of concern will be considered during this phase. Figure 1.2 includes possible standards of concern for pesticide application projects. This listing is not comprehensive, and not all of the standards in Figure 1.2 will be applicable to every situation.

Possible Human Rights Standards of Concern for Pesticide Applications	
<ul style="list-style-type: none"> ○ Right to Life ○ Right to Security of Person ○ Freedom from Degrading Treatment and Torture ○ Right to Adequate Standard of Living ○ Family's Right to Protection ○ Right of Mothers and Children to Special Protections ○ Right to Nondiscrimination ○ Right to Health ○ Right to a Clean Environment 	<ul style="list-style-type: none"> ○ Right to Water ○ Right to Food ○ Right to Housing ○ Rights of Indigenous Peoples ○ Right to privacy and home ○ Right to Property ○ Right to Favorable Working Conditions ○ Freedom of Religion

¹ A comprehensive list of universal human rights documents can be found at the United Nations Office of the High Commissioner for Human Rights website, at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx>

(Figure 1.2)

Phase II: Engage with Rights-holders

The assessment team will engage with rights-holders to collect on-the-ground information pertinent to the situation, after which information will be gleaned in order to identify project-specific human rights standards of concern. Data collection may involve recorded conversations, interviews, and focus groups. Rights-holders will also have the opportunity to share personal narratives accounts regarding pesticide exposure and contamination. Assessors will then systematically organize project-specific human rights norms according to topic and source.

(a) Identify, Seek Out, and Engage Rights-holders

Rights-holders—in this case, individuals whose human rights could be impacted by pesticide use—are included in the HRIA/P process from start to finish. All human beings who may be exposed to or could be affected by pesticides from an ongoing or proposed project are potential rights-holders. Rights-holder groups will vary in size, and may include persons who have no direct interaction with the project but who live, work, attend school or commute near enough to be affected by pesticide exposure.

Rights-holders include those who generally live, work or attend school near the project area, or who commute through the project area and are exposed to pesticide drift—and/or subsequent volatilization drift. Engagement with rights-holders is an integral part of the HRIA/P process, and in particular will include those who are marginalized and vulnerable. Migrant agricultural workers, many of whom may be undocumented and thus guaranteed almost no legal protection from abuse and coercion, would be one example of such a group. Other examples would be pregnant mothers whose exposure to pesticides affects unborn children, or elementary or secondary school children exposed to pesticide applications on, or on their way to, school grounds. The goal of rights-holder engagement is to ascertain the adverse impacts of pesticide use on human persons and human rights.

Figure 1.3 includes potential rights-holders for projects involving pesticide exposure.

Potential Rights-holders

- **Farmworkers or agricultural workers such as day laborers, migrant workers, and seasonal/temporary workers**
- **Spouses and families of farmworkers or people employed in agriculture**
- **Any employee that applies pesticides (agricultural, forestry, transportation, pest control, etc.)**
- **Pregnant women residing in or in proximity to the pesticide application area**
- **Inner-city marginalized populations, especially children and pregnant women, exposed to pesticides via pest control or environmental contamination**
- **Children, teachers and faculty exposed to pesticides at school**
- Indigenous groups whose religious/cultural practices are affected by chemical contamination of traditional food sources
- Organic farmers whose crop is impacted
- Individuals who work or reside in a building that has been sprayed for pest control
- Anyone with traditional uses for or planned activities in the project area
- Individuals whose water supply, access, or quality is impacted
- Individuals whose air quality is impacted
- Individuals residing in or around the project area, or traveling through the project area
- Farmers

(Figure 1.3)



Image courtesy of Lake Apopka Farmworker Quilt Project: <http://apopkaquiltproject.blogspot.com/2011/12/global-call-for-environmental-justice.html>

While engaging with rights-holders, it is best to record conversations in some manner so as to facilitate organization of and reflection on data received. Keeping in mind the vulnerability of certain populations, some conversations may be summarized rather than recorded, and some rights-holders may choose to contribute anonymously. In the case of school children, parental permission and child assent are pre-requisites for conversations. The assessment team will be sensitive to the needs of all rights-holders, and devise systems for data collection that uphold the best interests of affected individuals and communities.

(b) Collect personal narratives

A personal narrative regarding pesticide use is a first-person account of a rights-holder's lived experience with pesticide exposure, contamination, or poisoning. The responsibility of the HRIA/P assessment team to collect personal narratives varies depending upon individual or community willingness to voluntarily provide personal and detailed accounts of adverse events resulting from exposure to pesticide products, drift, volatilization or residues. Personal narrative sharing is strictly voluntary and rights-holders will not be made to feel as if personal narratives are a required component of the HRIA/P. Moreover, personal narrative sharing and collection is an activity that requires keen sensitivity, empathy and respect on the part of assessors engaged in conversations with rights-holders.

If any rights-holder should volunteer to share his or her personal narrative, the assessment team will work with them on ways in which the narrative can best be documented and shared. In some cases, a volunteer may choose to write down or audio record her or his own personal narrative, which can then later be shared with a wider public of her or his own choosing. In other instances it may be more appropriate for a member of the assessment team to record and document first-person accounts. Methods for personal narrative collection and sharing will vary depending upon the situation and decisions of rights-holders.

(c) Organize relevant human rights standards

After relevant human rights standards have been identified, the assessment team will organize them according to topic and source. Figure 1.4 provides an example of how these relevant human rights standards may be systematically organized.

➤ *Example: Organization of relevant human rights standards*

Human Rights Standards: Right to...	Relevant International Documents			
	UDHR	ICCPR	IESCR	DRIPs
Favorable Working Conditions	23		6,7,8	17
Non-Discrimination	1,2	2,3	2, 3	2, 44,8,9
Adequate Supply of Water				
Clean Air/Environment			12	29
Standard of Living Adequate to Health	25		12	21
Health			12	21, 24
Housing	25		11	21
Adequate Standard of Living	25		11	
Food	25		11	
Life, Liberty, Security of Person	3	6		7
Freedom from Degrading Treatment/Torture	5	11		7
Self-Determination		1	1	3,4,10...
Cultural Participation	27	27	15	5,8,11,15
Freedom of Religion	7	18	2	12

(Figure 1.4)

- ✚ UDHR: Universal Declaration of Human Rights
- ✚ ICCPR: International Covenant on Civil and Political Rights
- ✚ IESCR: International Covenant on Economic, Social, and Cultural Rights
- ✚ DRIPs: Declaration on the Rights on Indigenous Peoples

Phase III: Conduct Assessment



The assessment team will conduct a quantitative assessment in order to determine ratings for each human rights standard of concern. The purpose of conducting a quantitative assessment is to allow the company or agency to make more informed decisions regarding the potential breach of human rights standards, in order to maintain or bolster public image and avoid liabilities. By stressing the ways in which upholding human rights standards will avoid potential loss or litigation, these entities will be more likely to follow-up with the assessment team regarding the results of the HRIA/P.

(a) Conduct numerical assessment

Once data have been collected and organized, ratings will be assigned for the likely Severity (S), Extent (E), and Probability (P) of the potential breach of each human rights standard. Average ratings of the scales for each human rights standard will also be calculated (see Figure 1.5). Severity (S) is defined as the level of adverse impact on an individual's or a community's human rights. Extent (E) indicates the number of individuals likely to be negatively impacted. Probability (P) foreshadows the likelihood that this impact will occur. Severity, Extent, and Probability are each rated from 1 to 12,

and color-coded according to rating: Green (1-3), Blue (4-6), Orange (7-9), and Red (10-12).

Scales: Severity (S), Extent (E), Probability (P)				
Ratings: 1-12				
Color Coding:	Green 1-3	Blue 4-6	Orange 7-9	Red 10-12

(Figure 1.5)

Preliminary ratings are determined by practitioners, or human rights experts. No standardized methods currently exist for determining measurements, so scoring is determined by decisions based on professional knowledge and experience. Scores are produced in a collaborative environment and subsequently reviewed and finalized by rights-holders.

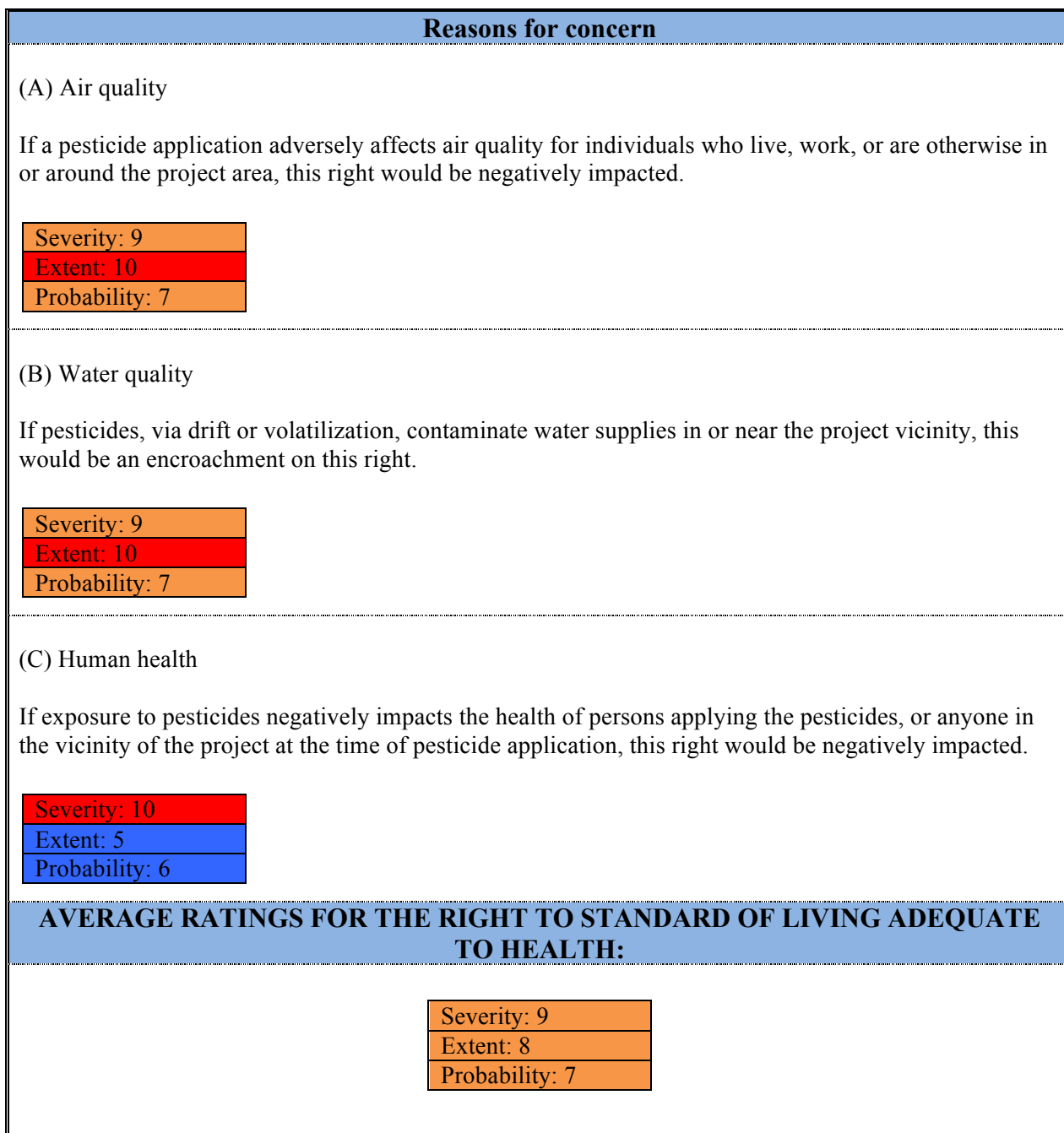
Figure 1.6 utilizes the ratings table from the Assessment Report Template to provide an example of a human rights standard rating based on application of pesticide(s).

- *Example: The situation of a proposed truck spray of shoulder vegetation along a 5-mile stretch of roadway in the vicinity of a rural community.*

1. Human rights standard: The right to standard of living adequate to health.

Articulated	Instrument Abbrev.	Article No.
“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”	UDHR	25(1)
“Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”	UDHR	25(2)
What this right entails		
This means that everyone has the right to be healthy in their respective environments, including home, work, school, community, and the like. Everyone has the right to protection from environmental hazards that have unfavorable impacts on health, and children and mothers, being particularly vulnerable, are entitled to special protections.		

Continued on page 16...



(Figure 1.6)

(b) Verify Ratings

In order to verify ratings, practitioners will hold an invitational meeting with rights-holders. Rights-holders will be invited via personal correspondence or through local environmental justice and human rights organizations. Rights-holders present at the meeting may include local activists, but will primarily be members of the affected communities, especially persons who are marginalized and vulnerable. The purpose of

the meeting being private is not to exclude diverse voices and opinions, but to maintain the integrity of the process by ensuring that no conflict-of-interest parties can unfairly influence decisions regarding final ratings.

At the meeting, practitioners will not initially disclose preliminary ratings to rights-holders. At the outset, rights-holders—working in small groups—will collaborate and determine ratings for each human rights standard based on knowledge vested in the rights-holder community and in individuals with a deeper understanding of community interests and concerns. Small groups will then be combined to create larger groups for members to continue to discuss and debate ratings. Finally, the entire group will come together and final ratings will be determined in a collaborative fashion with practitioners and all members of the group working as a team. Group consensus should be the goal of finalizing ratings for each scale; however, if it is not possible for the entire group to agree unanimously, ratings may also be determined by vote.

Once scores have been determined for each human rights standard and area of concern, these scores will be entered into the Assessment Report Template using the ratings table under Applicable Human Rights Standards: *Rights at Issue*. Alternatively, assessors may choose to draft their own version of the final report. The Assessment Report Template is available in Microsoft Word format at the Environment and Human Rights Advisory (EHRA) website.



PHASE IV: Finalize HRIA/P Report

Prior to issuing the HRIA/P final report, the assessment team will outline potential company and/or agency liabilities and propose recommendations based on final ratings. This process will take place either during the invitational meeting with rights-holders to finalize ratings, or afterward in a separate meeting with collaboration of the entire assessment team.

(a) Outline possible liabilities

The assessment team will examine possible liabilities to the company or agency for each human rights standard of concern, in the event that the company or agency fails to adequately protect the safety, health and rights of rights-holders.

Possible liabilities will stress the moral duty of companies and agencies to adhere to human rights standards. In addition, listing of potential liabilities will allow companies and agencies to more clearly understand the possible costs of not protecting the community's rights. It should be emphasized that companies and agencies can gain: (1) morally, by avoiding or reducing possible harm to community members; (2) financially, by avoiding losses due to inaction, and; (3) reputationally, by achieving a more positive public image. Possible liabilities may be entered into the Assessment Report Template under the *Potential Liabilities* section.

➤ *Example: Potential liabilities for ABC Forestry Company*

- Situation: Proposed truck spray of shoulder vegetation along a 5-mile stretch of roadway in the vicinity of a rural community
- Agency: ABC Forestry Company
- Human rights standard: The right to standard of living adequate to health

Risks due to inaction, for ABC Forestry Company

1. Economic risks include potentially costly legal actions brought against ABC Forestry Company for failure to adequately protect human health, particularly maternal and child health, and possible multiple small claims court actions.
2. The company's liability insurance premiums may increase.
3. The ramifications of ignoring human health concerns would include a risk of public and media perception that ABC Forestry Company does not respect human rights standards, potentially resulting in diminished trust by affected communities.

(b) Propose recommendations

Recommendations specific to this project should be concise and straightforward. Terms and definitions related to human rights will be clearly defined, so that they will be understood by a wide audience. Overall, recommendations are based on the expertise of practitioners as well as the on-the-ground knowledge of rights-holders. Recommendations may be entered into the *Recommended Measures to Reduce Liabilities* section of the Assessment Report Template.

➤ *Example: Possible recommendations*

Recommended measures for :

Sara Scottsdale, Owner
ABC Forestry Company
123 Main St.
Outwest, CA 65432
(111)-222-3333
sscottsdale@owner.org

Measures proposed by:

Sally Smith
Human Rights Associate, Human Rights Organization
123 F Street
Anytown, CA 12345
(415)-999-1111
sally@humanrights.org

Jay Johnson, community member
Rick Reynolds, community member
Patricia Fitzgerald, community member

1. The ABC Forestry Company will employ an independent party to conduct a Health Impact Assessment (HIA) of the project, and fully disclose the results of the HIA to community members

2. The ABC Forestry Company will avoid pesticide application within 1000 yards of school grounds, playgrounds, recreational areas, and any other area where children are regularly present

3. The ABC Forestry Company will agree to full transparency with its actions, and management will provide community members with extensive prior notification of any and all plans of pesticide use

(c) Finalize draft

The assessment team will finalize the draft after outlining potential liabilities and proposing recommendations. A full version of the final report will be provided to the company or agency and to rights-holders, and distributed to the public. The final report will also be available on the Environment and Human Rights Advisory (EHRA) website.



PHASE V: Implement and Monitor

The HRIA/P report will be presented to company or agency officials in both digital and hard copy formats. Rights-holders may choose to invite company or agency leaders to a meeting with rights-holders and community members in which copies of the HRIA/P report will be distributed, and potential liabilities, ratings and recommendations discussed. Rights-holders and community members will advocate for the health and safety of their community using gathered data as a point of leverage. They will focus on potential liabilities, explaining to company or agency leaders how loss can best be avoided by adhering to specific recommendations issued by the assessment team. In addition, rights-holders may share personal narratives. Practitioners may be invited to take part in the meeting.

If the company or agency is willing, rights-holders and/or practitioners will establish a plan of action along with company or agency representatives, so that proposed recommendations can be implemented. In this case, the assessment team will monitor the ongoing project as recommendations are implemented.

If company or agency representatives are unwilling to meet with rights-holders and community members, the HRIA/P final report will be mailed to them (both email and postal mail), and the assessment team will continue to monitor the project and record impacts on community members.