

Human Rights Impact Assessments of Trade Agreements: Reflections on Practice and Principles for Future Assessments

A Background Paperⁱ for the Expert Seminar on Human Rights Impact Assessments
of Trade and Investment Agreements, June 23-24, 2010 Genevaⁱⁱ

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I. Introduction

This background paper provides an overview of existing practice related to conducting human rights impact assessments (HRIAs) of trade agreements and addresses key methodological issues in conducting future assessments. It draws extensively upon [a previous paper produced for the Canadian Council for International Co-operation \(CCIC\)](#), work for the Scottish Human Rights Commission on HRIAs, as well as other work by this author.¹

It is structured in the following way:

- [Section II](#) defines what an impact assessment is
- [Section III](#) defines what an HRIA is and provides an overview of existing practice
- [Section IV](#) sets out details of previous HRIAs and ‘social’ impact assessments of trade agreements.
- [Section V](#) describes key lessons for undertaking future HRIAs of trade agreements
- [Section VI](#) sets out eight key steps that should be integral to any HRIA conducted of a trade agreement.
- [Section VII](#) reflects upon the benefits and potential dangers of undertaking HRIAs of trade agreements
- [Section VIII](#) provides some concluding thoughts

Hyperlinks in blue throughout the paper link to other sections of the document and key external texts and websites.

ⁱ I am very grateful to comments on an earlier draft by Thomas Braunschweig, Gauri Sreenivasan and Simon Walker.

ⁱⁱ The Seminar was organized by the Berne Declaration, Brot für die Welt, Canadian Council for International Co-operation, FIAN, Heinrich Böll Foundation Misereor, South Centre, 3D, and convened under the auspices of Olivier De Schutter UN Special Rapporteur on the Right to Food.

II. What is Impact Assessment?

Impact assessment is an increasingly widely-adopted tool for evaluating the effects of policies, practices, programmes and regulatory interventions across a wide range of different fields.²

Impact assessments are now conducted by a variety of different actors including national and local governments, non-government organizations, businesses and inter-governmental organisations. The [International Association for Impact Assessment \(IAIA\)](#) promotes the practice of impact assessment and collects many resources on the issues.

Internationally there are a huge range of types of impact assessment. At its 2006 International Conference, the IAIA listed over 50 different 'topical streams'.³ These include environmental, social and economic impact assessment, poverty and social impact analysis, health impact assessment and regulatory impact assessment.

III. What is Human Rights Impact Assessment?

HRIAs are also increasingly utilised to assess the impact of policies, programmes, projects, legislation and other interventions on human rights. Just as policymakers consider environmental, social or economic impacts by conducting impact assessments to explore those issues, HRIAs aim to make policymakers take into account the human rights impact of laws, policies, programmes etc. Before being recognised as a separate form of assessment, human rights impact assessment was considered as part of social impact assessment, but more recently a number of actors have begun to utilise it independently. HRIAs have been used to examine, *inter alia*:

- The impact of development programmes on beneficiary countries (e.g. see [NORAD handbook](#)).
- The human rights impact of multinational companies (see [Aim for Human Rights' Guide](#) for an overview of instruments).
- The extent to which human rights non-governmental organisations (NGOs) have achieved their policy aims and objectives (e.g. see [evaluation of nine Dutch NGOs](#)).
- The human rights impact of foreign investment projects (See [Rights and Democracy studies](#))
- Health and Human Rights Impact Assessment (e.g. see [Aim for Human Rights' Health Rights of Women Impact Assessment Instrument](#)).
- The impact of government policy and legislation on the rights of children (e.g. see [UNICEF's Child Rights Impact Assessment in Bosnia](#)).
- Analysis of the government budgets including on health, food and education (e.g. see [FAO's guide to right to food budget analysis](#)).

[The Human Rights Impact Resource Centre](#) provides details of many of these assessments, as well as a range of toolkits and methodological guidance on how HRIAs might be carried out.

There is no single existing blueprint for undertaking HRIAs. This type of assessment is a policy mechanism that is in its infancy. It has been undertaken for less than a decade. There is no universally accepted definition of what an HRIA is, and no generally accepted framework for how they should be carried out has been developed (in contrast with e.g. environmental impact assessment).⁴ There will also always be variation in practice depending on:

- The range of subjects assessed – both the particular issues involved (e.g. health, education, etc.) and the type of subjects analysed (a project, a policy, a piece of legislation, a budget etc.)

- The different actors involved in carrying out the assessment (governments, businesses, civil society actors)
- When the assessment takes place – before or after the policy or practice comes into force (*ex ante/ex post* assessments)
- The quality and complexity of the analysis undertaken
- The time, resources and quality of data available

An HRIA of a Trade Agreement seeks to assess how *the legal obligations of that agreement* will affect (negatively and positively) the human rights of people in the States concerned. It will therefore be very different from an HRIA that assesses the impacts of a particular project or programme of activities (e.g. a development co-operation programme, the construction of a pipeline) or those that assess the impact of an organisation (e.g. multinational companies, NGOs).

HRIsAs of trade agreements should be based on an explicit evaluation of the impact of trade law obligations on relevant, codified human rights obligations that apply to the actors (States and inter-governmental organisations) in question.⁵ The focus on international trade law obligations and their impact at the national level means that a specific methodological approach must be developed, particularly in relation to complex issues of causation (e.g. how might we demonstrate whether agricultural liberalisation commitments have caused human rights violations among semi-subsistence farmers?).

We therefore need to primarily focus on the specific experience of undertaking HRIsAs of trade agreements in order to understand what are the key characteristics of the HRIA process in that context (see next section). However we will also draw on some lessons from other HRIA processes where they are valuable.

IV. Existing Impact Assessments of Trade Agreements

There have been three major examples of HRIsAs of trade agreements that provide some potential lessons for how future HRIsAs should be carried out. In addition, there are a much greater number of impact assessments of trade agreements that conduct some form of ‘social’ impact assessment of the trade agreement in question. The approach taken by these ‘social impact assessments’ (SIAs) is also relevant, in that they cover many of the same issues that HRIsAs cover (e.g. how will the ‘health’ of the population be affected by intellectual property provisions that restrict access to generic medicines?). They do however use a very different normative framework (see [section V](#)). Details of the key assessments are set out below:

1. Human Rights Impact Assessments

- Thailand Human Rights Commission – In 2006, the Thailand National Human Rights Commission (TNHRC) produced a draft report of what was widely reported as the first HRIA of an international trade agreement. TNHRC considered the human rights implications of the free trade agreement that Thailand was negotiating with the US before the military coup in Thailand stalled those talks. The draft report covers four substantive areas – agriculture, environment, intellectual property, and services and investment – as well as the process of negotiation and the apparent lack of public participation and dissemination of information in this process. It is an *ex ante* assessment, in that it assesses the potential future impact of the Thailand-US bilateral trade agreement.
- A number of HRIsAs have been produced by FIAN (FoodFirst Information and Action Network) in collaboration with a number of other civil society organisations. They all analyse the human rights impact of trade liberalisation on the right to food of agricultural producers in a range of different

countries. These studies utilise the same basic methodological approach – they combine macro-level analysis of domestic food production, foreign importation and related state policies (of both domestic and external state actors) with micro-analysis at the community level. Human rights analysis combines the findings on the macro- and micro-level and evaluates them from the perspective of the right to food. Studies so far conducted are:

- Paasch, Garbers and Hirsch, [Trade Policies and Hunger: The Impact of Trade Liberalisation on the right to food of farming communities in Ghana, Honduras and Indonesia](#) (2007). It considers the impact of trade liberalisation due to trade conditionality in IMF structural adjustment programmes on the right to food of rice farming communities in Ghana, Honduras and Indonesia. It is an *ex post* assessment, in that it assesses past impacts of trade liberalisation in each of these countries.
- [Right to Food of Tomato and Poultry Farmers, Ghana](#) (2007). It analyses the effects of the European agricultural and trade policy and trade conditionality in IMF structural adjustment programmes on small producers of tomatoes and chicken breeders in Ghana. It is primarily an *ex post* study, but also predicts future impacts as a result of further liberalisation.
- [Right to Food of Milk and Honey Farmers, Zambia](#) (2008). It focuses upon the future potential human rights impact (*ex ante* study) of EU Economic Partnership Agreements on dairy and honey farmers in Zambia.
- [The Right to Food of Milk and Maize Farmers in Uganda](#) (2009). It investigates the past and potential future impact of agricultural trade policies of the EU on the right to food of small-holder farmers in Uganda, focussing on two products: milk and maize.
- [Simon Walker, 'Assessment of CAFTA: The Impact of Intellectual Property Protection on the Right to Health and Related Rights in Costa Rica'](#) contained in the book ['The Future of Human Rights Impact Assessments of Trade Agreements'](#) (Intersenta 2009). It considers the impact of the intellectual property provisions of the Central American Free Trade Agreement on the right to health in Costa Rica. It is an *ex ante* assessment which utilises economic modelling, causal-chain analysis and expert judgment to assess impact on the right to health. The book provides the most detailed methodological guidance on conducting HRIAs of trade agreements that has been produced.
- [Government HRIAs](#) – There are no examples of governments/inter-governmental bodies undertaking HRIAs of trade agreements (there are plenty of social ones, see below). Canada has recently implemented a new human rights reporting mechanism in its Free Trade Agreement (FTA) with Colombia which was originally described as an HRIA but appears to have few of the features that are core to the HRIA process described below.

2. Social Impact Assessments

- [EU Sustainability Impact Assessments](#) – The EU systematically conducts economic, social and environmental impact assessments of all major multilateral and bilateral trade negotiations. These are known as Sustainability Impact Assessments. Social impacts are measured separately according to social 'indicators' and impacts are assessed as of greater/lesser/no significance.
- [The United Nations Environment Programme](#) – UNEP has over thirty years of experience of conducting environmental impact assessments of trade agreements. Over the last decade it has also developed an impact assessment methodology that incorporates integrated environmental, social and economic assessment.
- [Other 'social' impact assessments of trade agreements](#) have tended to be conducted on an ad hoc basis by a range of different actors - national governments, NGOs, intergovernmental organisa-

tions or academic institutions. The greatest number of these impact assessments have been conducted in Central and South American countries. Others have been undertaken in Australasia, the Pacific region and Africa. Altogether, extensive research of existing impact assessments of trade agreements identified over 30 assessments (up until 2007) that contained some kind of social impact analysis. [A catalogue of the assessments](#) was produced for University of Nottingham Human Rights Law Centre.

V. Key lessons in undertaking future HRIAs of trade agreements

On the basis of extensive analysis of the above assessments, which has been undertaken by this author and others elsewhere,⁶ there are clear lessons to learn for conducting future HRIAs of trade agreements.

1. Added value of HRIAs over social impact assessment

There are a number of interconnected reasons for undertaking HRIAs of trade agreements as opposed to social impact assessments:⁷

- In HRIAs, the impact of trade agreements can be measured according to legal obligations entrenched in international legal instruments rather than partial and sometimes seemingly arbitrary ‘social’ principles (e.g. core EU ‘themes’ like poverty, health and education and equity).
- The human rights principles of interdependence and inter-relatedness help us to turn our minds to multiple impacts (e.g. on health, education and housing together) rather than focus on one or two predetermined impacts.
- HRIAs should put pressure on duty-bearers’ to act to protect the rights of ‘rights-holders’ and provide justifications for their policies in human rights terms.⁸
- HRIAs should engage international and national human rights actors (e.g. UN Actors, NHRIs etc.).
- HRIAs emphasise the importance of transparency, participation and empowerment, both in the process of conducting the impact assessment and in the negotiation and implementation of the trade agreement itself.⁹ (However, we need to make sure that the rhetoric is reflected in the reality).
- Many existing social impact assessments of trade agreements under-explore or marginalize the impact of trade agreements on the most vulnerable and disadvantaged persons and particular groups who might suffer (or benefit) as a result (e.g. women, ethnic minorities). A human rights-based approach to international trade “shifts the perspective from aggregate values – from the benefits of trade for the country as a whole – to the impacts of trade on the most vulnerable and ... insecure”¹⁰.

2. A technical not an ideological process

An HRIA is not suited to engagement in an ideological discussion about the purposes of, or overall justifications of the neo-liberal trade agenda. Nor is it an appropriate tool for passing judgment on whether a country *should be* eligible for a trade agreement. It should be utilised as the basis for an empirical study of the actual or potential human rights impacts of the trade agreement itself, based on the normative framework of human rights.

But a number of existing impact assessments are clearly very much ideologically opposed to the agreement being evaluated, and make strong statements about negative impacts that are not directly linked to any evidence presented. On the other hand, the EU assessments have been widely accused of taking an excessively pro-liberalisation stance. Measuring the human rights or broader social impact of any trade agreement is a complex process and must be based on some form of empirical analysis. Unsubstantiated ideological opposition/support for the agreement in question is likely to undermine its perceived objectivity and therefore value.

3. Different approaches required for assessing different types of provisions.

HRIAs may assess a number of different types of provisions of trade agreements:

- provisions of FTAs that *directly aim* at the protection and promotion of human rights, in particular provisions protecting labour rights.
- provisions of FTAs that have an *indirect human rights* impact (e.g. agricultural liberalization provisions, intellectual property provisions, investment provisions etc.).
- the process of negotiating a trade agreement and the extent to which it has promoted transparency and participation in accordance with key human rights principles.

As highlighted in [Section IV](#) and in [Appendix 1](#) there are a number of existing resources which assist in the development of future HRIA methodologies. The main focus of work so far has been on liberalisation of trade (in particular agriculture) and intellectual property provisions. There is also some limited guidance on assessing negotiating processes.¹¹ But a great deal more work is needed in order to understand how the legal standards on transparency and participation contained in key human rights instruments translate to obligations that need to be taken into account in the negotiation of trade agreements.¹²

There are no existing resources (which this author is aware of) which consider how a human rights impact assessment of investment provisions or labour standards might be undertaken. [Appendix 2](#) therefore provides a very brief outline for how an HRIA of investment provisions or labour standards might be undertaken from [a study of how an HRIA of the Canada-Colombia FTA might be conducted](#). A great deal more work will be required to develop methodological frameworks for these fields.

4. The Timing of the Assessment

HRIAs can take the form of both *ex ante* assessments (undertaken before or during the negotiation of trade agreement, or prior to implementation), and *ex post* assessments (undertaken on a trade agreement after a period of implementation). *Ex ante* assessments present more complex methodological challenges. In *ex post* assessments, it is possible to consider evidence of the actual impact of the trade agreement that is in force, and attempt to measure actual impacts on the population in question. In an *ex ante* assessment, this is not possible because the impacts have not yet happened. Therefore we need to find mechanisms for measuring *potential* impacts of the agreement.

Ideally, HRIAs should be cyclical with ongoing monitoring and review of impacts. Little evidence was found of cyclical assessments being undertaken in practice.

5. Complexity versus Simplicity

There is always a trade-off between the optimal methodology for the HRIA and a methodology that is achievable and produces a timely output. In the former we would want to e.g. develop a wide range of human rights indicators/questions, conduct a range of original case studies, specifically commission economic analysis of the FTA, conduct extensive and long term consultations with potentially affected

communities etc. In the latter scenario we may want to rely on less detailed analysis, more limited consultations and case studies and existing economic analysis so far as it is available. The problems inherent in this trade-off are found in many discussion of HRIAs.¹³ Much will depend on the time, resources, expertise available to the assessment team and they way impacts are reported.

It is also relevant to think here about the actors undertaking the assessment – do we require a more robust and constrained methodology for governments than we do for civil society HRIAs? In any event there may be benefits in having minimum standards for the conduct of HRIAs so that any single HRIA benefits from the credibility of the nomenclature.

6. Who undertakes the assessment

There are difficulties in creating robust frameworks that are able to gather reliable information about human rights impacts on particularly vulnerable and disadvantaged groups, and demonstrate whether or not these are caused by trade agreements. Some of the SIAs analysed reflected the difficulties inherent in this analysis. Those dominated by economists tended to concentrate on the economic impacts of the agreement and social impacts were often marginalised. Those without sufficient trade or economic expertise tended to under-explore the complex issues of causality and predicting future consequences inherent in a trade agreement of this type.

The creation of appropriate methodologies will require interdisciplinary teams of persons with complementary knowledge and skills including human rights and trade law and economics expertise coupled with social science expertise particularly in participatory methodologies.¹⁴ The overall structure of the assessment team will also depend on resources. Issues of independence, oversight and strict methodological frameworks are going to be particularly relevant where the HRIA is undertaken by a government. The recent experience of negotiating an ‘HRIA’ process in the Canada-Colombia FTA speaks to the difficulties that can be encountered.

VI. Key Steps in Undertaking an HRIA of a Trade Agreement

Although there is no single methodology for HRIAs, most have some key features in common. On the basis of analysis of existing HRIAs of trade agreements and impact assessments in other fields, eight key steps have been identified that should be included in any HRIA. These steps will inevitably require some adaption depending on timing, organisation, substance of assessment and resources. It is also recommended that people planning an *ex ante* HRIA look at the methodology by Simon Walker, for a much more detailed exploration of many of the same steps.¹⁵

There will in practice be some overlap between steps (in particular the consultation ‘step’ will be likely to start at the screening or scoping stage)) and some steps will not always be explicit. But each of the stages are set out individually and in turn below for ease of reference:

1. Screening
2. Scoping
3. Evidence gathering
4. Consultation/Participation
5. Analysis
6. Conclusions and Recommendations
7. Publication/Reporting
8. Monitoring and review

1. Screening

'Screening' is the process of deciding whether a particular policy is suitable for a full impact assessment, and screening out policies where an HRIA is not considered appropriate or necessary. A trade agreement contains a vast array of provisions that are potentially subject to an HRIA (e.g. trade in goods, trade in services, investment, intellectual property etc.).

Attempting to measure the *overall* human rights impact of an agreement is a monumentally complex task, particularly given the potential for long, intermediate and short term impacts. Attempts to measure overall 'social' impact across an entire trade agreement have tended to become superficial exercises. There are worries about the Canada-Colombia human rights reporting process for exactly this reason.

The screening process therefore identifies the key human rights issues that are subject to further analysis in the full assessment study. There is no recognised methodological framework for carrying out such a screening study. But some preliminary information gathering and analysis will probably be required in order to justify the screening decision – about the country itself, the trade agreement in question, and why the proposed sector/issue is worthy of a full assessment.¹⁶

Where governments are undertaking assessments, it is vitally important that there is a transparent process for deciding which elements of the trade agreement are to be subject to a full assessment. Where a civil society organisation is undertaking an HRIA of a trade agreement, they will often have a pre-determined area of interest (e.g. the impact of investment provisions). But decisions should still be justified through e.g. use of existing studies, expert analysis, causal chain analysis etc.¹⁷

2. Scoping

'Scoping' is the information that is gathered and questions that are asked once the decision to undertake a full HRIA has been made. This stage is termed 'planning' or 'mapping' in some HRIA methodologies.

In the trade context, questions will include

- What are the relevant trade measures and how do they operate? For example in relation to intellectual property and access to medicines we will need to know about e.g. patent terms, compulsory licensing arrangements etc.
- What are the human rights obligations of relevant actors (i.e. States who are parties to the agreement and relevant inter-governmental organisations)? This will include both national and international human rights obligations.
- What is the baseline situation in the country (i.e. prior to the trade agreement) with regard to the issue in question? E.g. what is the existing regime for provision of essential medicines, what are the existing patent laws etc?
- What are the potential mechanisms for dealing with any adverse impacts identified? (e.g. increased government support, tariff rises in products, human rights clauses in investment arbitration provisions etc.).
- What potential human rights impacts is the measure in question likely to introduce? This should include consideration of positive as well as negative impacts. E.g. how will/have reduced tariffs on agricultural products impact (ed) upon urban poor as well as rural farmers?
- What are the indicators or questions by which a judgment will be made about the human rights impact of the measure in question?

3. Evidence Gathering

Without gathering evidence about the (potential) impacts of a policy, the conclusions of the decision-maker are likely to reflect simply their own knowledge, experience and prejudices. This is not to say that evidence will provide us with certain knowledge about a policy's human rights impacts. '... questions of time, causation and spuriousness affect any assessment's ability to draw inferences about the true impact of a set of activities.'¹⁸ But it should give us a more informed basis on which to make our decisions.

The evidence required and the methods for collecting it will depend on the type of assessment being undertaken. For instance, in an *ex post* assessment there will be evidence of what has occurred as a result of the trade agreement coming into force, whereas in an *ex ante* assessment we will not have the same information available about future impacts. However it is still possible to predict changes based on comparable situations elsewhere and from estimating likely responses to policy changes by effected individuals.¹⁹

Whether an HRIA is *ex post* or *ex ante*, a combination of research sources will be required. Most advanced HRIA methodologies suggest a combination of quantitative and qualitative research methods:

Quantitative Research – This is the collection of numerical data about a situation. It will be primarily economic analysis of the trade agreement in question, and will be particularly important to demonstrate the overall impact of a particular trade measure (e.g. increase in rice imports entering the country as a result of liberalization). Quantitative research methods might include:

- Economic studies of the impact of existing trade policies
- Economic modeling of the potential future impact of trade policies
- Questionnaires which ask for responses that can be subjected to statistical analysis

Qualitative Research – Simply put, this is research which does not give you a hard number, but rather gives you a narrative about people's experiences. The consultation stage of the assessment can provide qualitative research but there may also be pre-existing qualitative data from earlier research. Qualitative research might include

- focus groups
- interviews with key rights-holders
- interviews with experts on the subject of the policy and on the rights issues
- case studies of particular groups and individuals
- questionnaires which ask for narrative responses
- other reports or academic articles

HRIAs of trade agreements will need to combine these two types of research (quantitative and qualitative) in order to analyse what the human rights of a policy is on particular people. This is because:

- Qualitative research can give a human face to what might otherwise be an abstract set of numbers and show how real people's lives have been or could be affected by a policy. But over-reliance on qualitative research faces the accusation of being subjective and partial (it depends on who is in the room).
- Quantitative data can show how many people actually experience certain outcomes and how great the impact is. Quantitative data can also be disaggregated (by for example race or gender) more reliably because of the potentially larger numbers in the data set. This can help expose differential impact of a policy on particular groups. But over reliance on quantitative methods can marginalise consultation and also leads to 'the erroneous impression of precision and confidence in predic-

tions'.²⁰ It may also disguise impacts on particular people in a particular place where the figures are not sufficiently precise (e.g. a national survey will not give you accurate figures for a particular community).

Decisions on appropriate methodologies will depend on the nature of the trade provisions being analysed (e.g. investment/labour provisions). Existing assessments have utilised various forms of economic analysis, causal chain analysis, expert study and analysis, participatory case studies, questionnaires, focus groups, interviews and observations.

Many SIAs tend to concentrate on detailed economic analysis with little attempt at the more complex social/human rights analysis. Studies and analysis of the EU SIAs and the South American impact assessments in particular, have been critical of their methodologies.²¹ Most have utilised traditional economic models to assess social impacts and this has been found to have its limitations. There is often insufficient data to do economic 'modelling studies' to predict future outcomes with respect to social impact, and effects are so complex that it is difficult to predict outcomes with any certainty.

Consideration of a diverse range of mechanisms for measuring impacts is therefore required. Those impact assessments that have been most successful in terms of identifying severe social impacts on specific people have tended to employ case studies of affected populations (e.g. FIAN studies, certain EU studies). Outside the field of trade, one of the most advanced mixed quantitative/qualitative methodologies for conducting an *ex ante* HRIA is UNICEF's [Child Rights Impact Assessment of Potential Electricity Rises in Bosnia and Herzegovina](#).

But it must be remembered that even an optimised impact assessment methodology will fall short of hard science where definitive answers can be provided based on incontrovertible 'evidence'. In particular, there are two inherent problems of impact assessments more generally: attribution gaps due to the problems of proving cause and effect in a complex chain of activities and – in the case of *ex-ante* assessments – the hard-to-predict future consequences of provisions that have not yet been implemented.

4. Consultation and Participation

By consultation we mean the provision and seeking of advice and information, in relation to the HRIA, whereas by participation we mean that people actually playing an active part in generating ideas as well as the decision-making process. I was unable to find any existing standards for what constitutes minimum reasonable standards of consultation and participation in an HRIA. I only found examples of better and worse practice.

So, the Paasch, Garbers and Hirsch Study utilized extensive interviews with affected populations in order to ascertain if price fluctuations in rice as a result of imports had led to human rights violations on the ground. Interviews were conducted with affected individuals and groups and the results were the basis of much of the human rights analysis in the final report. Participatory methodologies of other assessments have been more widely criticised. NGOs and other commentators have been very critical of the participatory mechanisms utilised in many of the EU SIAs of trade agreements; the way relevant actors, particularly in third countries, are informed about the SIA, consulted as to their views, and those views taken into account in the ongoing conduct of the SIA.

The majority of guidance on consultation processes simply stresses the importance of consultation and participation from a human rights perspective and argues that HRIAs should include effective consultation with the full range of potential rights-holders.²² The empowerment aspect of consultation is also stressed – that the process of bringing together (potentially) affected persons is itself a valuable end in itself.²³ But beyond this, a great deal more work needs to be done to develop guidance and good practice principles that are relevant to people conducting HRIAs of trade agreements in particular contexts. Do we want minimum standards about what is appropriate? To what extent should these standards

recognize that the degree of consultation and participation that is possible will depend on the time and resources that are available to the HRIA?

5. Analysis

This is the stage of the process where a decision is taken over what the human rights impact is. HRIAs must be based on an explicit evaluation of the impact of trade law obligations on relevant, codified human rights obligations that apply to the State in question. Otherwise there is a danger that human rights become merely ‘window-dressing’ for the assessment. Relevant obligations should have been utilised throughout the assessment to shape evidence gathering and consultation. Now they will be utilised to analyse what the human rights impact is.

But it is often difficult to translate the human rights obligations contained in international and national laws into analytical tools that can be utilised to measure impacts of trade agreements. Guidance from expert bodies, such as the General Comments of the Committee on Economic Social and Cultural Rights, should be utilised to ‘flesh out’ the content of obligations.

Beyond this, most HRIA toolkits and methodological frameworks talk of developing a series of ‘indicators’ which should then be developed to measure the impact. There has been much work internationally to put together indicators which can be utilised to determine whether a right has been violated. However, despite much talk about using these indicators in impact assessment, there is little evidence of their active use in existing assessments.

This may be because work on indicators is all relatively recent and only in relation to certain rights.²⁴ But it is also because importing lists of indicators of particular rights wholesale into an impact assessment process is likely to be overwhelming for decision-makers and also lack the contextual specificity necessary for this kind of exercise.²⁵ In HRIAs that do use indicators as tools of analysis, smaller lists of very context-specific questions are generally created. The questions are used in order to test the particular human rights issues which are the subject of the assessment.²⁶ Careful thought is therefore required to assess the extent to which indicators are utilized in future HRIAs.

An important part of this analysis stage will also be to test the hypothesis that trade agreements have caused/will cause problems or benefits from a human rights perspective against other possible causes.²⁷ Where there is strong evidence of human rights violations/improvements occurring, a number of alternative causes may be still possible for their occurrence, (e.g. domestic government policies and practices) and these need to be explored in any HRIA. Conclusions may also point to the interaction of various elements leading to violations/benefits.

6. Conclusions and Recommendation

The formulation of policy-orientated conclusions and recommendations is central to conducting an HRIA.²⁸ Many of the SIAs/HRIAs analysed included no detailed recommendations for the action required to deal with any negative impacts. Other SIAs (in particular EU SIAs) focused almost exclusively upon ‘mitigation’ measures (i.e. dealing with negative impacts after the relevant agreement came into force), rather than amendments to the relevant agreement to prevent negative impacts, or recommendations that the agreement should not come into force as currently constituted. Other recommendations were insufficiently precise or did not state who needed to take action in order to ensure that the change occurred.

There are four types of conclusions that can be reached:

1. Positive or at least no negative impact found

2. Change the trade measure in question (e.g. bring in safeguard measures, exception clauses, phase-in periods etc.)
3. Bring in additional measures to mitigate the impact (e.g. funds to assist in transition to other types of production, retraining of workers, increase tariffs etc.)
4. Negative impact found, but no action taken²⁹
5. Abandon the measures in question or the whole agreement.³⁰

The HRIA needs to specify the actors required to take action in relation to each recommendation.

7. Publication/Reporting

A report should be produced cataloguing the HRIA process. Publishing that report is vital to the impact assessment process. It ensures that the body responsible can be held to account by rights-holders and other interested actors. Impact assessments should provide a transparent audit trail ‘for others who want to question the methods or results or redo the analysis with different assumptions’.³¹

8. Monitoring and Review

A human rights impact assessment should not be a one-off policy but an ongoing and dynamic process.³² This means that at the end of any assessment process a procedure should be put in place for how and when impacts should be assessed again in the future.

The HRIA team should identify a monitoring and review process to make sure that:

- Recommendations are implemented.
- Impacts of the policy are reviewed over time to see whether predicted impacts have occurred or other unexpected impacts have arisen.
- Indicators are developed to measure future impacts.

VII. Benefits and Potential Dangers of Undertaking HRIAs

Having set out the methodological guidance above, it is important to take a step back and think about what HRIAs can achieve in practice. There are both benefits and potential dangers of conducting HRIAs of trade agreements. These should be considered in making a determination of whether an HRIA should be carried out in any particular context.³³ Some of the advantages of HRIAs of trade agreements, as opposed to social impact assessments have been discussed above including the power and universality of the legal obligations of human rights, its empowerment function, the engagement of human rights actors and the human rights focus on the most vulnerable and disadvantaged.

In addition we might add that HRIAs have the potential to enhance the engagement of human rights discourse in the trade sphere. It is an important critique of existing human rights approaches to international trade law that at the stage of actual policy formulation and evaluation ‘human rights language recedes into the background’ and that policy proposals often do not seem ‘to be derived from human rights obligations in any direct way’.³⁴ HRIAs allow human rights to be utilized to critique specific trade measures and formulate concrete alternatives.

HRIAs also enables human rights to be ‘mainstreamed’ within policymaking.³⁵ This has the potential to affect both institutional cultures and individual decision-making more widely in organisations. Particularly where HRIAs are conducted by governments, there is the potential for real change to be im-

plemented and for the attitudes of policymakers themselves to be changed so that they start to take into account human rights issues regularly in their decision-making processes.

But there are also potential dangers and disadvantages of conducting HRIAs:

- Proper human rights impact assessment, particularly in the trade context, is a complex process. For example, there is a danger that impact assessment will concentrate on short term impacts that are easily quantifiable rather than long term effects or impacts that are not easily anticipated.³⁶ HRIAs (like all forms of impact assessment) therefore need to make sure that they do not perpetrate a ‘dumbing down’ process on human rights fulfilment and on policy-making generally.
- There is a danger that the legal obligations of human rights can be seen in a vacuum. Therefore consideration of the broader social and environmental impacts of policies may be marginalised or overlooked entirely. The focus of the human rights approach upon ‘violations’ may also lead to assessments disregarding or marginalizing positive impacts (This may be an argument in favour of integrated assessments or at the very least a need to build in structured consideration of positive impacts).
- Particularly where HRIAs are conducted by governments, they can become simply a bureaucratic process that ‘may come to value technique over substance’. Even activists and campaigners can lose touch with the underlying values that make the human rights critique important.
- Decision-makers (who will often be trade specialists) can co-opt the HRIA process and then utilize it to justify decisions, safer in the knowledge that they have ‘taken into account’ legitimising human rights values.³⁷
- HRIAs can become a mechanism for stopping further debate on an issue (‘we have already considered the human rights implications of this when carrying out the impact assessment, there is no need to consider the human rights issues further/in the future’).³⁸

VIII. Concluding Thoughts

A decision to undertake an HRIA is in the end a political decision concerning the purchase it is likely to have in challenging orthodoxies and creating fairer models of trade that make peoples’ lives get better.

An HRIA is highly unlikely to ever be able to provide entirely ‘objective’ and undeniable ‘truths’ about the impacts of an FTA. Both the methodology and conclusions are likely to be highly contested by those who doubt the relevance of human rights to trade debates.

But HRIAs can ensure that key actors at the national and international level confront a range of concrete issues that would not normally be part of the mainstream trade agenda, such as the degree of impact of trade obligations on poor producers in terms of their access to food, land, livelihood, education, healthcare and housing etc.

For HRIAs of trade agreements to maximise their effectiveness, they need to engage those audiences beyond the human rights community who have power with regard to trade policy. This is why they need to demonstrate

- A lack of pre-existing bias about what the impact of a trade agreement will be
- Coherent methodological frameworks
- Persuasive analysis
- Clear and directed recommendations

The history of human rights impact assessment up to this point in time has been of calls for HRIAs to be undertaken and pioneers undertaking them. It is now time to ‘professionalise’ and to develop a set of principles for conducting HRIAs so that their effectiveness can be maximised and methodologies cannot be undermined by actors seeking legitimacy simply by utilising the term ‘human rights impact assessment’.

Appendix 1 – Key Resources

Human Rights Impact Assessments

FIAN et al studies available at - <http://www.fian.org/programs-and-campaigns/projects/agricultural-trade-and-the-right-to-food>

Simon Walker, ‘Assessment of CAFTA: The Impact of Intellectual Property Protection on the Right to Health and Related Rights in Costa Rica’, in ‘the Future of Human Rights Impact Assessments of Trade Agreements’ (Intersentia, 2009).

Thailand National Human Rights Commission (Subcommittees), Draft Report on Results of Examination of Human Rights Violations (2006), electronic copy on file with this author

Useful Websites

Human Rights Impact Resource Centre - <http://www.humanrightsimpact.org/> - containing HRIAs in a range of different fields and extensive methodological guidance

The University of Nottingham Human Rights Law Centre Trade Impact Assessment database - http://www.nottingham.ac.uk/law/hrlc/business-trade/Final_Database.xls - containing a wide range of ‘social’ impact assessments of trade agreements

Exploring HRIA Methodological Issues

3D, ‘Human rights impact assessments: A pertinent tool for informing and improving trade governance?’ http://www.3dthree.org/pdf_3D/3D_WTOPF2009_panelHRIASummary.pdf

3D, Insights on Human Rights Impact Assessments of Trade Policies and Agreements, http://www.3dthree.org/pdf_3D/HRIASbackgroundinformation.pdf

Olivier De Schutter, ‘A Human Rights Approach to Trade and Investment Policies’ in Murphy and Pasch (eds.) [The Global Food Challenge: Towards a Human Rights Approach to Global Food Policies](#) (2009) 14-29

James Harrison, Alessa Goller ‘Trade and Human Rights: What Does ‘Impact Assessment’ Have to Offer?’ (2008) *Human Rights Law Review* 8 (4)

James Harrison – Conducting A Human Rights Impact Assessment of the Canada-Colombia Free Trade Agreement: Key Issues.’, (2009) 1 - 17, A Background Paper for the CCIC Americas Policy Group available at http://www.ccic.ca/files/en/what_we_do/003_apg_2009-02_hr_assess_of_cfta.pdf.

Armin Paasch ‘World Agricultural Trade and Human Rights – Case studies on violations of the right to food of small farmers’ in Murphy and Pasch (eds.) [The Global Food Challenge: Towards a Human Rights Approach to Global Food Policies](#) (2009) 40-50

Simon Walker, 'The Future of Human Rights Impact Assessments of Trade Agreements' (Intersentia, 2009).

On the Development of Indicators

Office of the High Commissioner for Human Rights, OHCHR, *Report on Indicators for Promoting and Monitoring Implementation of Human Rights* (6 June 2008) HRMI/MC/2008/3.

Office of the High Commissioner for Human Rights, OHCHR, *Report on Indicators for Monitoring Compliance with International Human Rights Instruments* (11 May 2006) HRI/MC/2006/7

Appendix 2 – Illustrations of the Process for Undertaking HRIAs

Please note that these are brief illustrations only, and that they were developed in the context of a report on the Canada Colombia FTA,³⁹ before further work had been done on the methodological framework set out above.

A) Provisions providing protections for foreign investors

This type of assessment is very different from previous HRIAs of trade agreements which have focused on trade in goods, services and intellectual property protection. There are a number of different types of assessment which could be undertaken with regard to investment provisions. One could, for instance, analyse the extent to which any 'stabilisation clauses' in the agreement might lead to governments not bringing in legislative or other policy instruments to protect human rights which they otherwise would. The propensity for stabilization clauses to lead to such regulatory chill is a major concern.⁴⁰ Conducting an impact assessment of such clauses would be very difficult, particularly in respect of the extremely complex causation issues. It will be difficult (although not impossible) to find compelling evidence that a particular stabilization clause has been the primary cause of failure to legislate to better protect human rights, given the number of possible alternative (and perhaps even overlapping) domestic causes for such failures.

Perhaps the clearest issue for analysis by an HRIA is the extent to which provisions in the FTA which protect foreign investors, (and in particular the ability of MNCs to invoke international investment arbitration procedures) might lead to increased investment by foreign firms who might then commit or be complicit in human rights violations. This type of assessment would require at least the following key methodological steps (others are left out because of the lack of detail in the scenario):

1. Map the 'baseline' human rights situation including relevant human rights law (national and international) and the identification of key communities and other groups whose human rights are most likely to be endangered by the provisions in question (e.g. workers in the extractive industries and communities otherwise directly impacted upon by extraction activities)
2. Develop an understanding of the investor protection provisions in the FTA, and how it compares and contrasts with other investor protection provisions which are already in place with other countries (e.g. under NAFTA).
3. Make an assessment of the (predicted) increases in investment as a result of those provisions (through e.g. case studies of countries which have already implemented similar provisions in other trade agreements, modelling studies etc.), with a particular focus on areas of investment where human rights violations are more likely (e.g. in mining and extractive sectors). NB: The relationship between investment agreements and increases in levels of investment is very difficult to as-

certain. Since writing this outline initially concerns have been raised about the validity of this stage of the process.

4. Use indicators to measure whether increased human rights violations have occurred/will occur post-investment agreement and the extent of such human rights violations
5. Analyse the type and extent of human rights violations committed by investors already operating in the country in those industries and/or investors operating in other comparable countries.
6. Consult with local communities and other key actors in order to ascertain particular communities where violations have occurred and the nature and extent of those violations, measured against the indicators developed. This stage could utilise HRIAs already undertaken of investment projects undertaken with regard to Canadian firms.⁴¹
7. Analyse how investor protections might lead/have led to increased activity by companies responsible for/complicit in human rights violations and conclude on the (predicted) volume and nature of those violations
8. Make recommendations, as necessary, with regard to how investor provisions need to be amended/rejected in order to prevent human rights violations being caused by the agreement or other measures which are needed.
9. Make recommendations on the nature of the monitoring which is required, post-implementation in order to assess any human rights violations which occur in the future.

B) Provisions protecting labour rights

As with any other set of provisions in the FTA, provisions protecting labour rights can be assessed separately, and conclusions reached on their impact. Such an assessment will be attempting to gauge the extent to which provisions in the agreement (or in any side accord) effectively protect the rights of workers, and/or will lead to a decrease in the violation of labour rights. They will therefore be concentrating primarily on the degree of *positive* and *intentional* impact such additional labour regulation might produce, as opposed to the potential *negative* and *unintentional* impact of e.g. investment provisions. Therefore, it will be important to make sure that, to the extent that such provisions are found to have a positive impact, this does not lead to an endorsement, from the human rights perspective, of the FTA as a whole.

In terms of the methodological approach of any assessment undertaken, this should include the following key steps:

1. Map the 'baseline' human rights situation including relevant human rights law and the identification of the type of labour rights violations which are currently prevalent and workers most likely to suffer from those types of violations
2. Identify the type of labour provisions set out in the Agreement/Side Accord and their method of enforcement/promotion
3. Consult with key stakeholders (workers, union representatives, government officials etc.) regarding the perceptions of the likely impact of the labour provisions.
4. In the case of an *ex ante* HRIA, identify other countries with comparable labour issues to those faced and with similar labour provisions in trade agreements already in force.
5. Assess the effectiveness of the Side Accord in enhancing labour rights protection in identified countries. This will include quantitative analysis of the numbers of labour rights violations pre- and post- Agreement, qualitative analysis of the perceived impact of the Accord in changing prac-

tices through interviews with e.g. government officials, union officials, workers in key industries etc in those countries.

6. Take into account alternative causal explanations for increase/decrease in labour protection in identified countries (e.g. increased national protection of labour rights unrelated to the trade agreement in question etc.)
7. Assess the (likely) impact of these provision in light of the above analysis and, to the extent considered appropriate, make recommendations with regard to amendment/rejection of the provisions in question and/or alternative forms of labour protection.
8. Make recommendations on the nature of the monitoring which is required, post-implementation in order to assess the impact of the provisions as enacted.

Notes

¹ See James Harrison, 'Conducting a Human Rights Impact Assessment of the Canada-Colombia Free Trade Agreement: Key Issues.' (2009) A Background Paper for the CCIC Americas Policy Group available at http://www.ccic.ca/files/en/what_we_do/003_apg_2009-02_hr_assess_of_cfta.pdf. See also James Harrison & Alessa Goller, 'Trade and Human Rights: What Does 'Impact Assessment' Have to Offer?' (2008) Human Rights Law Review, 8(4), 587-615. James Harrison 'Trade Agreements, Intellectual Property and Access to Essential Medicines: What Future Role for the Right to Health?' (October 23, 2009). GLOBAL GOVERNANCE OF HIV/AIDS, Aginam & Harrington, eds., Edward Elgar (2010), Warwick School of Law Research. Available at SSRN: <http://ssrn.com/abstract=1493309>.

² See the International Association for Impact Assessment at <http://www.iaia.org/modx/>.

³ Paul Hunt & Gillian MacNaughton, 'Impact Assessments, Poverty and Human Rights: A Case Study Using the Right to the Highest Attainable Standard of Health', (UNESCO, 31 May 2006) available at: http://www.who.int/hhr/Series_6_Impact%20Assessments_Hunt_MacNaughton1.pdf, p. 9.

⁴ Gauthier De Beco, 'Human Rights Impact Assessments' (2009) Netherlands Quarterly of Human Rights, 27(2), 139-166, p. 140.

⁵ Emphasising the importance of basing HRIA on explicit human rights obligations see 3D, 'Insights on Human Rights Impact Assessments on Trade Policies and Agreements' at http://www.3dthree.org/pdf_3D/HRIAsbackgroundinformation.pdf.

⁶ Relevant works by other authors are referred to throughout. See also Harrison & Goller 'Trade and Human Rights: What Does 'Impact Assessment' Have to Offer?' (2008) Human Rights Law Review, 8(4), 587-615. Harrison 'Trade Agreements, Intellectual Property and Access to Essential Medicines: What Future Role for the Right to Health?' (October 23, 2009). GLOBAL GOVERNANCE OF HIV/AIDS, Aginam & Harrington, eds., Edward Elgar (2010), Warwick School of Law Research. Available at SSRN: <http://ssrn.com/abstract=1493309>.

⁷ For more detailed consideration see Simon Walker, 'The Future of Human Rights Impact Assessments of Trade Agreements' (Intersentia, 2009), 39-49; Armin Paasch, 'World Agricultural Trade and Human Rights – Case studies on violations of the right to food of small farmers' in Sophia Murphy & Armin Paasch (eds.) [The Global Food Challenge: Towards a Human Rights Approach to Global Food Policies](#) (2009) 40-50, p. 48; FIDH (2008) 'Position Paper. Human Rights Impact Assessment of Trade and Investment Agreements concluded by the European Union.' Brussels. www.fidh.org/IMG/pdf/positionpaperFIDH-HRIA_finalfevrier2008.pdf, p. 12.

⁸ De Beco, 2009, above n. 4, p. 147, Hunt & MacNaughton, 2006, above n. 3, p. 15.

⁹ Hunt & MacNaughton, 2006, above n. 3, p. 15; De Beco, 2009, above n. 4, p. 166.

¹⁰ Olivier de Schutter, 'Mission to the World Trade Organization, Report presented to the Human Rights Council' (A/HRC/10/5/Add.2), 4 February 2009. http://ap.ohchr.org/documents/dpage_e.aspx?m=101, p. 5.

¹¹ The Thailand HRIA is an impact assessment that makes limited efforts to develop such a methodological approach.

¹² E.g. Article 25 of the International Covenant on Civil and Political Rights states that “Every citizen shall have the right and the opportunity ... (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;” But the case has not as yet been convincingly made, to my knowledge, that this extends to an obligation to be consulted in the negotiation of a treaty with a foreign state, and, more importantly what form that consultation that should take in order to be effective.

¹³ Compare Todd Landman, 'Studying Human Rights' (2006), p. 139, “Maximising the rigour of a human rights impact assessment can only help to strengthen the types of inferences that are drawn and add weight to the types of human rights arguments that are made. The underlying logic of impact assessment is straightforward but is vulnerable to a number of methodological challenges that if not adequately addressed may lead to insecure inferences about impact, and ultimately undermine the kinds of human rights arguments that we make.” With the Humanist Committee on Human Rights, 'Human Rights Impact Assessment in Practice, Conference Report' (2007) p. 37-40, “... there is an inevitable tendency to be precise, complete and almost academic in developing (and using) particular instruments and tools. This can be disadvantageous for the actual use and effectiveness of the tool ... Instruments need to be as simple and easy to use as possible. This helps to 'sell' the concept to potential users: NGOs, governments and business. It also keeps the process manageable”.

¹⁴ Olivier De Schutter, 'A Human Rights Approach to Trade and Investment Policies' in Sophia Murphy and Armin Paasch (eds.) [The Global Food Challenge: Towards a Human Rights Approach to Global Food Policies](#) (2009) 14-29, p. 26 discussing the importance of wide participation.

¹⁵ Simon Walker, 'The Future of Human Rights Impact Assessments of Trade Agreements' (Intersentia, 2009), 51-121.

¹⁶ See Walker, above n. 15, p. 93 for a number of criteria by which to judge the potential significance of human rights impact.

¹⁷ E.g. see FIAN, 'Empowering Civil Society to Monitor the Right to Food. A Case Study Report on Uganda' (2009) p. 10.

¹⁸ Landman, 2006, above n. 13, p. 130.

¹⁹ E.g. see FIAN studies and the UNICEF Study by Alvin Birdi et al., 'Child Rights Impact Assessment of Potential Electricity Price Rises in Bosnia and Herzegovina' (2007). http://www.unicef.org/ceecis/media_8645.html.

²⁰ Brian L. Cole & Jonathan E. Fielding, 'Health Impact Assessment: A Tool to Help Policy Makers Understand Health Beyond Healthcare' (2007) *Annual Review of Public Health*, 28, 393-412, p. 400; Saskia Bakker et al, 'Human Rights Impact Assessment in Practice: The Case of the Health Rights of Women Assessment Instrument (HeRWAI)' (2009) *Journal of Human Rights Practice*, 1(3), 436-458 at p. 451-2.

²¹ Hernán Blanco, 'Sustainability impact assessment of trade policy and its application in the context of Latin America' (2006) *Impact Assessment and Project Appraisal*, 24(4), 285-297 at p. 292. Norman Lee & Colin Kirkpatrick, 'A Pilot Study of the Quality of European Commission Extended Impact Assessments' (2004) *Impact Assessment Research Centre Working Paper 8*, October 2004. This research concerns not only Trade SIAs, but a wide range of EU SIAs in different fields. Statement of Civil Society Organisations, *EU Trade Sustainability Impact Assessments: A Critical Review* (October 2006) at p. 6. Sarah Richardson, 'A “Critique” of the EC’s WTO Sustainability Impact Assessment Study and Recommendations for Phase III', paper commissioned by Oxfam GB, WWF-European Policy Office, Save the Children, ActionAid (2000) at p. 3.

²² De Beco, 2009, above n. 4, p. 164 – Participation in public affairs is itself a human rights (ICCPR Art. 25). Various human rights bodies have interpreted a right to participation in particular contexts as integral to particular rights. For instance in CESCR's General Comment No.14 public participation in health-related decisions is regarded as an essential component of the right to health. In the *Ilmari Lansma v Finland* case the Human Rights Committee found that minorities had the right to be consulted on policies that had an impact on their traditional way of life. In *Hatton and others v UK*, the court took into account the degree to which affected individuals had the opportunity to give their opinion on a policy. John Ruggie 'Business and human rights:

further steps toward the operationalization of the “protect, respect and remedy” framework' (2010) at http://www2.ohchr.org/english/issues/trans_corporations/docs/A-HRC-14-27.pdf, p. 17 – Human Rights Impact Assessment has consultation and dialogue with affected persons at the heart of its methodology because it involves rights holders rather than merely stakeholders.

²³ John Ruggie 'Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts' U.N. Doc. A/HRC/4/035 (9 February 2007), p. 5 – the process of bringing together communities, government and business representatives is as important as the result.

²⁴ Bakker et al, 2009, above n. 20, p. 440 – “As the formulation of human rights indicators is a recent development and limited to some rights only, most existing HRIA tools have been developed without such agreed indicators and instead have their own ways to measure impacts.”

²⁵ Humanist Committee on Human Rights, 'Human Rights Impact Assessment in Practice, Conference Report' (2007), p. 37, “... the length of lists of indicators is an important issue to deal with. Long lists of indicators and elaborate checklists make the process of impact assessment unattractive and costly. At the same time the use of lists of indicators and checklists is intrinsically linked to the whole process of impact assessment and keeps it manageable. In sum there needs to be a way to develop key indicators that are strategic and make a difference to stakeholders.”

²⁶ See e.g. questions in FIAN Uganda study, above n. 17, p. 10; Walker, above n. 15, p. 171f.

²⁷ See Armin Paasch 'World Agricultural Trade and Human Rights – Case studies on violations of the right to food of small farmers' in Sophia Murphy and Armin Paasch (eds.) [The Global Food Challenge: Towards a Human Rights Approach to Global Food Policies](#) (2009) 40-50 at p. 43 for much more on causal links.

²⁸ Emphasising the importance of strong recommendations and conclusions see 3D, 'Insights on Human Rights Impact Assessments on Trade Policies and Agreements' at http://www.3dthree.org/pdf_3D/HRIAsbackgroundinformation.pdf

²⁹ This is only likely to be an issue where governments are undertaking HRIAs. It might be considered that this is never an appropriate recommendation. But a number of HRIAs were found in other fields where negative impacts were found, no action was taken and no explanation was given. At least where actors are forced to explain why no action has been taken, decisions can be scrutinised.

³⁰ For more detailed possible recommendations see Walker, above n. 15, p. 99.

³¹ Cole and Fielding, 2007, above n. 20, p. 397.

³² Ruggie, 2010, above n. 23, p. 17.

³³ For different issues and more detailed analysis see Walker, above n. 15, p. 187.

³⁴ Andrew Lang, 'Re-thinking Trade and Human Rights' (2007) *Tulane Journal of International and Comparative Law*, 15(2), 335-414 at p. 393-394.

³⁵ De Beco, 2009, above n. 4, p. 146. See also Koskenniemi, 'The Politics of International Law 20 Years Later' (2009) *European Journal of International Law*, 20(1), 7-19, p. 14.

³⁶ Cole and Fielding, 2007, above n. 20, p. 400; Jan Knippers Black, 'The Politics of Human Rights Protection: Moving Intervention Upstream With Impact Assessment' (2009), p. 238.

³⁷ Knippers Black, 2009, above n. 36, p. 238.

³⁸ Knippers Black, 2009, above n. 36, p. 238.

³⁹ See James Harrison, 'Conducting A Human Rights Impact Assessment of the Canada-Colombia Free Trade Agreement: Key Issues.' (2009), A Background Paper for the CCIC Americas Policy Group available at http://www.ccic.ca/files/en/what_we_do/003_apg_2009-02_hr_assess_of_cfta.pdf.

⁴⁰ See e.g. Andrea Shemberg, 'Stabilisation Clauses and Human Rights' (11 March 2008) <http://www.reports-and-materials.org/Stabilization-Clauses-and-Human-Rights-11-Mar-2008.pdf>.

⁴¹ E.g. Rights and Democracy, 'Human Rights Impacts for Foreign Investment Projects: Learning from community experiences in the Philippines, Tibet, the Democratic Republic of Congo, Argentina and Peru' (2007), Investing in Human Rights: Volume 1 (Rights and Democracy: Montreal).