Human Rights Impact Assessment: Potential and Challenges in the Development Context
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1. **Introduction and Key Issues for Discussion**

The Rationale for thinking about HRIAs in a development context:
- Impact Assessments are an increasingly widely-adopted tool for evaluating the effect of policies, programmes and regulatory interventions across a wide range of fields (see International Association for Impact Assessment (IAIA))
- HRIAs measure "the impact of policies, programmes, projects and interventions on human rights." (Human Rights Impact Resource Centre)
- HRIAs have been utilised in a number of contexts where (1) there are clear and direct development issues (international trade agreements, projects of multinational corporations, government policies and programmes, use of development aid) (2) there are important lessons that could be learned in a development context (public spending decisions, liberalisation of key sectors of the economy).
- HRIAs increasingly important because of (1) the time and effort put into lobbying for them/undertaking them (2) the changing dynamics of how they are undertaken and (3) the positive/negative effects that practice can have.

Key Issues for Discussion Today:
- What are the key rationales for undertaking human rights impact assessments? (section 2)
- Where has the main practice occurred? (section 3)
- What are the key elements in undertaking and HRIA? (section 4)
- What are the key differences between different types of HRIAs (section 5)
- What are (1) the key methodological/capacity etc. issues to improve the quality of individual assessments? and (2) the key systemic issues to institutionalise meaningful and robust HRIA processes? (section 6)

2. **What are the key rationales for undertaking human rights impact assessments?**

Rationales from the development perspective:
- HRIAs utilise a set of norms and standards that are based on shared and distinct values and therefore represents a solid normative foundation on which to base impact assessment (Walker, 2009:43).
- The human rights framework ensures engagement with specific rights (e.g. the right to food, housing, freedom of expression etc.) that might be ignored in less legally grounded forms of assessment like social impact assessment (Ruggie 2007: 6).
- Human rights represent legal obligations of states, rather than simply aspirations that one hopes to achieve (e.g. better social outcomes).
- HRIAs should compel 'duty-bearers' to act to protect the rights of 'rights-holders' and provide justifications for their policies in human rights terms (De Beco, 2009: 147; Hunt and MacNaughton, 2006: 15).

Rationales from the human rights perspective:
- HRIAs have the potential to equip human rights advocates with 'solid, evidence-based arguments' on the basis of which they can intervene in policy debates (Bakker et al., 2009: 442).
- HRIAs address human rights issues during the process of policy development and reflection on existing practice, rather than after the violation has occurred (Hunt and MacNaughton, 2006:6).
- HRIAs can have an impact on institutional cultures by enabling human rights to be 'mainstreamed' within policymaking, 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 (De Beco, 2009: 146).
- HRIAs have the potential to raise awareness about human rights issues in affected communities and more widely in society. This can increase public debate around the issues raised and the accountability of decision-makers (Radstaake, 2006: 7).

BUT, this does not mean that HRIAs will necessarily achieve all of the above in practice.

3. Where has the main practice of HRIA occurred?

HRIAs have been used in a wide range of fields including on a range of issues relevant to development e.g.:
- Development programming
- Various government policy and legislative initiatives, particularly in relation to women and children's' rights
- International Trade Agreements
- Operations of multinational corporations

4. What are the key elements in undertaking and HRIA?

There are eight key steps in the HRIA Process in any field (Harrison, 2011):
1) **A screening stage** - a preliminary assessment on the proposed policy/programme etc. to determine whether or not a full-scale impact assessment is necessary/which parts to assess;
2) **A scoping stage** – the questions that need to be asked once the decision to undertake a full HRIA has been undertaken
3) **Evidence gathering** - collect information to inform analysis of the policy;
4) **Consultation** – procedures for ensuring the voices of those (likely to be) affected by the policy are heard and taken into account in the HRIA process;
5) **Analysis** – analyse the (likely) human rights and equality impact of the policy;
6) **Conclusions and Recommendations** – set out the results of the HRIA and the action which needs to be taken as a result including alternative proposals and mitigating measures;

7) **Publication** – what, when and where to publish to make sure that the HRIA process is fully transparent;

8) **Monitoring and review** – action to make sure that the HRIA is not a one off process but an ongoing and cyclical review of policy.

5. What are the key differences between different types of HRIAs?

There is no 'one size fits all' model for conducting HRIAs. Some of the key factors which will determine differences include:

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

6. What are (1) the key methodological/capacity etc. issues to improve the quality of individual assessments? and (2) the key systemic issues to institutionalise meaningful and robust HRIA processes?

(1) The key methodological/capacity etc. issues to improve the quality of individual assessments
- The development of a professional ethic in relation to HRIA
- Better and deeper shared understanding of key elements of the HRIA process (e.g. the development and application of human rights indicators, evidence gathering techniques, understanding of causation issues etc.)
- More cross-fertilisation of practice

(2) The key systemic issues to institutionalise meaningful and robust HRIA processes
- Development of guidelines/principles about how HRIA should be conducted (e.g. De Schutter for trade, Ruggie for MNCs) - Good starting point but insufficient by themselves.
- Transparency of practice
- Taking participatory elements of the process seriously
- Effective monitoring and review of individual performance

H. Key Resources

Academic Literature

- Andreassen, B. A. and Sano, H.O (2007). 'What's the Goal? What's the Purpose? Observations on Human Rights Impact Assessment?' *The International Journal of Human Rights*, Vol. 11 No.3 275-291
- Bakker S, Van Den Berg, M, Duzenli, D and Radstaake, M (2009). 'Human Rights Impact Assessment in Practice: The Case of the Health Rights of Women Assessment Instrument (HeRWAI)' *Journal of Human Rights Practice* Vol 1:3 436-458

- Harrison, (2013) 'Establishing a Meaningful Human Rights Due Diligence Process for Corporations: Learning from Experience of Human Rights Impact Assessment', *Impact Assessment & Project Appraisal* 31(2) (open access).

- Harrison, (2011) 'Human Rights Measurement: Reflections on the Practice of Human Rights Impact Assessment and the Potential for Future Enhancement' Journal for Human Rights Practice 3 (2), 162 – 187;

- Harrison & Goller, (2008) 'Trade and Human Rights: What Does 'Impact Assessment' Have to Offer?' Human Rights Law Review, 8(4), 587-615;

- Hunt and MacNaughton (2006). *Impact Assessments, Poverty and Human Rights: A Case Study Using the Right to the Highest Attainable Standard of Health*. available at: http://www.who.int/hhr/Series_6_Impact%20Assessments_Hunt_MacNaughton1.pdf

- Landman, T. (2006). Human Rights Impact Assessment' in *Studying Human Rights*: Oxford and New York: Routledge.

- De Beco, G (2009). 'Human Rights Impact Assessments'. *Netherlands Quarterly of Human Rights* Vol 27/2:139-166.

Human Rights Impact Assessments
- Human Rights Impact Resource Centre - http://www.humanrightsimpact.org/ - containing HRIAs in a range of different fields and extensive methodological guidance
- 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).
- Many leading ngo trade HRIAs available at - http://www.fian.org/programs-and-campaigns/projects/agricultural-trade-and-the-right-to-food
- Nomogaia HRIAs and toolkit available at http://nomogaia.org
- Health Rights of Women Impact Assessment materials available at http://www.humanrightsimpact.org/themes/womens-human-rights/herwai/herwai-home/

Principles and Guidance
- Human Rights Council, *Report of the Special Rapporteur on the right to food, Olivier De Schutter, Addendum, Guiding principles on human rights impact assessments of trade and investment agreements*, (A/HRC/19/59/Add.5) 19 December 2011.

- *Human Rights Council, 2011. Guiding principles on business and human rights; Implementing the United Nations 'protect, respect and remedy'. (A/HRC/17/31). 2011.*

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