

## INTRODUCING THE CONCEPT OF HUMAN RIGHTS IMPACT ASSESSMENT

**Memorandum by the Commonwealth Secretariat and Paper by Dr J. Oloka-Onyango, Dean of the Faculty of Law, Makerere University**

1. Human rights impact assessment (HRIA) of government policies and programmes is a relatively new concept whereby civil society is increasingly pressurising governments to review the impact of policies and programmes on the realisation/enjoyment of human rights.

2. This concept can be equated to the Environment Impact Assessment, a notion which has been around for some time and is more familiar to governments, donor agencies, multilateral corporations and funding agencies. The closest exercise to HRIAs has been the World Bank's Studies to review the impact of its structural adjustment policies. However, this was only done after the realisation that the effect of the policies had had drastic social implications which had grossly affected the most vulnerable groups in society. Thus, while the envisaged outcome of structural adjustment policies may be positive in the long run, the short term implications for the most vulnerable groups were mostly negative and tended to increase their vulnerability.

3. Today accountability and transparency are recognised as essential elements of good governance. Societies are becoming more aware of their rights and governments' obligation to create the necessary environment for the realisation of these rights. Apart from the obligation, deriving from a moral duty by governments to create such an environment, many Commonwealth governments through ratification or accession to international human rights instruments have a legal duty to create the necessary environment.

4. In reality however, there is a vast gap between the aspirations of the international human rights instruments and the fulfilment of the obligations required by the instruments. Fortunately, the international community is increasingly recognising the fact that human rights can only be fulfilled in the daily lives of individuals by the integration of human rights

norms and principles into the process of the development of society itself and its values. This requires the engagement of not only the actors in the process, but also individuals who are the ultimate beneficiary of development. What is required is a deeper appreciation of the role of the individual in developing effective policies and in determining their direct impact on the individual as a member of society.

5. Privatisation has brought changes which present both challenges and opportunities. The role of the state is changing, there is therefore, also a need to give attention to how non-state actors can be accountable for the impact of their actions on the enjoyment of human rights. There are already attempts to develop codes of conduct for transitional companies, for overseas investment. However, these changes do not relieve states of their legal obligations of guaranteeing human rights. This obligation extends to ensuring that in the implementation of state policies, the implications of specific programmes on human rights are assessed.

6. Subscribing as they do to the Commonwealth fundamental political values of good governance, the rule of law and respect for human rights, Commonwealth governments would benefit from the application of the policy of HRIA. The policy promotes accountability and would ultimately contribute to good governance and respect for human rights.

7. Law Ministers, being the most natural advocates for justice, and given the important role they play in the negotiation and conclusion of bilateral and international agreement, are well placed to influence policy to ensure that in the implementation of such agreements, the impact on human rights is assessed. At the domestic level, the impact of legislation on human rights could also be assessed.

8. The attached paper gives an overview of the policy of HRIA, its essential elements, its objectives and its application.

new ground, a measure which can be said to be truly proactive on the part of Commonwealth governments.

#### **Recommendation**

9. Law Ministers may wish to consider the positive elements of this policy, and determine how the policy could be further developed in the context of the Commonwealth's fundamental values for the benefit of member countries. Development of a policy of HRIA will break

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