

## TOWARDS A COMPREHENSIVE HUMAN RIGHTS IMPACT - ASSESSMENT (HRIA) POLICY

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### A. INTRODUCTION

1. It is trite to point out that of the most prominent global movements that have had a far-reaching impact on society in the late 20th Century, one is the question of the environment, while the other is the issue of fundamental human rights. There is nevertheless a marked distinction between the approach of policy-makers, activists and scholars to the two phenomena. Unlike the environment, the matter of human rights — civil and political, and economic, social and cultural — is still very much dealt with in a reactive, rather than proactive fashion. One can hardly imagine a programme of mineral exploration and exploitation, nuclear testing, or dam construction that today does not take into account the possible adverse consequences of such action on the surrounding environment, and attempts to devise methods of countering them. Put another way, the benefits of a positive approach to the environment that is not wholly subordinated to the quest for economic gain have long been recognised and incorporated into the development approaches of the various actors involved. Whether or not the concerned parties genuinely take measures to eliminate or mitigate those consequences, governments, scholars and activists have generally come to acknowledge the benefits of moving to ensure that the environment is not despoiled, rather than waiting for its destruction before reacting to the same. This explains the genesis of the Environmental Impact Assessment (EIA) that is standard fare in all development and industrial projects that may have consequences for the environment.

2. In contrast, it is the exceptional programme of international aid (development assistance), policy

formulation, or domestic legislative enactment which seriously considers the possible (and even the probable) human rights impacts of its application. Basic aspects of civil and political rights including non-discrimination (between sexes, ages, or people with disabilities), equality of treatment, due process, transparency and accountability (to the supposed beneficiaries and not the “donor”) are given short shrift. The same is true for considerations relating to economic, social and cultural rights, among them the impact on the right to shelter (housing), work (employment and conditions therein), or the right to education (and access to it). And yet, at the end of the day, all development must necessarily be sensitive to the needs and demands of the population in which it is supposed to be applied.

3. It is thus high time that all programmes of international development assistance, policy formulation and domestic legislative enactment incorporate Human Rights Impact Assessments (HRIAs) in their formulation. What is thus being urged is not simply an assessment of the human rights impact of the purposes of multi- and bilateral interaction, commerce and investment (between governments). Rather the concern is to see an internal *in-house* assessment by all individual governments of the failure to be sensitive to human rights concerns in all of the various ways they operate. *How, in other words, do development assistance processes, policy measures and the promulgation of domestic legislation affect the promotion and observance of fundamental human rights across the board?*

4. The notion of an HRIA is essentially based on the premise that the observation of all categories of human rights is fundamental and complementary to

the achievement of sustainable human development (SHD). Through its annual Human Development Report and Index the United Nations Development Program (UNDP) has convincingly demonstrated that the various aspects of human existence must be pursued in holistic fashion. Indeed, the Right to Development is considered to be the culmination of the concerted attempt to both respect human rights and to foster positive socio-economic development for the individual and the society in which s/he lives. By taking into consideration the possible human rights impact of any policy, it is possible to avoid needless suffering, exploitative and ultimately unproductive social and economic relations, and in the final analysis, unstable or repressive political arrangements of governance.

## **B. HRIA: THE ESSENTIAL ELEMENTS**

5. Viewed from the broadest perspective, HRIA is concerned with the compatibility of any process of extending development assistance, formulating policy or enacting domestic legislation with international, regional and domestic human rights standards. It seeks to avoid situations of foreseeable human rights violations. Instead of responding to a human rights crisis once it occurs and rushing to seek its resolution, the philosophy underlying the HRIA favours the adoption of effective preventative measures to forestall its initial occurrence.

6. HRIA needs to be contrasted from the idea of human rights conditionality — a practice that has gained in prominence as a tool for the enforcement of human rights observance on regimes which are considered to have crossed the rubicon of acceptable international behaviour regarding the protection of human rights. The essential problem with conditionality is that it is applied in an ad hoc fashion and without a coherent policy framework. Furthermore, it identifies the breach of human rights almost solely with the violation of civil and political rights. In how many instances has conditionality been applied against governments that grossly

neglect the protection of the rights of workers, prioritise defence expenditure over education or reduce the levels of health-care assistance beyond the basic minimum? Finally, the kind of conditionality in place, generally affects the individual citizenry more adversely than it does the leadership of the country to which it is applied. This may in fact result in the prolongation of the regime and enhanced conditions of political repression and social unrest.

7. If instead a country is compelled to make sure that all of its actions comply with human rights standards before they are applied, one can clearly see the benefits entailed for the country at large and its citizenry in particular. An HRIA engages governmental action before its execution and considers the various case scenarios that may result as a consequence thereof. But the use of HRIA as a policy need not be confined to governments alone, but to all those actors (transnational corporations, multi- and bilateral institutions) whose actions may have implications for the protection of human rights.

8. HRIA can be beneficial at several levels. At the level of international monetary policy and development assistance, one can look at the issue of Structural Adjustment Programmes (SAPs) for some lessons. SAPs were applied first before an adequate assessment was made of their possible impact in a single-minded attempt to force developing country economies to adopt the basic tenets of supply-side economics. It is only after the adverse social and economic consequences were apparent that steps were taken to devise policies that addressed their negative impact. Indeed it is in this connection that many of the current programmes of “poverty alleviation” or “social-cost adjustment” have been formulated and applied by the World Bank. Lessons also need to be drawn from the recent experience of the Organization of Economic Co-operation and Development (OECD) in the negotiations over the Multilateral Agreement on Investment, which was recently suspended on account of a variety of factors. The lesson of the

negotiations was that it is high time that governments, multi- and bilateral agencies involved in the area of international trade, investment, finance and development assistance become much more transparent and inclusive in the evolution of their policies. Backdoor negotiations, in smoke-filled rooms are no longer the accepted modes through which multilateral agencies will be permitted to conduct their affairs. The transparency and accountability demanded from governments that receive aid must also be expected and exacted from those which give it. Furthermore, those who are at the receiving end must participate in the formulation and execution of the processes that result in the various policy frameworks eventually adopted.

9. Within the context of domestic legislation, it is quite clear what the benefits of HRIA can be. These extend from the scrutiny of existing and proposed legislative enactments in order to assess their compatibility with basic human rights norms. to seeking their review should they fail to conform. Why should we wait for the judiciary to intervene in order to make the determination that a particular legislation violates human rights when this assessment could have been made at the point at which the legislation was still in bill form? If a government can be advised of the possible and probable negative impacts of any policy that it is seeking to implement before it does so, then clearly much expenditure of time, energy and needless suffering can be avoided.

### C. APPLYING THE HRIA

10. HRIA can be applied at several levels, including the level of the formulation of development assistance policy, general government policy and in the process of enacting legislation. The standard of application would be the international, regional and domestic human rights instruments.

11. The key objectives of an HRIA would comprise the following:

- (a) identifying whether or not (YES/NO) a proposed policy or project is likely to have significant impacts on the observation/progressive realisation/respect for the protection of fundamental human rights;
- (b) if YES, what are those significant human rights impacts, or what is the degree to which such proposed policy or project conforms to the basic human rights standards and principles as enshrined within domestic legislation (especially the Constitution), and regional and international obligations entered into by the state;
- (c) can the aid be extended/the policy formulated/the legislation to be enacted be reconstituted in order to avoid the negative impacts identified?
- (d) what are the preventive or mitigative measures that can be taken in order to prevent the envisaged negative human rights outcome?
- (e) an assessment of the human rights implications of the implementation of the policy;
- (f) the consideration of the direct or indirect application of new and existing legislation, particularly in the area of crime and the administration of justice, domestic relations, immigration, elections, citizenship and labour relations to mention only a few areas of concern;

12. An HRIA would commence at the stage of conception, planning and design, and also during the implementation of the project.

### SELECT REFERENCES

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