

## INSIGHTS ON HUMAN RIGHTS IMPACT ASSESSMENTS OF TRADE POLICIES AND AGREEMENTS

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*This paper presents an outline of key issues related to human rights impact assessments (HRIAs) of trade policies and agreements, based on existing literature. It offers a glimpse at existing types of HRIAs, introduces the main criteria to which HRIAs of trade agreements should respond and exposes arguments of proponents and opponents to a human-rights based approach to assess trade policies and agreements. It is not meant to be exhaustive. For an in-depth analysis, please refer to the bibliography enclosed.*

Many voices from developing countries, civil society groups and academia regularly raise concerns that trade liberalization and trade-related policies do not always attain the objective of poverty reduction and economic empowerment that they should. Also criticized is the fact that policies governing economic liberalization are often formulated in a non-transparent, non-participatory way, contrary to accepted human rights principles.

Economic systems need clear and predictable legal and policy frameworks to be able to work properly and for the benefit of all. At the same time, there is mounting evidence that numerous human rights violations have underlying economic causes. While countries have been performing economic, environmental and social assessments of trade agreements for a decade,<sup>1</sup> these have in most cases not or only insufficiently taken into account the human rights dimension.

Thus, there is a growing demand for human right impact assessments (HRIAs) of trade policies and agreements, coming from human rights treaty bodies,<sup>2</sup> national parliaments,<sup>3</sup> non-governmental organizations (NGOs)<sup>4</sup> and academics. Such calls are based on the premise that economic and trade policies that have been reached through inclusive processes and that explicitly take into account their impacts on different population groups – including the more vulnerable and marginalized – are likely to be more effective and that holding economic actors accountable for the impacts of their activities will contribute to more sustainable economies.

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<sup>1</sup> Since 1999, all European trade negotiations are systematically submitted to a sustainability impact assessment (SIA), whose list is accessible at <http://ec.europa.eu/trade/issues/global/sia/studies.htm>. The United Nations Environmental Programme (UNEP) has also conducted several integrated impact assessments of trade agreements, see for example United Nations, *Integrated Assessment of Trade Liberalization and Trade-Related Policies*, UNEP Country Studies – Round II, A Synthesis Report, United Nations Environmental Programme, Geneva and New York, 2002 (Argentina, China, Ecuador, Nigeria, Senegal, Tanzania)

<sup>2</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights regarding Costa Rica, 26 November 2007, E/C.12/CRI/CO/4; Concluding Observations of the Committee on the Rights of the Child regarding Thailand, 27 January 2006, CRC/C/THA/CO/2

<sup>3</sup> Report of the Standing Committee on International Trade, Human Rights, the Environment and Free Trade with Columbia, Communication Canada, Ottawa, June 2008

<sup>4</sup> See 3D's country reports at <http://www.3dthree.org/en/page.php?IDpage=23&IDcat=5>

There is no universally accepted definition of a HRIA. A wide range of actors use this tool to measure the impact on the enjoyment of human rights of different kinds of activities: policies, international agreements, programmes, corporate projects and NGO's interventions. HRIAs can cover actions that are specifically designed to have an impact on human rights as well as actions that are not intended to impact on human rights, but could do so indirectly. They can be undertaken at different stages, such as before a rule is adopted (*ex ante*) or after a period of implementation (*ex post*). However, all HRIAs have in common that they measure the gap between the legal human rights standards and a current or proposed action, with the objective to enhance the knowledge of decision makers and stakeholders and to limit the adverse effects of governmental and corporate activities.

HRIAs of trade policies and agreements endeavour to measure the positive and negative impacts on the enjoyment of human rights that are likely to happen or have already occurred in relation to a specific trade policy or agreement. Their objective is to provide trade policymakers with a better understanding of consequences that their actions can have on human rights, with the view to mitigate the adverse effects of economic and trade policies.

## **I. EXISTING PRACTICE OF HRIAS – SOME EXAMPLES**

Human rights serve as benchmarks to assess:

### **1) Domestic impacts of national policies and legislation:**

- Aniek Wubben, *Violations of Human Rights in the Netherlands*, 2008, assesses how modifications in national Dutch law could hamper the accessibility to health care for uninsured and undocumented migrant women in the Netherlands.<sup>5</sup>
- Human Rights Watch, *Chop fine – The human rights impact of local government corruption and mismanagement in Rivers State, Nigeria*, 2006, analyzes the impacts of corruption in five local governments on Nigerians' rights to education and health and access to information.<sup>6</sup>

### **2) Impacts of development governmental programmes for foreign countries:**

- Biekart, Thoresen and Ochaeta, *Evaluation of the Dutch 'Governance and human rights programme' in Guatemala 1997-2003*, 2004, examines the effects of the implementation in Guatemala of Dutch policy cooperation in the field of human rights.<sup>7</sup>

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<sup>5</sup> Aniek Wubben, *Violations of Human Rights in the Netherlands*, Women's Global Network for Reproductive Rights, Amsterdam, The Netherlands, 2008, [http://www.humanrightsimpact.org/fileadmin/hria\\_resources/HeRWAI\\_Centre/2008\\_Report\\_HeRWAI\\_access\\_to\\_health\\_care\\_for\\_undocumented\\_women.pdf](http://www.humanrightsimpact.org/fileadmin/hria_resources/HeRWAI_Centre/2008_Report_HeRWAI_access_to_health_care_for_undocumented_women.pdf)

<sup>6</sup> Human Rights Watch, <http://www.hrw.org/en/reports/2007/01/30/chop-fine>

<sup>7</sup> Biekart, Thoresen and Ochaeta, *Evaluation of the Dutch 'Governance and human rights programme' in Guatemala 1997-2003*, Netherlands Ministry of Foreign Affairs: Policy and Operations Evaluation Department, The Hague, The Netherlands, 2004,

### 3) Impacts of foreign investment projects of private corporations:

- Rights & Democracy is one of the leading organizations in the field of corporate accountability and human rights impacts of foreign investment. Their publication, *Human Rights Impact Assessments for Foreign Investment Projects*, 2007, encompasses five case studies that evaluate the effects of foreign direct investment on human rights in Argentina, the Democratic Republic of Congo, Peru, Philippines and Tibet.<sup>8</sup>
- The Danish Institute for Human Rights, through its Human Rights and Business department, works on improving corporate compliance with human rights by providing private companies with country risk assessments and a compliance assessment tool.<sup>9</sup>

### 4) Impact of international trade agreements (as yet, there are only three applications of HRIAs):

- Thailand National Human Rights Commission, *Report on Results of Examination of Human Rights Violations (Draft)*, 2006, examines the negotiated Thailand – USA Free Trade Agreement with regard to possible implications for human rights for four aspects: agriculture, environment, intellectual property rights, investments and services.<sup>10</sup>
- Frank Garbers and Thomas Hirsch, *Trade policies and hunger: The impact of trade liberalization on the right to food of rice farming communities in Ghana, Honduras and Indonesia*, 2007, measures to what extent economic policies of international financial organizations and international trade and agriculture agreements have affected the realization of the right to food of small-scale rice farmers in selected countries.<sup>11</sup>
- Simon Walker, *The Future of Human Rights Impact Assessments*, contains an assessment of the US-Dominican Republic-Central American Free Trade Agreement with respect to intellectual property protection and the right to health.<sup>12</sup>

## II. FRAMEWORK FOR HRIAS OF TRADE AGREEMENTS

A strong and rigorous methodology is the key for a HRIA to successfully map the interactions between human rights and international trade norms and to have the potential to inform trade policy shaping. As yet, the experience concerning HRIAs of trade agreements has been insufficient to give rise to an overall approved methodology. Considerations on the accurate method for HRIAs of trade agreements are still at a conceptual level that requires further

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[http://www.humanrightsimpact.org/fileadmin/hria\\_resources/Evaluation\\_of\\_the\\_Dutch\\_Governance\\_and\\_Human\\_Rights\\_Programme\\_in\\_Guatemala.pdf](http://www.humanrightsimpact.org/fileadmin/hria_resources/Evaluation_of_the_Dutch_Governance_and_Human_Rights_Programme_in_Guatemala.pdf)

<sup>8</sup> Rights&Democracy, [http://www.dd-rd.ca/site/\\_PDF/publications/globalization/hria/full%20report\\_may\\_2007.pdf](http://www.dd-rd.ca/site/_PDF/publications/globalization/hria/full%20report_may_2007.pdf)

<sup>9</sup> Consult their reports at <http://humanrightsbusiness.org>

<sup>10</sup> The English version of the draft report is available at

[http://www.measwatch.org/autopage/show\\_page.php?t=5&s\\_id=3&d\\_id=7](http://www.measwatch.org/autopage/show_page.php?t=5&s_id=3&d_id=7)

<sup>11</sup> Frank Garbers and Thomas Hirsch, *Trade policies and hunger: The impact of trade liberalization on the Right to Food of rice farming communities in Ghana, Honduras and Indonesia*, Ecumenical Advocacy Alliance, 2007, <http://www.e-alliance.ch/en/s/food/rice>

<sup>12</sup> Simon Walker, *The Future of Human Rights Impact Assessments*, Intersentia, Mortsels, Belgium, 2009

developments and practical investigation. It must be added that elaborating a single model and methodological framework is not viable, as the choice of approach will depend on specific circumstances such as the size of the study, the allotted time or the party undertaking the assessment. No methodology will fit every situation without some modification.

Having said this, there are some guiding principles that should be governing each human rights-based approach to performing impact assessments of trade agreements. Indeed, there is a set of features that, despite the on-going process of conceptualisation, appears to be recurrent in the analysis of commentators<sup>13</sup> and may be presented as the core of the framework for HRIAs of trade agreements.

### **1) Reference to an explicit human rights legal framework**

Assessments must explicitly refer to relevant human rights norms and standards, which have to be clearly stated and precisely defined relating to their scope and content.

### **2) Consistence with basic human rights principles**

1. Equality and non discrimination: as all individuals are entitled to enjoy human rights, impact assessments should not exclude any individuals or groups from its scope.
2. Inclusive participation: all key stakeholders, affected people and duty-bearers, should be at the heart of the assessment process. Assessments should ensure that people involved are fully informed, heard and that their voices are integrated in the findings of the assessment report.
3. Interdependence of rights: civil, political, economic, social and cultural rights are interdependent, which means that the non-realization of one of them affects one or several other rights. This means that assessments cannot limit their scrutiny to one right but have to investigate impacts on related rights, too.

### **3) Use of human rights indicators**

Indicators provide contextualised information – both qualitative and quantitative – on the level of enjoyment of human rights and measure changes affecting their realization over time. Thus, they provide an evidence-based analysis of the human rights impacts, presenting them in quantifiable terms that can be easily used by trade practitioners and decision-makers. Because they measure both the extent to which duty-bearers are fulfilling their obligations as well as the extent to which people are enjoying their rights, human rights indicators clarify the causal link between rights impacts and a specific policy or programme. The causal-chain explanation is an important component of every impact assessment to ensure its credibility and thus effectiveness.

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<sup>13</sup> The following comments essentially refer to the work of James Harrison and Alessa Goller, ‘Trade and Human Rights: What does Impact Assessment have to Offer?’, *Human Rights Law Review*, 8(4), 2008, 587-615; Simon Walker, ‘Human Rights Impact Assessments of Trade-related Policies’, in Gehring and Segger (Eds.), *Sustainable Development in World Trade Law*, Kluwer, The Hague, 2005; Paul Hunt and Gillian MacNaughton, *Impact Assessments, Poverty and Human Rights: A Case Study Using the Right to the Highest Attainable Standard of Health*, Submitted to UNESCO, 2006

#### **4) Inclusion of specific and strong recommendations**

Each assessment should ask for specific and clear actions to efficiently prevent or mitigate the adverse effects of policies or agreements. This requires identifying answerable actors and attributing responsibilities to each one of them.

### **III. ARGUMENTS FOR AND AGAINST HRIAS OF TRADE AGREEMENTS**

#### **1) Proponents of HRIAs claim that they:**

- enhance the effectiveness, coherence and legitimacy of trade policies by improving their compliance to human rights law
- take into account human rights of the most vulnerable and marginalized groups by placing human rights norms at the centre of the assessment process
- facilitate the mainstreaming of human rights in trade policy formulation by increasing awareness of human rights among decision-makers
- improve accountability of actors by identifying the failures of duty-bearers to meet their human rights obligations and encouraging them to endorse the cost of action prejudicial to human rights
- increase people's empowerment by giving individuals the opportunity to express their concerns and inviting decision-makers to consider these seriously

#### **2) Critiques of HRIAs say that they:**

- lack consistent methodology and rigorous parameters, thereby undermining their credibility and capacity to influence policy formulation
- must be repeated several times to fully capture impact. HRIAs, therefore, need a cyclical approach. *Ex post* HRIAs need to be carried out at different intervals after the implementation of a trade agreement in order to capture long-term impacts, and not just short-term and medium-term impact
- need to be started early as they are generally a long process. If carried out too late, *ex ante* HRIAs will not be able to influence trade policy-makers

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### Methodological guidance for specific HRIAs

Humanist Committee on Human Rights (HOM), *Health Rights of Women Assessment Instrument*, Humanistisch Overleg Mensenrechten, Utrecht, 2006

International Finance Corporation, UN Global Compact Office and the International Business Leaders Forum, *Guide to Human Rights Impact Assessment and Management: Road-Testing Draft*, June 2007, IFC and IBLF, 2007

Norwegian Agency for Development Cooperation (NORAD), *Handbook in Human Rights Assessment: State Obligations, Awareness and Empowerment*, February 2001

Rights and Democracy, *Getting it Right: a step by step guide to assess the impact of foreign investments on human rights*, International Centre for Human Rights and Democratic Development, Montreal, Canada, 2008

The Nomogoia Foundation, *A Methodology for Human Rights Impact Assessment*, Draft version, Denver, 2009

### **Useful websites**

Human Rights Impact Resource Centre, [www.humanrightsimpact.org](http://www.humanrightsimpact.org)

International Association for Impact Assessment, [www.iaia.org](http://www.iaia.org)

The Danish Institute for Human Rights, [www.humanrights.dk](http://www.humanrights.dk)

The University of Nottingham Human Rights Law Centre Trade Impact Assessments database: [www.nottingham.ac.uk/law/hrlc/business-trade/Final\\_Database.xls](http://www.nottingham.ac.uk/law/hrlc/business-trade/Final_Database.xls) - contains a wide range of social impact assessments of trade agreements

The European Commission, [http://ec.europa.eu/trade/issues/global/sia/index\\_en.htm](http://ec.europa.eu/trade/issues/global/sia/index_en.htm) - provides detailed information on Trade Sustainability Impact Assessments

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