**Presentation- RTD regional consultation**

**Human rights impact assessment (HRIAs) and development: process and pitfalls**

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Thank you for the invitation to this regional consultation.

The topic I will cover today is on Human Rights Impact Assessments (HRIAs) and its use in development policy and practice.

I will address three key questions:

1. What are Human Rights Impact Assessments (HRIAs) and what is the value added by this tool or methodology?
2. How can they be used to inform better decision-making at a policy level, including at global levels, in terms of trade, investment and finance?
3. What are some of the opportunities and challenges in integrating these assessments in development policy and practice?

**First- what are HRIAs?**

HRIAs developed in the late 1990s bearing most resemblance to social impact assessments and are part of a wide-ranging family of impact assessment work. HRIAs enable an objective analysis of the ways and the extent to which a policy or project intervention or legislation or measure affects human rights, negatively or positively.

While HRIAs emerged out of existing impact assessments, they can be distinguished from other impact assessments in important ways:

* HRIAs are based on the normative framework of international human rights law.
* As a result, HRIAs can be informed by established human rights principles, standards and jurisprudence and human rights mechanisms may assist in the carrying out and implementation of the recommendations of HRIAs.
* Although other impact assessments regularly address human rights principles (such as participation, non-discrimination, transparency, accountability and equality), HRIAs do so in a more systematic and comprehensive way.
* HRIAs are more universal and comprehensive than other impact assessments, considering economic, social, cultural, civil and political rights.
* HRIAs can be conducted ex ante or ex post, while other impact assessments are usually conducted ex ante.

There have been a number of guidelines, checklists and methodological guidance that have developed over the years in this area. Practice in this area is comparatively less developed especially when it comes to certain policy arenas such as trade.

The overwhelming number of HRIAs have been in relation to business and human rights and project level assessments. There are a number of organisations, mostly civil society and a number of companies who have undertaken HRIAs in relation to projects. Unfortunately, many of the company HRIAs are treated as confidential and are not disclosed to the public, which does not allow for us to evaluate this body of work and can put into doubt the credibility of the work. While a number of treaty bodies and special procedures have recommended that governments do human rights impact assessments in relation to a number of thematic areas, this has not had any significant uptake to say the least.

Apart from this individual project level assessment, there has been in recent years a push towards sector-wide assessments for example a recent report on the oil and gas sector in Myanmar and community based assessments.

Given the proliferation of checklists and guidance out there, you will find that there is often a variety of terms and terminology attached to the steps in a HRIA. But broadly speaking, there is a preparatory phase, an analysis phase, a reporting phase and a follow up phase.

So the preparatory phase includes steps such as screening and scoping. These steps are to look at which project or policy intervention will be the focus of the assessment and scoping out which human rights will be the priority focus areas. So for example with an infrastructure project- if a government is building a road, experience may show that these kinds of projects lead to displacement of people and forced evictions in the context of right to housing and that may be an issue to focus on. Specific legislations or regulations may impact on the right to health and education. Certain supply chains will have impact on right to work and labour rights. So these earlier stages help with identifying human rights areas and the policy/project interventions most likely to raise concerns.

The next stage which is the analysis covers evidence gathering, using quantitative and qualitative methods akin to social sciences methodologies but keeping the human rights framework as the main basis. These stages can include empirical research, desk research, case studies, modelling techniques, focused interviews. From a human rights standpoint, principles such as participation, transparency and access to information are crucial here, including in data collection, participatory research, in elaborating the analysis.

The reporting phase is preparing the report and its conclusions and recommendations which may be aimed at multiple actors. In the case of development projects, there may be recommendations for the government, for business actors, for International Financial Institutions and other actors.

The next phase is the follow up, which emphasises the monitoring and evaluation and essentially reminds us that the report is not an end in itself. It is how this work is then taken forward in terms of its operational steps that makes the difference. Of course this can mean different things for different contexts. For business HRIAs, this phase could look at impact management and mitigation while for a trade agreement, the terminology of monitoring and evaluation is more appropriate and more institutional mechanisms may need to be set up for this purpose.

One thing to note about the methodology is that the steps are iterative, beginning with a general or preliminary assessment which is deepened and narrowed at later stages to clarify specific impacts. And one can always get back to the drawing board and for this the participatory aspect cannot be stressed enough.

In terms of the value add of HRIAs- the focus on the normative framework helps identify impacts which may not be easily gleaned from a social impact assessment or an environmental impact assessment and also they will always be judged against standards that have legal, normative weight. It lends a more formal quality to the decisions and the trade-offs that have to be made, but also focused on the need for participation and transparency of this decision-making.

**The second question is:**

**How can HRIAs be used to inform better decision-making policy, including at global levels, in terms of trade, investment and finance?**

I have already covered some part of this answer when explaining the broad steps in a human rights impact assessment. Clearly if done well, it can help fill the gaps in creating a democratic, participatory decision-making process for development policy broadly and particularly in the case of business and human rights, where it can identify impacts at a project level.

However, given that we are here at this consultation to talk about the right to development, while HRIAs are useful at a national level to evaluate development, it can also address more global policy issues. They can and are useful also to make better trade, investment and macroeconomic policy, challenge current financial models, and see how development aid can work better.

This global policy focus for HRIAs is still a nascent area wtih most of the practice being ad hoc and unsystematic. Again there is guidance in this area. In 2011, the former Special Rapporteur on right to food prepared Guiding Principles on HRIAs of trade and investment agreements. Presently, the mandate on foreign debt is also working on guidance around HRIAs and economic policies, especially in the context of austerity. All this helps illuminate how we can use this tool in these varied policy contexts and adapt the methodology to fit these different areas. This global policy dimension is crucial in our view as policy at the national level is interweaved with the global, given how diffuse and interconnected all systems are. The Sustainable Development Goals (SDGs) and its agenda reinforce this through its means of implementation and SDG Goal 17 which tackles this.

**Third question:**

**What are some of the opportunities and challenges in integrating these assessments in development policy and practice?**

While I did present the steps and the methodologies, I did say a few times that there are some areas where there is more HRIA practice such as in business project contexts and less, such as trade. There is also very little uptake on the part of governments to take this kind of assessment up in different policy arenas and we have probably not made the case sufficiently as to why and how this can be done, while mostly spending our energy on repeating that they have to do it. The political nature of human rights of course is also clearly a factor deflecting attention from its more technical potentialities.

In terms of challenges, given that HRIAs are a technical exercise, actors doing the assessments will face a number of uphill battles in terms of time, resources, getting the right team together with relevant expertise and in ensuring proper and substantive human rights analysis. Also in terms of the analysis, given our own experience doing an assessment of a trade agreement, it can be difficult often in establishing causality between the intervention and the impact. Linking it with the substantive standard and establishing how it may better or worsen the human rights outcome is similarly difficult. So however technical the exercise it is, we may often be faced with making guesstimates and often shooting in the dark. However, we should not oversell concerns here. Many of the links and how human rights impacts and violations have come about have also been well investigated and recorded over the years. So in the area of trade, whether it is the impact of certain intellectual property measures on the right to health or agricultural tariffs on the right to food, there is a considerable amount of work done in these areas and evidence of where and how things go wrong.

So challenges for HRIAs- time, financial and human resources, diverse actors conducting it, different guidance and methodologies, lack of transparency for business related HRIAs, the complexity of the analysis and making the causal linkages.

The diverse actors- one is a real case in point. If you have so many actors doing HRIAs and no standardisation or consistency with the guidelines established, how can one assess whether the HRIA is a good one, how can we assess its credibility and legitimacy or the quality of its analysis? This may be a really intractable problem but given that there may be no easy solutions, disclosure is key. HRIAs must be publicised and the methodology and analyses clear so that there is at least some peer and user review.

Linked with this is the recommendations. In the end to judge this body of work, we would need a systematic look at how these recommendations have been picked up by policymakers or advocacy done by rights holders, for us to say that HRIAs are really a feasible, tool for social change.

On the other concern I raised in earlier parts about the lack of government uptake, as human rights advocates we have to do a lot more to enhance practice in this area to also convince governments of how this evidence-based analysis can actually lead to better decision-making. This links with the previous point on the quality and use of recommendations of existing HRIAs.

I would like to end by saying the following. Just like any other tool in the human rights toolbox, HRIAs can be blunt or sharp, it can be powerful if wielded well, it can be a technology for social change or it can be pretty unused, difficult to use or put together and be clumsy and ineffective.

These challenges should not stop us from using or trying out this tool, but they do enlist us with using it responsibly and for the right reasons. Given that it can be financially or otherwise challenging and methodologically not always an accurate barometer, there may be other human rights tools such as national action plans, investigation and monitoring, advocacy work and education, which may prove to be more appropriate for the development intervention in question. So in sum, HRIAs are a great addition to our human rights arsenal in development work but we need to be wary of the pitfalls while pushing for more active HRIA practice in different arenas.