



**Impact Assessments, Poverty and Human Rights:  
A Case Study Using  
The Right to the Highest Attainable Standard of Health**

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**Submitted to UNESCO  
31 May 2006**

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## Executive Summary

In recent years, there has been a growing demand for governments to carry out human rights impact assessments prior to adopting and implementing policies, programs and projects. To date, however, little work has been done to develop methodologies and tools to aid governments in undertaking human rights impact assessments. The purpose of this project is to contribute to the development of such a methodology. UNESCO provided the funding for this project, and the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health ('the right to the highest attainable standard of health' or 'the right to health') supervised the project and preparation of this report.

This report emphasizes the role of human rights impact assessment in alleviating poverty. Today, poverty is understood to be not simply an economic but rather a multi-dimensional condition, including features such as hunger, illiteracy, discrimination, vulnerability and social exclusion. This broader definition corresponds closely to a deprivation of human rights such as the rights to food, education, equality, non-discrimination and participation. The link between poverty and the right to the highest attainable standard of health is especially close. Ill health is both a cause and a consequence of poverty: sick people are more likely to become poor and poor people are more vulnerable to disease and disability. Recognizing these links, this report uses the right to health as a case study to look at how human rights impact assessments can help governments generate policies that both realize human rights and alleviate poverty.

Human rights impact assessment is the process of predicting the potential consequences of a proposed policy, program or project on the enjoyment of human rights. The objective of the assessment is to inform decision-makers and the people likely to be affected so that they can improve the proposal to reduce potential negative effects and increase positive ones. Human rights impact assessment is a relatively recent concept. However, other forms of impact assessment – such as environmental and social impact assessments – are now well-established and routinely undertaken in many countries to evaluate proposed policies, programs and projects. Similarly, proposed policies, programs and projects should be assessed for their impact on human rights prior to being adopted and implemented.

This report reviews and then draws key criteria from three pioneering human rights impact assessment initiatives: (1) the NORAD Handbook in Human Rights Assessment, (2) the Rights & Democracy Initiative on Human Rights Impact Assessment, and (3) the HOM Health Rights of Women Assessment Instrument. We focus specifically on the obligation of governments to undertake impact assessments in order to comply with their obligation to progressively realize human rights and, accordingly, proposes a methodology specifically suited to government assessments. The methodology is also intended to assess *proposed policies*; it does not consider impact assessments for programs or projects, nor evaluations of policies that have already been implemented. We recognize that developing such a methodology is a complicated undertaking and will require much more work and debate. The approach presented in this report is intended as a modest contribution to the discussion on human rights and impact assessment, and we will welcome comments on this study.

In designing a methodology for impact assessments, there are at least two distinct approaches. The first approach is to develop a self-standing methodology for human rights impact assessments just as has been done for environmental and social impact assessments. The other approach is to develop a methodology for integrating human rights into other types of impact assessments. This report proposes the second approach, consistent with mainstreaming human rights into all government processes. The integration of human rights into existing impact assessments will require interdisciplinary collaboration between human rights professionals, experts in various types of impact assessment, and others. This study begins this process by contributing some human rights considerations and frameworks and by outlining a methodology.

The report presents a methodology in two parts. The first part presents seven general principles for performing a rights-based impact assessment. These are (1) use an explicit human rights framework, (2) aim for progressive realization of human rights, (3) promote equality and non-discrimination in process and policy, (4) ensure meaningful participation by all stakeholders, (5) provide information and protect the right to freely express ideas, (6) establish mechanisms to hold the State accountable, and (7) recognize the inter-dependence of all human rights.

The second part of the methodology proposes six steps for integrating the right to health, as a starting point for integrating all human rights, into existing impact assessments. The six steps are (1) perform a preliminary check on the proposed policy to determine whether or not a full-scale right-to-health impact assessment is necessary; (2) prepare an assessment plan and distribute information on the policy and the plan to all stakeholders; (3) collect information on potential right-to-health impacts of the proposed policy; (4) prepare a draft report comparing the potential impacts with the State's legal obligations arising from the right to health; (5) distribute the draft report and engage stakeholders in evaluating the options; and (6) prepare the final report detailing the final decision, the rationale for the choices made and a framework for implementation and evaluation.

The final section of the report proposes follow up activities. For example, the Special Rapporteur intends to promote this study during his country missions, in one of his forthcoming general reports to the United Nations, and by placing the study on the website of the Right to Health Unit at the University of Essex. Subject to further funding, it would also be helpful to distribute the report more widely for comment and to present it at a workshop, as well as at the annual meeting of the International Association for Impact Assessment.

Further work is also required to determine whether mainstreaming human rights, such as the right to health, into other impact assessments is feasible, including case studies with different types of impact assessments. The practical tools, such as checklists, interview guidelines and charts for connecting impacts to human rights obligations (all of which are found in this report), also need further development. Finally, whichever approach is taken, there is a need to lobby governments and impact assessment professionals to follow rights-based approaches to impact assessment and policy-making.

## **I. Introduction**

The purpose of this report is to contribute to discussions on human rights and impact assessments. In recent years, there have been increasing calls for governments to perform human rights impact assessments prior to adopting and implementing policies, programs and projects. Yet to date, there has been little published on methodologies or tools to aid governments in undertaking human rights impact assessments. This report examines some recent developments on human rights impact assessment and, using the right to health as a case study, proposes a methodology for incorporating human rights into other forms of impact assessment.

The aim of human rights impact assessment in this study is to aid governments in complying with their international and national human rights obligations. In general, impact assessment is a process used to predict the future consequences of proposed policies, programs and projects and thereby to provide governments with opportunities to improve them before they are adopted or implemented. In the context of human rights impact assessment, the process aids governments in choosing between alternatives, making modifications, and providing for mitigating measures in order to respect, protect and fulfill human rights. Thus, human rights impact assessment helps governments to adopt and implement policies, programs and projects that will best meet their obligations to take deliberate and concrete steps toward progressive realization of human rights.

This study also focuses on the relationship between human rights and poverty with specific reference to the right to the highest attainable standard of health. As human rights are particularly concerned with the rights of disadvantaged people, human rights impact assessment can play a crucial role in identifying the likely consequences of proposed policies, programs and projects on people living in poverty, as well as other marginalized people. Human rights impact assessment provides opportunities for governments to improve policy-making by incorporating general human rights principles into the process, and to improve policies so that they do not adversely affect, but rather promote, human rights, especially for people living in poverty and other marginalized people.

Following this introduction, Part II provides general background information on impact assessments, including various definitions, forms, and objectives of impact assessments. This general background presentation is followed by a discussion on the added value of human rights impact assessment. Part III explains the relationship between poverty and human rights, setting forth a human rights approach to poverty reduction. It discusses three previous approaches to human rights impact assessment, and draws from them key criteria for a proposed methodology on impact assessment and the right to the highest attainable standard of health.

Part IV presents the case study of right-to-health impact assessment, focusing on government obligations to perform impact assessments as an integral part of the policy-making process to ensure that policies do not adversely affect but rather promote the progressive realization of the right to health. This part begins by explaining the close relationship between health and poverty, and then it outlines State obligations for the right to health under international human rights law. Part IV also presents seven overarching human rights principles to guide the process of the

impact assessment and concludes with six steps for governments to incorporate right-to-health considerations into impact assessment and policy making. Finally, Part V draws conclusions and makes recommendations for next steps.

In sum, this report intends to stimulate discussion on a methodology for governments to perform human rights impact assessments prior to adopting and implementing policies. Performance of such impact assessments is highly recommended, if not required, to comply with their international human rights obligations to progressively realize human rights. Moreover, human rights obligations require particular attention to the rights of disadvantaged people, including people living in poverty. Consequently, the human rights framework is well suited to provide guidance for impact assessments focused on alleviating poverty.

Professor Paul Hunt, UN Special Rapporteur on the right to the highest attainable standard of health, and Gillian MacNaughton, Senior Research Officer to the Special Rapporteur, prepared this report on the basis of research supported by a grant from UNESCO. Two informal consultations on human rights impact assessment were organized. The first was held at the University of Essex, UK, on 8 December 2005 and the second was held at the World Health Organization in Geneva on 17 May 2006. Several researchers contributed to the draft, including Alison Blaiklock, Judith Mesquita, Rajat Khosla and Stefania Tripodi; we are very grateful to them all. We would also like to thank Carlos Dora, Saskia Bakker and Asako Hattori for their especially helpful comments on an earlier draft of this report.

While there remains much work to do on developing human rights impact assessment methodologies, we hope that this report makes a modest contribution to a complex and important discussion.

## II. Impact Assessments

### A. Definitions

“Impact assessment” is a technical term used to describe “the process of identifying the future consequences of a current or proposed action.”<sup>1</sup> Generally, we use impact assessments to predict the likely effects of a proposal – a policy, program or project – in order to modify the proposal to reduce negative effects and enhance positive ones. The two essential characteristics of health impact assessment are that it seeks to predict the future health consequences of possible decisions and to inform decision-making.<sup>2</sup> The term “impact assessment” usually refers to a set of tools and methods. However, it may also refer to the process of assessing the impacts of planned interventions and developing strategies for the ongoing monitoring and management of those impacts.<sup>3</sup>

The World Bank has described poverty and social impact assessment as “a systematic analytical approach” to policy reform, rather than a separate report or product.<sup>4</sup> This approach involves: (1) performing an ex-ante analysis of expected impacts of policy reforms for the purpose of informing the design of the reforms, (2) monitoring the results during implementation of the reforms, and (3) evaluating ex-post the impacts of the reforms. Social impact assessment methodology also incorporates an analysis of past activities and their impacts with a view to improving the reforms and the impact assessment methodology.<sup>5</sup> In sum, impact assessment has been alternatively defined as a tool, a method, a process or an approach, but all forms intend to inform and thereby improve decision-making on policies, programs or projects.

Impact assessments generally include the following components:

- defining the policy, program or project to assess
- identifying the people who would be affected by the policy, program or project
- gathering and reviewing evidence about the potential effects of the policy, program, or project on people and / or the environment
- providing decision makers and people who may be affected with information about the potential effects
- evaluating and proposing alternatives to reduce potential problems and increase potential benefits for people and / or the environment.

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<sup>1</sup> International Association for Impact Assessment, Welcome, available at [www.iaia.org](http://www.iaia.org) (accessed 21 April 2006).

<sup>2</sup> John Kemm, “Editorials: Perspectives on health impact assessment,” Bulletin of the World Health Organization 81(6) at 387 (2003) available at <http://www.who.int/bulletin/volumes/81/6/en/> (accessed 25 April 2006).

<sup>3</sup> International Association for Impact Assessment, Social Impact Assessment: International Principles, IAIA Special Publication Series No. 2, at 2 (May 2003) available at [http://iaia.org/Non\\_Members/Pubs\\_Ref\\_Material/pubs\\_ref\\_material\\_index.htm](http://iaia.org/Non_Members/Pubs_Ref_Material/pubs_ref_material_index.htm) (accessed 25 April 2006) (hereinafter IAIA Social Impact Assessment).

<sup>4</sup> World Bank Group, Poverty & Social Impact Analysis, available at <http://lnweb18.worldbank.org/ESSD/sdvext.nsf/81ByDocName/PovertySocialImpactAnalysis> (accessed 24 April 2006) (hereinafter World Bank Poverty & Social Impact Analysis).

<sup>5</sup> IAIA Social Impact Assessment, supra note 3, at 2.

This means that impact assessments should be an integral part of the development of a policy, program or project, and should be implemented early enough to generate recommendations before critical decisions are made.<sup>6</sup>

Human rights impact assessment is a relatively recent concept. However, impact assessments in other fields have been carried out for several decades and are now regularly carried out in most developed countries.<sup>7</sup> Environmental and social impact assessments, for example, are well-established approaches to evaluating proposed policies and programs.<sup>8</sup> In many countries, laws, administrative rules, procedures and methods exist to assess the impacts of policies on, for example, employment, economic growth or equality.<sup>9</sup> Health impact assessments have also been developing rapidly over the last decade.<sup>10</sup>

The International Association for Impact Assessment lists over fifty topical streams of impact assessments for its 2006 annual conference.<sup>11</sup> Here are some definitions of various forms of impact assessment:

### *1. Child Impact Assessment*

“A child impact assessment involves examining existing and proposed policies, legislation and changes in administrative services to determine their impact on children and whether they effectively protect and implement the rights expressed in the Convention on the Rights of the Child.”<sup>12</sup>

### *2. Poverty and Social Impact Analysis*

“Poverty and social impact analysis (PSIA) implies an analysis of the distributional impact of policy reforms on the well-being or welfare of different stakeholder groups, with particular focus on the poor and vulnerable.”<sup>13</sup>

### *3. Health Impact Assessment*

“Health Impact Assessment is a combination of procedures, methods and tools by which a policy, program or project may be judged as to its potential effects on the health of the population, and the distribution of those effects within the population.”<sup>14</sup>

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<sup>6</sup> Health Impact Assessment: main concepts and suggested approach, Gothenburg consensus paper (1999) available at [www.who.dk/document/PAE/Gothenburgpaper.pdf](http://www.who.dk/document/PAE/Gothenburgpaper.pdf) (accessed 24 April 2006) (hereinafter Gothenburg consensus paper).

<sup>7</sup> UNESCO, “Abolishing Poverty Through the International Human Rights Framework: Towards an Integrated Strategy for the Social and Human Sciences,” Consultation in Bergen, Norway 5-6 June 2003 (organized by Comparative Research Programme on Poverty for UNESCO, Sector for the Social and Human Sciences) at 9.

<sup>8</sup> Alex Scott-Samuel, “HIA-Key Conceptual and Policy Issues,” Human Impact Assessment – Seminar, 24 January 2002, Helsinki, Finland, at 1, available at <http://www.stakes.fi/sva/huia/seminar/scottsamuel.html> (accessed 8 May 2006).

<sup>9</sup> Gothenburg consensus paper, supra note 6, at 1.

<sup>10</sup> John Kemm, supra note 2, at 387.

<sup>11</sup> International Association for Impact Assessment, 2006 Conference, Submitted Abstracts, available at [http://www.iaia.org/Non\\_Members/Conference/IAIA06/abstract%20submissions/view\\_abstracts.asp](http://www.iaia.org/Non_Members/Conference/IAIA06/abstract%20submissions/view_abstracts.asp) (accessed 21 April 2006).

<sup>12</sup> UNICEF, Fact Sheet: Implementation guidelines for the Convention on the Rights of the Child, [http://www.unicef.org/crc/files/Implementation\\_guidelines.pdf](http://www.unicef.org/crc/files/Implementation_guidelines.pdf) (accessed 21 April 2006).

<sup>13</sup> World Bank Poverty & Social Impact Analysis, supra note 4.

<sup>14</sup> Gothenburg consensus paper, supra note 6, at 4.

#### *4. Environmental Impact Assessment*

“Environmental Impact Assessment can be defined as: The process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made.”<sup>15</sup>

#### *5. Social Impact Assessment*

“Social Impact Assessment includes the process of analyzing, monitoring and managing the intended social consequences, both positive and negative, of planned interventions (policies, programs, plans, projects) and any social change processes invoked by those interventions.”<sup>16</sup>

#### *6. Gender Impact Assessment*

“Gender impact assessment means to compare and assess, according to gender relevant criteria, the current situation and trend with the expected development resulting from the introduction of the proposed policy.”<sup>17</sup>

### **B. Objectives**

The general objective of impact assessments “is to improve knowledge about the potential impact of a policy or program, inform decision-makers and affected people, and facilitate adjustment of the proposed policy in order to mitigate the negative and maximize the positive impacts.”<sup>18</sup>

Specific types of impact assessments also have more specific aims. The primary purpose of social impact assessment, for example, is to analyze, monitor and manage the social consequences of development to bring about a more sustainable and equitable biophysical and human environment.<sup>19</sup> Environmental impact assessment aims to: (1) ensure that environmental considerations are explicitly addressed and incorporated into development decision-making; (2) anticipate, avoid or minimize adverse biophysical and social effects of development proposals; (3) protect the productivity and capacity of natural systems; and (4) promote sustainable development and optimize resource use.<sup>20</sup> The purpose of an equality impact assessment is to determine the possible impact of a proposed policy on protected groups in order to mitigate adverse impacts and consider alternatives that could better promote equality.<sup>21</sup>

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<sup>15</sup> International Association for Impact Assessment & Institute of Environmental Assessment, UK, Principles of Environmental Impact Assessment Best Practice § 2.1 (undated), available at [http://iaia.org/Non\\_Members/Pubs\\_Ref\\_Material/pubs\\_ref\\_material\\_index.htm](http://iaia.org/Non_Members/Pubs_Ref_Material/pubs_ref_material_index.htm) (accessed 25 April 2006) (hereinafter IAIA Environmental Impact Assessment).

<sup>16</sup> IAIA Social Impact Assessment, supra note 3, at 2.

<sup>17</sup> European Commission, A Guide to Gender Impact Assessment (1997) at 3 (electronic version), available at [http://www.europrefem.org/02.info/22contri/2.04.en/1en.gend/09en\\_gen.htm](http://www.europrefem.org/02.info/22contri/2.04.en/1en.gend/09en_gen.htm) (accessed 25 April 2006).

<sup>18</sup> Gothenburg consensus paper, supra note 6, at 1 (1999).

<sup>19</sup> IAIA Social Impact Assessment, supra note 3, at 2.

<sup>20</sup> IAIA Environmental Impact Assessment, supra note 15, at § 2.2.

<sup>21</sup> Equality Commission for Northern Ireland, Section 75 of the Northern Ireland Act 1998: Practical Guidance on Equality Impact Assessment, at 4 (February 2005).

Although impact assessments usually have such specific objectives, it is important to note that “social, economic and biophysical impacts are inherently and inextricably linked.”<sup>22</sup> Change in any of these domains involves or leads to change in the other domains.<sup>23</sup> Indeed, recognition of such unintended consequences of policy reforms was one of the main impetuses for developing impact assessments – to consider the possible indirect and unintended consequences of a proposed policy.<sup>24</sup>

Of course, impact assessments may also consider the direct impacts of a proposed policy, in other words, consider whether the policy is likely to have the intended consequences. For example, an impact assessment could evaluate the likely consequences of a human rights policy on human rights – a direct impact assessment. On the other hand, a impact assessment could evaluate the likely consequences of an economic, social or environmental policy on human rights – an indirect impact assessment.<sup>25</sup>

While the primary aim of impact assessment is to inform and thereby improve decision-making on policies, programs and projects, the process of impact assessment is especially valuable if carried out through participatory processes. Impact assessment offers the opportunities (1) to make decision-making and trade-offs more transparent, (2) to encourage debate on policy reforms, (3) to promote evidence-based policy-making; (4) to build country or community ownership of policy choices; and (5) to build capacity for policy analysis.<sup>26</sup> Indeed, broad participation in impact assessment implies that policy makers share information with people who may be affected by a proposal so that the policy makers can assess the possible impacts on them, provide opportunities for them to raise potential problems or adverse impacts and consider other alternatives that are preferable for the well-being of the people affected.<sup>27</sup>

Finally, impact assessment methodology will also differ within a field depending on who is carrying out the assessment and for what purpose. For example, impact assessments are carried out by inter-governmental organizations and governments to inform decision-makers on proposed policies, programs and projects, by non-governmental organizations to lobby governments concerning these proposals and by businesses to obtain licenses and other permissions to engage in proposed business projects. In each case, the methodology will reflect these differences. In all cases, however, the aim is to predict the consequences of proposals, and the purpose is to inform and improve decision-making.

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<sup>22</sup> IAIA Social Impact Assessment, supra note 3, at 2.

<sup>23</sup> Ibid.

<sup>24</sup> Gothenburg consensus paper, supra note 6, at 1.

<sup>25</sup> For further explanation *ex-parte*, *ante-parte*, direct and indirect impact assessments see generally, Todd Landman, “Human Rights Impact Assessments,” in *Studying Human Rights* (2006) Routledge, London. He puts impact assessments “into four different categories that are a result of the combination of their different forms (*direct* and *indirect*) and their timing (*ex ante* and *ex poste*).” Ibid at 127.

<sup>26</sup> World Bank Poverty & Social Impact Analysis, supra note 4.

<sup>27</sup> Notably, participation of this order requires considerable time, which in some circumstances may not be feasible. Moreover, if policy makers delegate responsibility for performing the impact assessment to allow for broad participation, policy makers may feel no ownership of the assessment, and thus, it may do little to inform decision-making. See Kemm, supra note 2.

This study responds to demands of human rights treaty bodies, responsible for monitoring State compliance with international human rights law, the Commission on Human Rights, and others, such as the Special Rapporteur on the right to the highest attainable standard of health, for governments to perform human rights impact assessments prior to adopting proposed policies.<sup>28</sup> *It therefore focuses on the obligation of governments to undertake human rights impact assessments and proposes a methodology specifically suited to government assessment of its proposed policies.* The methodology is generally intended to be carried out prior to decision-making, however, aspects of the methodology could well inform implementation stages as well as ex-post evaluations of the consequences of policy reforms.

### **C. Added Value of Human Rights**

With this myriad of impact assessment methodologies already in use, is there any purpose in developing a methodology for human rights impact assessment? Human rights impact assessment offers added value for several inter-related reasons. First, human rights impact assessment is based on a framework of international legal obligations to which governments have agreed. Second, human rights impact assessment provides an opportunity to make government policy-making more coherent across departments as the framework applies to all divisions of the government. Third, human rights impact assessment will result in more effective policies because the policies will be more coherent, they will be backed up by legal obligations and they will be adopted through human-rights respecting processes.

#### *1. Legal Obligations*

International human rights legal obligations arise when a State voluntarily endorses a human rights treaty. Every State is a party to at least one international human rights treaty; thus they all have some binding international legal obligations for human rights.<sup>29</sup> Almost every State is a party to the Convention on the Rights of the Child, which recognizes along with civil and political rights, a broad range of economic, social and cultural rights, including the right to the highest attainable standard of health.<sup>30</sup> Most States are party to the International Covenant on Economic, Social and Cultural Rights as well, which also guarantees the right to

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<sup>28</sup> See, e.g., Committee on the Rights of the Child (CRC), General Comment 5 (2003), General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), CRC/GC/2003/5, ¶s 45-47 (requiring governments to engage in a continuous process of child impact); Preliminary Report of the Special Rapporteur on the right of everyone to enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, E/CN.4/2003/58 (13 February 2003) ¶s 82-85 (recommending States perform impact assessments prior to adopting a new policy to ensure that the policy is consistent with national and international legal obligations for human rights); Commission on Human Rights resolution 2003/28, “The right of everyone to the enjoyment of the highest attainable standard of physical and mental health,” E/CN.4/RES/2003/28 (22 April 2003) ¶ 16 (requesting the Special Rapporteur pursue his analysis of the role of health impact assessments).

<sup>29</sup> Office of the High Commissioner for Human Rights (OHCHR), “Human Rights and Poverty Reduction: A Conceptual Framework,” at 1 (2004) available at [www.ohchr.org/english/about/publications/docs/Broch\\_Ang.pdf](http://www.ohchr.org/english/about/publications/docs/Broch_Ang.pdf) (accessed 6 May 2006).

<sup>30</sup> Only two States have yet to ratify this Convention. See OHCHR, Status of Ratification: Convention on the Rights of the Child (19 April 2006) available at <http://www.ohchr.org/english/countries/ratification/11.htm> (accessed 25 April 2003) (indicating 192 States are party to this Convention).

health.<sup>31</sup> The rights enumerated in these treaties derive from the dignity and worth of the human person, lending them considerable moral authority.

To comply with its international human rights obligations, a State must ensure, before it adopts any proposed law, policy, program or project, that it is consistent with its human rights, as well as other, legal obligations.<sup>32</sup> The Committee on the Rights of the Child, for example, has stated that a continuous process of child impact assessment is required to ensure that all provisions of the Convention on the Rights of the Child are respected in legislation and in policy development and delivery at all levels of the government.<sup>33</sup>

In response to reports submitted by States, the treaty bodies have also urged individual States to perform impact assessments. For example, the Committee on the Rights of the Child urged the Government of the Netherlands “to develop ways to establish a systematic assessment of the impact of budgetary allocations and macroeconomic policies on the implementation of children’s rights and to collect and disseminate information in this regard.”<sup>34</sup> Similarly, the Committee on Economic, Social and Cultural Rights, has recommended to States that human rights impact assessments “be made an integral part of every proposed piece of legislation or policy initiative on a basis analogous to environmental impact assessments or statements.”<sup>35</sup>

Thus, human rights impact assessments are highly recommended, perhaps even legally required, for States to comply with the international human rights obligations that they have undertaken. Further, the human rights legal framework for impact assessments adds legitimacy to demands for policy changes that are based on these assessments.<sup>36</sup> The legal obligations also bring both monitoring and accountability to bear on policy-making. Policy-makers will be subject to scrutiny by human rights institutions, including the international treaty bodies, and people can hold their governments accountable for the adverse human rights impacts of policies, programs and projects.

In sum, the international legal obligations underlying the human rights framework for impact assessments gives States a strong incentive to do the impact assessments, a legitimate rationale for modifying proposals based on the assessments and a system to hold policy makers to account for the impact of their decisions on human rights.

## 2. Coherence

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<sup>31</sup> See OHCHR, Status of Ratification: International Covenant on Economic, Social and Cultural Rights (19 April 2006) available at <http://www.ohchr.org/english/countries/ratification/3.htm> (accessed 25 April 2006) (indicating that 153 States are parties to this Covenant).

<sup>32</sup> Preliminary Report of the Special Rapporteur, supra note 28, ¶ 82.

<sup>33</sup> CRC, General Comment 5, supra note 28, ¶ 45.

<sup>34</sup> CRC, Concluding Observations of the Committee on the Rights of the Child, Netherlands, CRC/C/15/Add.114 (1999) ¶ 13.

<sup>35</sup> Committee on Economic, Social and Cultural Rights (CESCR), Conclusions and recommendations of the Committee on Economic, Social and Cultural Rights, United Kingdom of Great Britain and Northern Ireland, E/C.12/1/Add.19 (1997).

<sup>36</sup> OHCHR, Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies (2002) available at <http://www.ohchr.org/english/issues/poverty/guidelines.htm> (accessed 2 May 2006) ¶ 18.

The human rights framework for impact assessment also offers States the opportunity to enhance coherence in policy-making processes. Governmental departments are often disconnected and do not necessarily know what other departments are doing or have agreed to do.<sup>37</sup> Thus, for example, one department may adopt a policy or program that adversely affects the people that another policy or program in another department is designed to help. However, a State's national and international human rights obligations apply to all divisions of the government, and thus human rights must be consistently and coherently applied across all national policy-making processes.<sup>38</sup> In this manner, the human rights framework can bring coherence to policy making, helping to ensure that the same factors are considered in policy-making in all departments of the government.

### *3. Effectiveness*

The underlying legal obligations and the increased coherence offered by a human rights framework for impact assessment will both contribute to rigorous policy-making as well as to adoption of policies, programs and projects that are more effective in improving the well-being of people, especially those who are marginalized. The human rights approach also brings a number of factors to the assessment process that generally will improve effectiveness in policy making such as disaggregation, participation, transparency and accountability.<sup>39</sup>

For example, a human rights approach to impact assessment requires assessing the decision-making process to determine whether it encourages the people who are likely to be affected by the policy, program or project to participate in a meaningful manner. It asks: does the government consult the people likely to be affected in determining the likely consequences of a proposal, in generating ideas for modifications and alternatives to a proposal, in weighing priorities and in making final trade-offs and decisions? Participation by the people affected is more likely to result in a decision that will be better for them, a decision that they will accept and a decision that they can own. In this way, the human rights requirement of participation will enhance effectiveness of the policy, program or project.<sup>40</sup>

Similarly, the human rights approach to impact assessment requires consideration of the distributional impact of reforms on the well-being of various groups, especially people living in poverty and other marginalized groups.<sup>41</sup> Disaggregated information allows for the impact analysis to identify mitigating

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<sup>37</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mission to the World Trade Organization, E/CN.4/2004/49/Add.1 (1 March 2004).

<sup>38</sup> Preliminary Report of the Special Rapporteur, *supra* note 28, ¶ 8.

<sup>39</sup> See Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, E/CN.4/2006/48 (3 March 2006) ¶ 30 (human rights-based approach to health indicators includes features, such as emphasis on disaggregation, participation and accountability that, if integrated into health policies and program, are likely to enhance their effectiveness).

<sup>40</sup> CESCR, Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights, E/C.12/2001/10 (10 May 2001) ¶ 12 (“In the Committee’s experience, a policy or programme that is formulated without the active and informed participation of those affected is most unlikely to be effective.”).

<sup>41</sup> Preliminary Report of the Special Rapporteur, *supra* note 28, ¶ 82.

measures or alternatives that may not have been evident without this information and that will result in a more effective policy, especially in terms of its impact on the most vulnerable people.

Overall, the human rights framework for impact assessment adds value because human rights (1) are based on legal obligations to which governments have agreed to abide, (2) apply to all parts of the government encouraging coherence to policy-making and ensuring that policies reinforce each other; (3) require participation in policy making by the people affected, enhancing legitimacy and ownership of policy choices; (4) enhance effectiveness through factors such as disaggregation, participation and transparency; and (5) demand mechanisms through which policy makers can be held accountable.

### III. A Human Rights Approach

#### A. Human Rights and Poverty Reduction

Traditionally, poverty has been defined in monetary terms based on either income or consumption levels.<sup>42</sup> These monetary approaches often use poverty lines, calculated from estimates of the income required to purchase a minimum set of goods and services.<sup>43</sup> Usually, this list of goods and services encompasses basic food, clothing, shelter, education and health needs.<sup>44</sup> People with incomes less than the poverty line are deemed to be living in poverty.<sup>45</sup> While monetary approaches to poverty provide a convenient short-hand and the data for their calculation is readily available, they do not capture the broader experience of living in poverty.<sup>46</sup>

In recent years, the conception of poverty has evolved beyond the simple monetary aspect. Today, poverty is often understood to refer more broadly to a lack of basic capabilities that allow a person to live in dignity.<sup>47</sup> “The capability approach defines poverty as the absence or inadequate realization of certain basic freedoms (such as the freedoms to avoid hunger, disease, illiteracy, and so on) owing at least in part to lack of command over resources.”<sup>48</sup>

In this conception of poverty, the basic human freedoms are derived from understanding what is fundamental to living with human dignity.<sup>49</sup> Although the list of basic capabilities may differ from one society to another, a common core of capabilities is considered basic in most societies.<sup>50</sup> “They include the capabilities of being adequately nourished, avoiding preventable morbidity and premature mortality, being adequately sheltered, having basic education, being able to ensure security of the person, having equitable access to justice, being able to appear in public without shame, being able to earn a livelihood, and taking part in the life of the community.”<sup>51</sup>

This multi-dimensional definition recognizes that poverty has many features beyond the economic dimension, such as hunger, illiteracy, discrimination, vulnerability and social exclusion.<sup>52</sup> In contrast to income-based poverty measures, the capabilities approach therefore focuses on indicators such as average life

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<sup>42</sup> Roger Riddell, “Approaches to Poverty: A Note from the ‘Development’ Perspective” (2004), International Council on Human Rights Policy, Researcher’s Meeting on Poverty, Development, Rights (Geneva, 24-25 November 2004) at 3.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid at 4.

<sup>45</sup> Ibid. at 3. The first Millennium Development Goal, for example, is to reduce by half the number of people living in extreme poverty, which is defined as living on less than a dollar a day. See Millennium Development Goals, available at <http://www.un.org/millenniumgoals/> (accessed 6 May 2006).

<sup>46</sup> See Riddell, supra note 42, at 4.

<sup>47</sup> CESCR, Statement on Poverty, supra note 40, ¶ 7. For a discussion of the conceptual equivalence of human capabilities and human rights see generally OHCHR, “Human Rights and Poverty: A Conceptual Framework,” supra note 29.

<sup>48</sup> Paul Hunt, Siddiq Osmani & Manfred Nowak, “Summary of the Draft Guidelines on a Human Rights Approach to Poverty Reduction,” (March 2004) ¶ 6.

<sup>49</sup> Ibid.

<sup>50</sup> OHCHR Draft Guidelines, supra note 36, ¶ 46-47.

<sup>51</sup> Ibid. ¶ 47.

<sup>52</sup> CESCR, Statement on Poverty, supra note 40, ¶ 7-8.

expectancy, infant mortality rates, and percentage of children in primary school.<sup>53</sup> The Committee on Economic, Social and Cultural Rights, among others, has noted that this broader understanding of poverty corresponds closely to the human rights protected by the International Bill of Rights.<sup>54</sup> Moreover, the same concern for human dignity that underlies the capabilities approach to poverty underlies human rights.<sup>55</sup>

Recognizing the close link between human rights and the capabilities approach to poverty, the Committee on Economic, Social and Cultural Rights has endorsed a multi-dimensional definition of poverty from a human rights perspective. The Committee defines poverty “as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights.”<sup>56</sup> In short, in the Committee’s view, “poverty constitutes a denial of human rights.”<sup>57</sup> UNESCO has taken this one step further, stating that “poverty is a *violation* of human rights and, as such, must be considered *illegal*, according to international law.”<sup>58</sup>

It is now widely accepted in the United Nations system that there is a close relationship between poverty and human rights. For example, the United Nations General Assembly has recognized “that surmounting extreme poverty constitutes an essential means to the full enjoyment of political, civil, economic, social and cultural rights, and reaffirm[ed] the interrelationship between these goals.”<sup>59</sup> Further, the Secretary-General issued a report at the request of the General Assembly “to assess progress made in clarifying the link between human rights and poverty/extreme poverty, and suggest a conceptual framework that responds to poverty/extreme poverty in human rights terms.” The Human Development Report 2000 connected the development goal of poverty reduction with human rights, stating: “A decent standard of living, adequate nutrition, health care, education and decent work and protection against calamities are not just development goals – they are also human rights.”<sup>60</sup>

This link between human rights and poverty works in two ways: first, the conditions in which poor people live often violate their human rights, and second, realizing human rights will alleviate poverty.<sup>61</sup> With this understanding, the Office of the High Commissioner of Human Rights has supported the development of a human rights approach to poverty reduction,<sup>62</sup> and the United Nations system in general has

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<sup>53</sup> See Riddell, *supra* note 42, at 5.

<sup>54</sup> The International Bill of Rights is generally understood to include the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

<sup>55</sup> Hunt, Osmani & Nowak, *supra* note 48, ¶ 6.

<sup>56</sup> CESCR, Statement on Poverty, *supra* note 40, ¶ 8.

<sup>57</sup> *Ibid.* at ¶ 1.

<sup>58</sup> UNESCO Consultation, *supra* note 7, at 2.

<sup>59</sup> United Nations General Assembly resolution, “Human Rights and Extreme Poverty,” A/RES/53/146 (8 March 1999).

<sup>60</sup> UNDP, Human Development Report, *Human Rights and Development* (2000), at 8.

<sup>61</sup> See OHCHR Conceptual Framework,” *supra* note 29, Foreword, at iii.

<sup>62</sup> See generally *ibid.*; OHCHR Draft Guidelines, *supra* note 36.

moved toward using a human rights framework for poverty eradication.<sup>63</sup> Indeed, in 2002, Mary Robinson, then High Commissioner for Human Rights, stated in the Preface to the *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies*: “Poverty cannot be banished without the realization of human rights.”<sup>64</sup>

In numerous declarations, such as the Millennium Declaration, States have also committed to eradicating poverty and “freeing the entire human race from want.”<sup>65</sup> Further, all States have legal obligations to realize the human rights of all their people under the treaties to which they are parties. To comply with both the legal obligations to realize human rights and the political commitments to eradicate poverty, governments are urged to undertake human rights impact assessments prior to decision-making on any policy, program or project and to make human rights impact assessment an integral part of all policy-making.

## **B. Three Case Studies on Human Rights Impact Assessment**

The recent calls for governments to perform human rights impact assessments as part of the policy-making process has begun to generate discussion and literature on human rights impact assessment.<sup>66</sup> By way of illustration, this section reviews three of the approaches, methodologies and tools that have been developed to aid governments and nongovernmental organizations in performing human rights impact assessment.

### *1. NORAD Handbook in Human Rights Assessment*

In 2001, the Norwegian Agency for Development Cooperation (NORAD) published the *Handbook in Human Rights Assessment: State Obligations, Awareness*

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<sup>63</sup> See generally, UNESCO, Poverty and Human Rights: UNESCO’s Anti-Poverty Projects: The United Nations Human Rights System, available at [http://portal.unesco.org/shs/en/ev.php-URL\\_ID=5078&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/shs/en/ev.php-URL_ID=5078&URL_DO=DO_TOPIC&URL_SECTION=201.html) (accessed 6 May 2006) (providing a sample of the efforts of United Nations to mainstream human rights into poverty eradication).

<sup>64</sup> OHCHR Draft Guidelines, supra note 36, Preface.

<sup>65</sup> United Nations General Assembly resolution, “Millennium Declaration,” A/RES/55/2 (8 September 2000) at ¶ 11.

<sup>66</sup> See, e.g., Halifax Initiative, “Risk, responsibility and human rights: Taking a rights-based approach of trade and project finance,” a discussion paper prepared by the NGO Working Group on EDC for the expert meeting on human rights, trade and finance, Ottawa, Canada, 3-4 May 2004 (Final revised version July 2004); Human Rights Impact Resource Centre, <http://www.humanrightsimpact.org/> (accessed 8 May 2006); Humanist Committee for Human Rights (HOM), Health Rights of Women Assessment Instrument (2006), available at [http://www.hom.nl/english/womens\\_rights\\_wrw.php](http://www.hom.nl/english/womens_rights_wrw.php) (accessed 7 May 2006) (hereinafter HOM Assessment Instrument); Todd Landman, Human Rights Impact Assessment, supra note 25; Norwegian Agency for Development Cooperation (NORAD), “Handbook in Human Rights Assessment: State Obligations, Awareness & Empowerment” (February 2001) available at [www.norad.no/files/Handbook.pdf](http://www.norad.no/files/Handbook.pdf) (accessed 29 May 2006) (hereinafter NORAD Handbook); International Centre for Human Rights and International Development, Initiative on Human Rights and Impact Assessment, [http://www.dd-rd.ca/site/what\\_we\\_do/index.php?lang=en&subsection=documents&id=1489&page=1&tag=&keyword=](http://www.dd-rd.ca/site/what_we_do/index.php?lang=en&subsection=documents&id=1489&page=1&tag=&keyword=) (accessed 5 May 2006) (unpaginated electronic version summarizing draft methodology of August 2005) (hereinafter Rights & Democracy Human Rights Impact Assessment) (full draft methodology – August 2005 version – available by request to Diana Bronson, Rights and Democracy, [dbronson@dd-rd.ca](mailto:dbronson@dd-rd.ca); Simon Walker, “Human Rights Impact Assessments of Trade-Related Policies,” in *Sustainable Development in World Trade Law*, edited by Markus W. Gehring and Marie-Claire Cordonier Segger, Kluwer Law International Publishing (2005).

& *Empowerment* to aid NORAD program officers, embassy personnel and external advisers in integrating human rights into all parts of development co-operation for poverty alleviation.<sup>67</sup> The handbook is essentially a short training manual on human rights and participatory development, followed by two questionnaire forms with instructions on how to complete them and a brief guide to interpreting the results. As stated in the introduction, it “is not a manual on how to conduct a full-scale human rights impact analysis, rather it is a guide that will assist the user to identify the need for such analysis.”<sup>68</sup>

Following the introduction, the handbook first outlines the concepts of human rights, legal instruments and State obligations. It then explains that the focus of this assessment tool is “on the involvement of people in national and local decision-making, and the implementation of development programmes.”<sup>69</sup> The handbook therefore emphasizes human rights awareness and empowerment and addresses whether the program:

- is consistent with the human rights obligations of the partner country;
- strengthens human rights awareness within the target population and other people affected; and
- empowers target groups and other people affected to enjoy their human rights.

The assessment tool is composed of two forms. The first analyzes the current state obligations, requiring the assessor to indicate whether the partner State has ratified each of the main international and regional human rights treaties, whether the partner State has made any reservations to each of the treaties ratified, and when the partner State submitted the last report to the Committee responsible for monitoring each treaty ratified.<sup>70</sup>

The second form asks the assessor to respond to ten questions evaluating the program’s effect on human rights. They are:

1. What is the program’s assumed/actual impact on equality and nondiscrimination?
2. Has the population directly affected been informed about the program?
3. Does the program respect/has the program respected everyone’s right to seek and impart information relevant to the implementation?
4. Does the program respect/has the program respected everyone’s right to express views freely in the preparation and implementation of the program?
5. Does the program promote/has the program promoted participation in decision making of groups affected?
6. Does the program uphold/has the program upheld the right to organize?
7. Does the program respect/has the program respected the right to just and favorable conditions of work?
8. Does the program affect/has the program affected the fulfillment of the right to an adequate standard of living for target groups and other people affected,

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<sup>67</sup> NORAD Handbook, supra note 66, at 6.

<sup>68</sup> Ibid. at 7.

<sup>69</sup> Ibid. at 17.

<sup>70</sup> Ibid. at 19.

- including access to adequate food and continuous improvement of living conditions?
9. Does the program affect/has the program affected the opportunity of people for self provision in terms of income generation activities?
  10. Does the program address the right to compensation for those negatively affected?<sup>71</sup>

The handbook provides a scoring system and explains how to answer each of the questions. In particular, consistent with NORAD's objective of poverty alleviation, the questionnaire should be completed with a view to how the program might empower poor sections of the community.<sup>72</sup> Often, the process of carrying out the assessment may suggest to the program officer specific measures that could minimize negative and maximize positive effects.<sup>73</sup> The assessment process may also show that the government has not provided enough information to make human rights assessment possible, in which case more information should be required. As a general rule, an assessment resulting in a low score in terms of human rights impact requires a new dialogue between cooperating partners.<sup>74</sup>

In short, the NORAD Handbook is a simple tool for program officers to do an initial assessment of the likely human rights consequences of a proposed program, including how the program affects human rights, whether people are aware of their rights, and whether the program empowers people to claim their rights.<sup>75</sup> It thereby provides opportunities to improve the human rights impact of a development program and to determine whether a full-scale human rights impact assessment is necessary for a particular program.

## *2. Rights & Democracy Initiative on Human Rights Impact Assessment*

The International Centre for Human Rights and Democratic Development (Rights & Democracy) has initiated a project on human rights impact assessment that "aims to improve the capacity of civil society organizations to evaluate the impacts of foreign direct investment on human rights."<sup>76</sup> The draft methodology adopts a rights-based approach to research and advocacy, which incorporates the following principles:<sup>77</sup>

- Encouraging meaningful participation of groups within civil society – in addition to business and government actors;
- Strengthening accountability of duty bearers by fostering awareness of the legal framework of international human rights law;
- Employing transparent processes that are publicly accessible at all stages and conducting outreach to all actors involved;

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<sup>71</sup> Ibid. at 22.

<sup>72</sup> Ibid. at 23.

<sup>73</sup> Ibid. at 24.

<sup>74</sup> Ibid. at 25.

<sup>75</sup> Ibid. at 26.

<sup>76</sup> Rights & Democracy Human Rights Impact Assessment, *supra* note 66, unpaginated. Rights & Democracy is a non-partisan organization created by the Canadian Parliament to encourage and support human rights and democratic institutions around the world. Rights & Democracy, *Who We Are*, available at [http://www.dd-rd.ca/site/who\\_we\\_are/index.php?lang=en](http://www.dd-rd.ca/site/who_we_are/index.php?lang=en) (accessed 5 May 2006).

<sup>77</sup> Rights & Democracy Human Rights Impact Assessment, *supra* note 66.

- According special attention to involve vulnerable groups and to understanding the specific human rights challenges they face;
- Recognizing that all rights are indivisible, although some rights may be more affected by a particular investment project.<sup>78</sup>

“This methodology also places a great deal of importance on process, which, when done well, is perhaps as critical as, or even more important than, the final product (ie. the written report).”<sup>79</sup>

The draft methodology is composed of ten steps.

**(1) Identify Key Human Rights Issues and Stakeholders:** This initial stage involves, among other preparatory work, constructing the research team; reviewing the international instruments ratified by the host country; examining reports to treaty bodies and shadow reports; locating books, reports and statistics on human rights in the country; and identifying the key stakeholders such as affected communities, civil society actors, companies, government and experts.

**(2) Research the Investment Project:** This step involves obtaining and analyzing key background information on the project such as environmental and social impact assessments already done; corporate filings and security regulations; corporate policies or international codes adopted on social responsibility; past record of the company on human rights; and media coverage on the investment project.

**(3) Adapt the Human Rights Assessment Tool to the Project:** This step involves adapting the assessment tool, which is composed of a series of questions derived from the UN Norms for Business, to the specific project.<sup>80</sup> The Norms draw on a broad selection of human rights instruments and set forth a comprehensive and well-organized set of human rights standards for business enterprises. Not all of the Norms will be applicable to a given project. Further, some rights may be particularly pertinent and thus may need more development on the questionnaire.

**(4) Seek Expert Opinion on Key Questions:** At this step, the research team seeks expert opinions on whether the state is fulfilling its international obligations to provide general background before moving on to focus on the impact of the investment project. The general portrait questions for this step are found in the assessment tool.

**(5) Interview Stakeholders:** At this step, the assessment team interviews representatives from the community, workers, the corporation and government officials using the adapted assessment tool as a guide to the information needed. All concerned parties must be informed that the human rights impact assessment is taking place and that all their contributions are welcome. The methodology also provides guidelines for conducting human-rights respecting interviews, including ensuring that each respondent understands the impact assessment process, that detailed records of

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<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> UN Sub-Commission on the Promotion and Protection of Human Rights, Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, E/CN.4/Sub.2/2003/12/Rev.2 (26 August 2003).

interviews are kept, that steps are taken to protect informants at risk and that all respondents receive the final report.

**(6) Verify Information and Identify Factual Disputes:** At this step, the assessment team should corroborate all information where possible, and if facts are in dispute, clearly indicate so in the report.

**(7) Prepare and Circulate Draft Report:** This step involves preparing a draft report, circulating it to all parties for comment and then revising the report.

**(8) Develop Recommendations:** At this step, the assessment team should consider corrective measures to improve the project and to increase accountability of the government and the corporation. In developing the recommendations, the team should seek advice from interviewees.

**(9) Finalize the Report:** The final report must be agreed upon by Rights & Democracy and the local sponsoring organization. Any major disagreement should be explained in the report. The final report is to be made available free of charge in local language to community representatives.

**(10) Continue Monitoring and Evaluation:** At this step, mechanisms for ongoing monitoring and evaluation should be established to allow continuing communication of concerns with duty bearers. Among the follow-up actions suggested are: distributing the final report to all stakeholders, prosecuting violations of human rights, human rights education in the community, mediation of differences, policy reform and improvement of the impact assessment methodology.

The Rights & Democracy initiative on human rights impact assessment aims to increase the accountability of corporate actors. They believe that human rights impact assessments should be done routinely before engaging in large-scale investment projects, just as environmental impact assessments are now done as a matter of course.<sup>81</sup> The Rights & Democracy draft methodology and assessment tool are now being used for five case studies that examine the effects of foreign direct investment on human rights in Argentina, the Democratic Republic of Congo, Peru, Philippines and Tibet.<sup>82</sup>

### *3. HOM Health Rights of Women Assessment Instrument*

The Humanist Committee on Human Rights (HOM) has also developed a human rights impact assessment approach, which is published in *Health Rights of Women Assessment Instrument* (2006).<sup>83</sup> This assessment instrument provides comprehensive and practical instructions for a nongovernmental organization to conduct an analysis of the impacts of a government policy on the health rights of women.<sup>84</sup> It is specifically designed for women's organizations, health organizations

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<sup>81</sup> Rights & Democracy Human Rights Impact Assessment, *supra* note 66, unpaginated.

<sup>82</sup> *Ibid.*

<sup>83</sup> HOM Assessment Instrument, *supra* note 66.

<sup>84</sup> *Ibid.* at 6.

and human rights organizations to employ to produce arguments to lobby for policies to improve women's health rights.<sup>85</sup>

The HOM instrument can be used to analyze policies that are intended to affect health rights and also policies that do not intend to affect health rights but may have an impact on health rights.<sup>86</sup> Moreover, it can be used to analyze an existing policy or a policy still in development.<sup>87</sup> Although the HOM instrument focuses primarily on developing recommendations to lobby governments, it can also be used to lobby international institutions such as the World Bank, to influence international political meetings such as meetings of the Commission on the Status of Women or as the basis for a shadow report to submit to the CESCR or the Committee on the Elimination of Discrimination Against Women.<sup>88</sup>

The HOM instrument is presented in six chapters. Chapters 1, 2 and 3 introduce the objectives and the structure of the instrument, the main concepts on which it is based, and the human rights framework. Chapter 4 is the "Quick Scan," which helps the organization evaluate whether to undertake the impact assessment. Chapter 5 presents the heart of the assessment in a six-step methodology, and Chapter 6 encourages organizations to inform HOM about their experiences with the instrument. The instrument also provides several annexes, including a glossary, a list of resources, a work plan timetable and a discussion guide, which summarizes the instrument. The introduction notes that a full HOM analysis may take one to three months, whereas the discussion guide allows an organization to make a quick analysis in one-half to two days.<sup>89</sup>

For our purposes, chapter 5 is key. It describes the six-step methodology, including for each step the purpose, the key questions, detailed questions with explanations, where to find the information, and a final question to help the organization sum up the conclusions for that step. Briefly outlined, the six steps are as follows:

**(1) Identify the policy:** This step requires defining the focus of the analysis by describing the policy, the problem, the women or groups of women affected and the rights that are involved.<sup>90</sup> It concludes with a brief formulation of the focus of the analysis.<sup>91</sup>

**(2) Identify the government commitments:** In this step, the organization identifies the international treaties to which the country is a party; international political commitments made with respect to the rights at issue; the national laws, policies, strategies and plans of action that are relevant to those rights and the policy under analysis; and the formal mechanisms for participation of civil society in decision-

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<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid. at 7.

<sup>90</sup> Ibid. at 19.

<sup>91</sup> Ibid. at 22.

making.<sup>92</sup> It concludes with a brief statement on “the most relevant commitments the government has made in relation to the policy under analysis.”<sup>93</sup>

**(3) Describe the capacity for implementation:** This step involves examining the government’s capacity to implement the policy under analysis, including the financial resources available, the human resources available and other factors – such as cultural, religious and social factors or the influence of international actors – that may limit or expand implementation capacity.<sup>94</sup> In later steps, this information will help in evaluating the actual impact the policy may have and in formulating realistic recommendations.<sup>95</sup> This step concludes with a description of the capacity of the government to implement the policy and the main factors influencing this capacity.<sup>96</sup>

**(4) Assess the impact on health rights:** This step examines the impact of the policy on women’s health rights. In particular, it looks at the impact that the policy has on (a) timely and appropriate health care, including the availability, accessibility, acceptability and quality of goods and services, (b) the underlying determinants of health, such as safe water, adequate food and housing, healthy working conditions and access to health information, and (c) violence against women.<sup>97</sup> This step also looks at participation, in other words, whether women are involved, and if so, which women are involved, in health-related decision-making and in developing, implementing and evaluating policies.<sup>98</sup> It also considers whether the policy has any discriminatory impact, particularly on vulnerable or marginalized groups.<sup>99</sup> It concludes with a statement on the human rights impact of the policy on women’s health rights.

**(5) Draw links between step 2 commitments and step 4 impacts:** This step involves comparing the government’s human rights commitments identified in step 2 with the actual human rights impacts found in step 4.<sup>100</sup> The purpose of linking the impacts (described in step 4) to specific legal obligations (enumerated in step 2) is to identify the impacts for which the can be held government accountable.<sup>101</sup> This step also involves linking the capacity information in step 3 to these obligation to identify the main obstacles the government will have in meeting its human rights obligations.<sup>102</sup> It concludes with a table organizing this information to produce a list of the impacts for which the government can be held accountable.<sup>103</sup>

**(6) Generate recommendations and the action plan:** This step involves using the results of the analysis to lobby the government for policy changes.<sup>104</sup> It requires generating recommendations or demands to the government based on the analysis and then summarizing the assessment and the recommendations in an appropriate form to

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<sup>92</sup> Ibid. at 23.

<sup>93</sup> Ibid. at 28.

<sup>94</sup> Ibid. at 29.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid. at 32.

<sup>97</sup> Ibid. at 33-34.

<sup>98</sup> Ibid. at 33.

<sup>99</sup> Ibid. at 38.

<sup>100</sup> Ibid. at 39.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid. at 43-44.

<sup>103</sup> Ibid. at 44, 58.

<sup>104</sup> Ibid. at 45.

disseminate and use for lobbying.<sup>105</sup> This step also involves preparing a plan of action to lobby for improvement of the policy, including awareness-raising activities and linking with other groups working on these issues.<sup>106</sup>

#### *4. Discussion of the Three Approaches*

Notably, the NORAD handbook is aimed at assessing programs, the Rights & Democracy initiative at assessing projects and the HOM instrument at assessing policy. To some extent, these objectives also influence the approaches. The NORAD handbook is designed for government officials to use, whereas the Rights and Democracy initiative and the HOM instrument are designed for use by civil society organizations. Again, these differences may influence the methodology, at least in the final steps that consider how the analysis will be used.

The Rights & Democracy initiative and the NORAD handbook both address human rights generally. Nonetheless, the two approaches differ in several major respects. First, the NORAD Handbook is a basic tool created to do a summary initial human rights assessment of a program. The Rights & Democracy approach is a much larger undertaking designed for large scale direct investment projects. It requires considerably more time and expense than the NORAD approach in order to, among other reasons, allow participation of all stakeholders. Further, the Right & Democracy initiative is intended to be carried out by a team of researchers, rather than a single program manger, and uses a detailed assessment tool of over seventy pages, rather than the simple one-page form employed in the NORAD assessment process. Moreover, the Rights & Democracy approach is intended to improve the capacity of civil society to carry out human rights impact assessments, while the NORAD approach is intended to be employed by a NORAD program manager to determine whether a full human rights impact assessment is necessary for any given project.

Overall, the HOM instrument falls between the simplicity of the NORAD handbook and the complexity of the Rights & Democracy initiative. Interestingly, the HOM instrument incorporates flexibility in this respect by providing a “discussion guide,” or summary of the methodology, to make a quick human rights assessment in one-half day to two days, rather than the one to three months required for the full assessment. The HOM instrument is also more specific than either of the other approaches because it focuses on women’s health rights in particular rather than on human rights more generally. However, recognizing that the right to health is closely related to other human rights, it is flexible in allowing for consideration of other rights that are impacted by the policy that will have bearing on health rights.

These three approaches illustrate that human rights impact assessment methodology and tools must be adapted to the specific circumstances, including the size of the policy, program or project, the objectives of the impact assessment, the time and funding available to carry out the assessment and the party undertaking the assessment – for example, the government, the corporation or the civil society organization. In addition to these factors, a human rights impact assessment is likely

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<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

to focus on certain human rights depending on the policy, program or project at issue or the mission of the civil society actor undertaking the assessment.

One human rights feature that plays an important role in all three approaches is participation but the approaches emphasize participation at different levels. The NORAD instrument has only ten questions, yet four are directed toward the right to participate. The four questions pertain to informing people about the program, respecting their rights to seek and impart information, respecting their rights to express their view on the program, and promoting participation by groups affected in the decision making. These questions address participation in designing the program. Similarly, the HOM instrument focuses on the rights of the people affected to participate in formulating the policy under assessment. The Rights & Democracy initiative, however, also considers participation in the impact assessment to be important to a human rights impact assessment process, a feature that is not present in the other two approaches.

There is also a third possible level of participation: whether the policy, program or project is designed to promote participation. For example, does the policy include a mechanism for participation in its continual evaluation, does the project establish a forum for discussing concerns as they arise or does the program incorporate a process for receiving feedback from participants? In the case of a policy decision to privatize services that have previously been provided by the public sector, for example, specific attention would be required to ensure the right to participate in decision making is not diminished in any manner. It may not be possible to incorporate all three levels of participation in any given assessment, but the fact of not including any of these levels should be noted as part of the assessment.

All three approaches provide helpful insight for the current project. They illustrate common threads in human rights impact assessment, as well as ways in which approaches may differ and yet be fully consistent with the same human rights objectives. Because of its focus on health rights, the HOM instrument is particularly helpful to the current project, which also addresses the right to health. The HOM instrument also focuses on assessing government policy, as does this project, rather than on a program or a project. The current methodology differs, however, because it is intended for governments to use in policy-making in order to comply with their obligation to progressively realize the right to health, rather than for nongovernmental organizations to use to lobby governments to comply with this right. Further, this methodology has a particular focus on poverty and the role of human rights impact assessment in improving policy-making processes for people living in poverty.

## **IV. A Case Study: Impact Assessment and the Right to Health**

This section draws on the general discussion on impact assessment as well as the three specific illustrations of human rights impact assessments to propose an approach to human rights impact assessment using the right to health as a case study. In doing so, it focuses in particular on the role of both human rights impact assessment and the right to health in poverty alleviation. Thus, it begins by discussing the relationship between the right to health and poverty.

### **A. Health and Poverty**

Poverty and health are closely linked. Ill health contributes to poverty by, for example, consuming household resources to pay for care and medicines, by lowering educational achievement through absences or disrupting concentration, reducing time or productivity at work or limiting the possibility of working at all.<sup>107</sup> Ill health creates economic insecurity. Moreover, poverty causes ill health by reducing access to health care while increasing the likelihood of malnutrition, inadequate housing and exposure to environmental and other health risks.<sup>108</sup> Ill health is both a cause and a consequence of poverty: sick people are more likely to become poor and poor people are more vulnerable to disease and disability.<sup>109</sup>

The close relationship between poverty and health is well-recognized within the United Nations. Indeed, three of the eight Millennium Development Goals address health directly: (1) reduce child mortality by two-thirds, (2) reduce maternal mortality ratio by three-quarters, and (3) reverse the spread of diseases, especially HIV/AIDS and malaria.<sup>110</sup> Other Millennium Development Goals address the underlying determinants of health: reducing hunger, ensuring primary education, promoting gender equality and ensuring environmental sustainability.<sup>111</sup> This emphasis on health in development planning illustrates the central role of health in alleviating poverty.

Health is also crucial to enjoying other human rights, such as the right to education, the right to work and the right to participate in public affairs. The close link between poverty, health and human rights means that realizing the right to health is an integral part of poverty reduction, as well as a legal obligation under international human rights law. As such, the right to health provides an excellent case study for human rights impact assessment that focuses particularly on ensuring that government policy alleviates rather than contributes to poverty. With these links drawn, we turn now to the meaning and content of the right to health.

### **B. The Right to the Highest Attainable Standard of Health**

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<sup>107</sup> See OHCHR Draft Guidelines, *supra* note 36, ¶ 112.

<sup>108</sup> See *ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> See Millennium Development Goals, *supra* note 45.

<sup>111</sup> *Ibid.*

The right to health is not a right to be healthy; the State cannot protect anyone against every possible cause of ill health.<sup>112</sup> The right to health “is the right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health. The right includes both health care and the underlying determinants of health, including access to potable water, adequate and safe food, adequate sanitation and housing, healthy occupational and environmental conditions, and access to health-related information and education.”<sup>113</sup> The Special Rapporteur on the right to health defines it as the “right to an effective and integrated health system, encompassing health care and the underlying determinants of health, which is responsive to national and local priorities and accessible to all.”<sup>114</sup>

The right to health is recognized in numerous international human rights instruments.<sup>115</sup> The Universal Declaration of Human Rights provides: “Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services.”<sup>116</sup> The right to health is also recognized in Article 12 of the ICESCR, which states:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of health.
2. The steps to be taken by the State Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
  - (b) The improvement of all aspects of environmental and industrial hygiene;
  - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

This list of State obligations in Article 12(2) is illustrative and non-exhaustive.<sup>117</sup>

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<sup>112</sup> CESCR, General Comment 14, “The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2000/4 (11 August 2000) ¶ 8; OHCHR Draft Guidelines, supra note 36, ¶ 116.

<sup>113</sup> Ibid.; see also CESCR General Comment 14, supra note 112, ¶ 9, 11.

<sup>114</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, E/CN.4/2006/48 (3 March 2006) ¶ 4.

<sup>115</sup> See, e.g., International Convention on the Elimination of All Forms of Racial Discrimination (1966), article 5(e)(iv); Convention on the Elimination of All Forms of Discrimination Against Women (1979), articles 11.1(f) and 12; United Nations Convention on the Rights of the Child (1989), article 24; European Social Charter (1961) as revised, article 11; African Charter on Human and Peoples’ Rights (1981), article 16; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988), article 10. In addition, the Preamble to the Constitution of the World Health Organization states: “The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.”

<sup>116</sup> Universal Declaration of Human Rights (1948) article 25(1).

<sup>117</sup> CESCR General Comment 14, supra note 112, ¶ 7.

The Committee on Economic, Social and Cultural Rights has further explained Article 12 and the normative content of the right to health in General Comment 14.<sup>118</sup> The right to health encompasses both freedoms and entitlements.<sup>119</sup> The freedoms include, for example, the right to make decisions about one's health, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from non-consensual medical treatment.<sup>120</sup> The entitlements include the right to a health system that provides for everyone to enjoy the highest attainable standard of health.<sup>121</sup>

The right to health also contains four inter-related and essential elements: (1) Availability, (2) Accessibility, (3) Acceptability, and (4) Quality. While these essential elements are often described in connection to health care services, programs and goods, they also apply to the underlying determinants of health. In other words, health care must be *available*, but safe water and housing must be *available* too. The AAAQ framework is explained further in General Comment 14 and summarized here.

*Availability.* Health facilities, goods and services must be available in sufficient quantity within the State party. This includes, for example, hospitals, clinics, trained health professionals and essential medicines, as well as underlying determinants, such as safe drinking water and adequate sanitation facilities.<sup>122</sup>

*Accessibility.* Health facilities, goods and services must be accessible to everyone without discrimination, especially the most vulnerable or marginalized people. They must be physically accessible, meaning within safe physical reach of all sections of the population, including people with disabilities and people in rural areas. They must be economically accessible, meaning affordable to all. Moreover, accessibility includes the right to seek, receive and impart information on health.<sup>123</sup>

*Acceptability.* Health facilities, goods and services must be respectful of medical ethics, including the right to confidentiality, and they must be sensitive to cultures, communities and gender. Further, health information must be provided in local languages.<sup>124</sup>

*Quality.* Health facilities, goods and services must also be scientifically and medically appropriate and of good quality. Further, the underlying determinants of health must be appropriate and of good quality too.<sup>125</sup> Thus, for example, water and health education, in addition to hospitals and medicines, must be of good quality.

In addition to AAAQ, six other concepts are crucial to the right to health. First, the right to health is subject to *progressive realization*. Many States do not currently have the resources necessary to implement fully the right to enjoyment of the highest standard of attainable health for all people. Nonetheless, States must take

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<sup>118</sup> See generally, CESCR General Comment 14, *supra* note 112.

<sup>119</sup> *Ibid.* ¶ 8.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.* ¶ 12(a).

<sup>123</sup> *Ibid.* ¶ 12(b).

<sup>124</sup> *Ibid.* ¶ 12(c).

<sup>125</sup> *Ibid.* ¶ 12(d).

deliberate and concrete steps toward the full realization of the right to health for all.<sup>126</sup> The corollary to the obligation to progressively realize the right to health is that “there is a strong presumption that retrogressive measures taken in relation to the right to health are not permissible.”<sup>127</sup>

Second, while the right to health is subject to progressive realization, States have a *core obligation* in relation to the right to health that is immediate, and requires, at the very least, minimum essential levels of primary health care, food, housing, sanitation and essential drugs.<sup>128</sup> This core obligation also includes adopting and implementing a national health strategy and plan of action.<sup>129</sup> Of comparable priority are reproductive, maternal and child health care; immunization against major infectious diseases; measures to prevent, treat and control epidemics; health education; access to health information; and appropriate training for health professionals.<sup>130</sup>

Third, it is important to emphasize that *non-discrimination and equality* are central to the right to health. The right to health proscribes any discrimination in access to or provision of health care and the underlying determinants of health.<sup>131</sup> Moreover, special attention must be paid to promoting the equality of women and men and of vulnerable and marginalized groups.<sup>132</sup> Indeed, careful consideration of health resource allocations is required to ensure that health policy and spending promotes equality rather than contributing to or perpetuating inequalities.<sup>133</sup>

Fourth, a further important aspect of the right to health “is the *participation* of the population in all health-related decision-making at the community, national and international levels.”<sup>134</sup> Participation implicates, among other factors, the rights to seek and impart health-related information, the right to express views freely, and the right to basic health education, as well as transparency in policy-making processes. Full participation on a non-discriminatory basis also requires special attention to sharing information with and seeking the views of women and men, as well as the views of vulnerable and marginalized people.<sup>135</sup>

Fifth, access to health *information* is also an essential aspect of the right to health.<sup>136</sup> Health information enables people to promote their own health and to claim quality health facilities, goods and services from the State and others.<sup>137</sup> Therefore,

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<sup>126</sup> Ibid. ¶s 30-31.

<sup>127</sup> Ibid. ¶ 32.

<sup>128</sup> Ibid. ¶ 43.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid. ¶ 44.

<sup>131</sup> Ibid. ¶ 18. Discrimination is prohibited “on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health.”

Ibid.

<sup>132</sup> See *ibid.* ¶ 18.

<sup>133</sup> See *ibid.* ¶ 19.

<sup>134</sup> Ibid. ¶ 11 (emphasis added).

<sup>135</sup> See, e.g., *ibid.* ¶ 54 (discussing the right of individuals and groups to participate in decision-making processes for developing any policy, program or strategy related to the right to health).

<sup>136</sup> Ibid. ¶12(b)(iii).

<sup>137</sup> Report of the Special Rapporteur 2006, *supra* note 114, ¶ 49(c)(iii).

States must ensure that health information is available and accessible to all, and that it is provided in local languages.<sup>138</sup> The right to health also includes the freedom of all people to seek, receive and impart information concerning health issues.<sup>139</sup> Indeed, other essential aspects of the right to health, such as meaningful participation and effective accountability, depend upon having access to information, as well as the right to express views freely.<sup>140</sup> While health information must be made available, personal health data must be treated with confidentiality.<sup>141</sup>

Sixth, the right to health demands access to effective mechanisms of *accountability*, including judicial remedies at both the national and international levels.<sup>142</sup> Victims of violations of the right to health are “entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition.”<sup>143</sup> In addition to judicial remedies, national ombudsmen and human rights commissions should also address violations of the right to health.<sup>144</sup>

These six concepts and AAAQ provide an overall framework for the right to health. Of course, the right to health also includes specific attributes, such as sexual and reproductive health, mental health, essential medicines, the social determinants of health and so on, as well as the specific illustrative features enumerated in Article 12(2), including infant and child health, environmental and industrial hygiene, the prevention, treatment and control of epidemics, and medical services assured in the event of sickness. We have based the following proposal on the right-to-health framework of AAAQ and the six essential concepts discussed above.

### **C. Right-to-Health Framework for the Impact Assessment**

In designing a methodology for human rights impact assessment, we have considered two overall approaches. The first approach is to propose a self-standing methodology for human rights impact assessment just as the three assessment case studies discussed above have done. The other approach is to propose a methodology for incorporating human rights into existing impact assessment methodologies.

We have decided to embark on this second approach for two reasons. First, we think it more likely that governments will integrate human rights considerations into impact assessments that they are already carrying out, than they are to undertake an entirely separate human rights impact assessment process in addition to those that they already do. Second, by proposing that human rights factors should be folded into other methodologies, this project is consistent with the consensus that human rights must be mainstreamed into all government processes.<sup>145</sup>

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<sup>138</sup> See *ibid.*; see also CESCR General Comment 14, *supra* note 112, ¶ 12(b)(iv).

<sup>139</sup> CESCR General Comment 14, *supra* note 112, ¶ 12(b)(iv).

<sup>140</sup> Report of the Special Rapporteur 2006, *supra* note 113, ¶ 49(c)(iii).

<sup>141</sup> CESCR General Comment 14, *supra* note 112, ¶ 12(b)(iv).

<sup>142</sup> *Ibid.* ¶ 59.

<sup>143</sup> *Ibid.*

<sup>144</sup> *Ibid.*

<sup>145</sup> Notably, these rationales would not apply to nongovernmental organizations undertaking human rights impact assessments because (a) they are not under any previous obligation to undertake, for example social and environmental impact assessments, into which human rights could be folded, and (b) they have no obligation, as do States, to mainstream human rights into their processes.

Taking the mainstreaming approach, this report identifies the sorts of considerations that, from a human rights or right-to-health perspective, governments should incorporate into existing impact assessment methodologies in order to comply with their obligations to progressively realize human rights. This is therefore not a self-standing human rights methodology but rather a non-exhaustive list of human rights factors to be folded into other types of impact assessments. Further, how this incorporation should or could be done is a different project. If, in due course, we were to find that the human rights considerations could not be folded into existing methodologies, then we would then propose a self-standing methodology. That, however, is for a future discussion beyond the current study.

The objective of proposing this right-to-health approach is to aid governments in complying with their legal obligations to progressively realize the right to health. Governments do so by assessing the potential right-to-health impacts of proposed policies in order to modify them, if necessary, in a manner that will best ensure the right to health for all. The right-to-health framework proposed here is, as noted, specifically aimed at impact assessments undertaken by governments as an integral part of the policy-making process.

Here, we are also focused on government policies directed to reforms within their own jurisdictions, as opposed to those frameworks for human rights impact assessments that have focused on foreign direct investment or trade-related policy-making. Further, we are particularly interested in impact assessments that predict potential consequences, direct or indirect, of a proposed policy, and thus are intended to inform policy making. We are not focused here on evaluating impacts of policies that have already been implemented, although most of the framework would apply to such evaluations as well.

Finally, the right-to-health approach proposed here is a work in progress and will, we hope, be revised and developed further in the future in response to feedback and the continuing dialog on human rights impact assessment. In a similar vein, we note that in any case in which a right-to health impact assessment is carried out, any approach will need to be modified by the assessor to fit the policy proposal as well as the local circumstances. No approach will fit every situation without some modification. With the understanding that this is intended as a contribution to the ongoing discussion on human rights impact assessment, we turn now to our proposed approach.

### *1. Seven General Principles for Rights-Based Impact Assessments*

Any impact assessment, as part of the government policy-making process, should be undertaken in a human-rights respecting manner. Our approach for right-to-health impact assessment is based on the right-to-health concepts outlined above, which are also fundamental human rights principles. The following general principles reflect a rights-based approach to performing impact assessments:

**(1) Explicit Human Rights Framework:** A rights-based approach to impact assessment must be explicitly based on a human rights normative framework.<sup>146</sup> The right-to-health approach developed here is based on ICESCR Article 12 and the Committee’s General Comment 14 defining the normative content of Article 12. In selecting the appropriate human rights normative framework, States should look to the specific human rights treaties that they have ratified as well as international consensus documents pertaining to the particular subject of the policy.

**(2) Progressive realization:** A rights-based approach also demands that the State take deliberate steps to progressively realize the right to health as expeditiously and effectively as possible.<sup>147</sup> Impact assessment provides States with the methodology to do so. Integrated into policy-making processes, rights-based impact assessment aids the State in selecting, from among policy alternatives, those policies that will most expeditiously and effectively realize the right to health. Rights-based impact assessment will also ensure that the State is aware when a proposal is likely to impede the right to health, and thus, can take measures to mitigate or compensate for such impacts, avoiding any measures that might be considered retrogressive or otherwise in violation of legal obligations.

**(3) Equality and non-discrimination:** Rights-based impact assessment means the principles of equality and non-discrimination must be considered at all stages and in all aspects of the impact assessment. For example, the principle of non-discrimination requires States to consider the likely impacts of proposals on different groups to ensure that a policy does not adversely affect a protected group. To do such analysis will require disaggregated information on potential impacts. Further, people must be able to hold the State accountable for any illegal discrimination in the assessment process. The principle of equality requires States to consider alternatives that could be more effective in promoting equality, including devoting more resources to areas with the greatest potential to benefit poor people.<sup>148</sup> It also means that all people must be encouraged to participate in the impact assessment.

**(4) Participation:** Rights-based impact assessment requires participation by all stakeholders. To ensure meaningful participation requires providing all stakeholders with information on the proposed policy and promoting the free exchange of ideas concerning the proposal. Effective participation also means that the people affected are heard, have the opportunity to influence decision-making and feel empowered by taking part in the decision-making; in sum, it means that they are able to exercise their rights to take part in the conduct of public affairs. This will require the State to encourage participation by both women and men, and by marginalized people, including people living in poverty, and to ensure that all their voices are heard. It also requires the impact assessment process to be transparent and accessible to all.<sup>149</sup>

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<sup>146</sup> See OHCHR Draft Guidelines, supra note 36, ¶ 52 (Poverty Reduction Strategies must be informed by the State’s national and international human rights commitments). For example, the Rights & Democracy initiative is based on the UN Norms for Business, and the HOM instrument is based on CEDAW and ICESCR, specifically, Article 12.

<sup>147</sup> See CESCR General Comment 14, supra note 112, ¶ 31 (States have “a specific and continuing obligation to move as expeditiously and effectively as possible toward the full realization of article 12” of the ICESCR on the right to health.).

<sup>148</sup> OHCHR Draft Guidelines, supra note 36, ¶ 9.

<sup>149</sup> See generally, Rights & Democracy Human Rights Impact Assessment, supra note 66, unpaginated (taking this approach to participation in human rights impact assessment).

**(4) Information:** Rights-based impact assessment also requires the to State provide information on the proposed policy and on the process of the human rights impact assessment to all stakeholders. All parties potentially affected by the policy must be fully informed in order to meaningfully participate in the impact assessment and to effectively hold the State accountable for the impact assessment. The right to information also means that States must respect the freedom of everyone to seek and receive information, to freely discuss the proposal, to organize without restrictions, and to propose options for avoiding or minimizing adverse impacts on rights and alternatives that could enhance rights.<sup>150</sup>

**(6) Accountability:** A rights-based approach also demands accountability. Thus, States must ensure that stakeholders are advised of the rights and obligations relevant to a rights-based impact assessment process and of mechanisms of accountability that are available to them. These mechanisms must be accessible, transparent and effective. People must be able to hold duty-bearers accountable for the process of the impact assessment should it fail to respect their human rights.

**(7) Interdependence of rights:** A rights-based approach also recognizes the interdependence of rights – the fact that the enjoyment of some rights is dependent on or contributes to the enjoyment of others.<sup>151</sup> It also recognizes that impact assessments aimed at progressively realizing the right to health and thereby reducing poverty must reflect the interdependence of all human rights, economic, social, cultural, political and civil. As poverty is defined in terms of all these rights, a rights-based approach must encompass them all.<sup>152</sup>

These seven principles are fundamental for the process of human rights impact assessments undertaken by governments as an integral part of the policy-making process. The next section focuses on the right-to-health aspects of impact assessment.

## *2. Six Steps for Integrating the Right to Health into Impact Assessments*

The following six steps are offered as a contribution to discussion on integrating human rights concerns into an existing impact assessment process. The purpose of including human rights in impact assessment is to ensure that the State considers human rights in its policy-making in order to comply with its legal obligations to progressively realize human rights. While we are concerned with incorporating all human rights into impact assessment and policy-making, for purposes of illustration, we begin here with suggestions for incorporating the right to health.

At each step in this section, we refer to the corresponding step in impact assessment, if there is a corresponding step. We also provide, in the annexes to the report, checklists, guideline questionnaires, suggestions for presenting information to the public and for including the public in the impact assessment process and in policy-making. Not all the factors listed below, however, will be relevant to a given proposal, and some proposals will require more in-depth consideration on one or more

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<sup>150</sup> See OHCHR Draft Guidelines, *supra* note 36, ¶ 10-11.

<sup>151</sup> *Ibid.* ¶ 11.

<sup>152</sup> See *ibid.* ¶ 12.

of these factors. Thus, the following steps are offered merely as a guide that would in most cases need to be modified to fit the particular State, its specific human rights obligations, the policy under consideration and the type of impact assessments being undertaken as part of the policy-making process.

### **Integrating the Right to Health into Impact Assessments**

<b>OVERVIEW</b>	Step 1: Preliminary Check Step 2: Assessment Plan Step 3: Information Collection Step 4: Rights Analysis Step 5: Debate Options Step 6: Decision and Evaluation
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## Step 1: Preliminary Check

At this Step, the government should consider whether the proposed policy may have any potential right-to-health implications.<sup>153</sup> The purpose of this Step is to determine whether or not the proposal requires a full-scale right-to-health impact assessment. At the conclusion of this Step, the government should conclude whether the assessment is complete or whether to proceed to Step 2.

For every policy proposal, the government should consider whether there is any potential impact on the right to health. To do so, the government must be aware of its right to health commitments. Thus, at this stage, the government should identify the proposed policy that it is considering, the human rights treaties it has ratified that include the right to health and the national laws concerning the right to health. It should then do a preliminary check to consider whether the proposed policy is likely to impact upon any aspect of the right to health. In summary, the government should ask:

- What is the policy under consideration?
- What are our key international human rights treaty obligations?
- What are our key national human rights laws?
- Does this policy have any potential right-to-health impacts?

It will be helpful to have a summary checklist for the right to health against which the government can compare the proposal. The details of the checklist will depend upon the human rights framework that the government elects to use to ensure that its policies comply with its international and national human rights obligations. To create such a checklist, the government may look to the specific human rights treaties that it has ratified as well as to international consensus documents.

In ANNEX 1, we present an example of such a checklist for the right to health based upon Article 12 of the International Covenant on Economic, Social and Cultural Rights on the right to health and General Comment 14 of the Committee on Economic, Social and Cultural Rights, which explains the contents of Article 12. The basic right-to-health framework used for this checklist is set forth in more detail above in section IV-B. If responses to the checklist indicate that there are no potential right-to-health impacts from the policy, then the assessment is completed at Step 1. If, however, the responses indicate that there may be right-to-health impacts from the policy, then the government should proceed to Step 2.

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<sup>153</sup> This step – determining whether or not a proposal should be subject to a full impact assessment – is often called “screening” by impact assessment professionals. See, e.g. IAIA Environmental Impact Assessment, *supra* note 15, at § 2.3. It is similar to the Quick Scan in the HOM instrument, which provides a list of question to help the organization decide if and to what purpose to undertake the health rights analysis. It is also similar to the NORAD handbook, which essentially analyzes whether a full scale human rights impact assessment is necessary. Here, the government does a quick examination of the policy to determine whether there may be any potential right-to-health implications, in order to decide whether a full right-to-health assessment is necessary or not.

## Step 2: Assessment Plan

At this Step, the government should prepare a plan for a participatory human rights-based impact assessment.<sup>154</sup> The purpose of this Step is to provide a work plan for the impact assessment to guide the research team and to allow the public to follow the process. This Step also involves preparing the terms of reference for the impact assessment against which the State may be held accountable. At the end of this Step, the government will have a plan for the impact assessment and will have informed stakeholders on the policy proposal, the assessment plan and the rights involved.

If the preliminary check in Step 1 reveals that the proposed policy has potential right-to-health impacts, the government should plan for a participatory rights-based impact assessment process. This preparatory work involves at minimum:

- deciding who will perform the assessment
- drafting a work plan for the assessment
- preparing time table for the assessment
- identifying the stakeholders
- preparing the information in appropriate formats to provide to stakeholders
- identifying the issues most likely to be the subjects of the investigation

The State should inform stakeholders, at minimum, on:

- the *proposed policy*, any alternatives that have been or are being considered and potential right-to-health impacts already identified
- the fact that a rights-based *impact assessment* is being undertaken, an explanation of what is rights-based assessment and how stakeholders may participate in the assessment
- the *right to health*, its normative content and the States obligations under international and national human rights law
- the *formal mechanisms* through which their views and proposals will be heard and considered and through which the State may be held accountable

The illustrative tables in ANNEX 2 may be helpful in providing stakeholders with an overview of the six steps of the impact assessment, indicating the points at which they will be invited to participate in the process (Step 2: Time Table); to inform stakeholders on the seven principles of a rights-based impact assessment (Step 2: What is a Human Rights-Based Impact Assessment?); and to explain to stakeholders the normative content of the human rights – in this case the right to health – that will be considered in the assessment (Step 2: What is the Right to Health?) .

This information, as well as an explanation of the policy under consideration, should be provided in a form and language that is understandable to everyone, and particular attention should be given to ensuring that the information reaches both women and men, as well as vulnerable and marginalized people, including people living in poverty. All stakeholders must be informed and encouraged to participate in the impact assessment process as well as in the policy decision-making.

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<sup>154</sup> This step may be called “scoping” and/or the “terms of reference for the impact assessment” by impact assessment professionals. It corresponds, in general, to Step 1 in the HOM instrument.

### Step 3: Information Collection

At this Step, the government should collect information and views on the potential right-to-health impacts of the proposed policy.<sup>155</sup> The purpose of this Step is to identify and predict the likely human rights impacts of the proposed policy. This is the core of the impact assessment process, the so-called “impact assessment proper.” At the conclusion of this Step, the government will have compiled information from a variety of sources on the likely right-to-health impacts of the proposed policy and on potential avenues for improving the proposal from a right-to-health perspective.

Information on the potential right-to-health impacts of the policy should be collected from, among others:

- experts on the right to health, health professionals, human rights organizations
- experts on the subject of the policy (for example, experts on tax, transportation or education)
- data on the health of the people likely to be affected by the policy from books, reports, websites, nongovernmental organizations, international organizations and national sources of health statistics
- reports the government has prepared on its right-to-health obligations to submit to the Committee on Economic, Social and Cultural Rights or to comply with its national health strategy and plan of action
- people likely to be affected by the policy, including people who are the target of the policy, people who will be unintentionally affected and people who are employed to implement the policy or have been employed to implement related policies<sup>156</sup>
- other reports that have been prepared on this policy or related policies

It may be helpful to begin with collecting previously prepared reports, data and health information, followed by consulting with experts and then the people affected. In this way, the government would have background information before seeking more specialized information from experts and then have more comprehensive information to share with people potentially affected that could inform the interviews with them. In addition, interviewers should be trained in right-based interviewing principles, such as ensuring that people interviewed understand the purpose of the assessment and how the information they provide will be used.<sup>157</sup>

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<sup>155</sup> This step may also be called “documenting”, “impact assessment” or “impact analysis” by impact assessment professionals. See, e.g. IAIA Environmental Impact Assessment, *supra* note 15, at § 2.3 (“impact analysis”). This step corresponds to Step 4 in the HOM instrument, which involves assessing the impact of the policy on women’s health rights. It also corresponds to Steps 4, 5 and 6 of the Rights and Democracy initiative, which involve seeking expert opinions, interviewing representatives of all stakeholders and verifying information. These three steps together are considered “application of the methodology.”

<sup>156</sup> These three categories of people affected are recognized in the NORAD handbook, *supra* note 66, at 23 (intended beneficiaries, employees and others affected).

<sup>157</sup> The Rights & Democracy Human Rights impact Assessment Initiative provides a useful list of ten factors for all interviewers to follow: (1) use someone who is trusted by the respondent to do the interview, (2) use local languages or independent translation services when interpretation is required, (3) keep a detailed record (ideally audio recording) for future reference, (4) ensure that the interview takes place in a safe and familiar location, (5) ensure that respondents understand the HRIA exercise and how their information will be used, (6) protect confidential sources as requested, (7) take steps to

It may also be helpful again to use a right-to-health framework for collecting the information on the potential impacts of the policy, including preparing interview guidelines and focus-group agendas based on the framework. Using the right-to-health framework would ensure that information is sought on all aspects of the right to health, including the AAAQ of health care services and underlying determinants, progressive realization, core obligations, non-discrimination and equality, participation and accountability. In seeking information, however, questions should usually be open-ended, at least at the beginning of the interview, to ensure the opportunity to provide assessors with new or alternative information and ideas.

In ANNEX 3 there are illustrative questionnaires to guide the research team through Step 3. Not all of the questions will be applicable to a particular policy and some areas will require more follow-up and in-depth questioning. For example, if the policy relates to the privatization of water distribution, it will likely have more impacts on provision of the underlying determinants of health than on provision of health care. Thus, additional questions will be required to examine more closely the specific types of impacts that may be the consequence of the policy. On the other hand, if the policy relates to displacement of a village, for example, the impacts will be widespread and detailed questions would be required for each of the areas in the questionnaires in ANNEX 3.

In the guideline questionnaires in ANNEX 3, it is also important to consider the likely impacts of the policy on different areas of the country – such as rural and urban areas or poor and rich localities. It is also important to consider the likely impacts of the policy on different groups of people – such men and women, older and younger persons, poor people, minorities and so on. Thus, information collected should be disaggregated on the basis that would be relevant in the particular country and for the particular policy. Nonetheless, we suggest that, in general, information on the likely right-to-health impacts of a policy should be disaggregated, at minimum, on the basis age, sex, race, ethnicity, rural/urban and socio-economic status.

Finally, it is important here to note again the different levels of participation: (1) whether there is full participation – including consultation with the people likely to be affected – in the assessment, (2) whether there was participation – including consultation with the people likely to be affected – in designing the proposed policy, and (3) whether the proposed policy will enhance participation in decision-making on health issues in the future. For purposes of collecting information on the potential impact of the policy on the right to health, it is important to take affirmative action to seek out views of both women and men, and marginalized people, including people living in poverty. As the goal of the right-to-health aspects of the impact assessment is to ensure that the right to health is progressively realized through policy-making, including the goals of non-discrimination and equality, it is essential to consider the views of people whose health is most at risk in our communities.

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protect informants who are at risk, (8) share drafts of how the information has been used and offer respondents a chance to comments, and (10) ensure that all respondents receive final report. Although this list was intended for civil society actors conducting interviews to assess foreign direct investment projects, it provides some useful guidance for purposes of this project as well, particularly as many health issues are sensitive topics to discuss with people.

## Step 4: Rights Analysis

At this Step, the government should perform a rights-based analysis by comparing the information collected on potential right-to-health impacts with the State's legal obligations for the right to health.<sup>158</sup> Based on this comparison, the government should consider how the policy could be improved from a right-to-health perspective and whether mitigating measures or compensation are necessary. The purpose of this step is to ensure that the proposed policy is consistent with the State's right-to-health legal obligations, that it enhances the right to health in every manner possible, and that the best policy choices are presented to the public. At the conclusion of this step, the government will have generated a draft impact assessment report based on the rights analysis.

For a rights analysis, the government should organize the information collected in a manner that demonstrates the links between human rights obligations and the potential impacts of the policy. This information is then presented in a draft report based on the rights framework. For this right-to-health case study, the draft report would (1) summarize the government's right-to-health obligations under national and international law, (2) summarize the proposed policy, (3) list the likely impacts of the proposed policy on the right to health, (4) compare the right-to-health obligations to the list of likely impacts to identify any inconsistencies, (5) generate alternatives with more potential for enhancing the enjoyment of the right to health, (6) suggest mitigating measures or compensation that may be necessary to comply with right-to-health obligations, and finally, (7) present the best policy choices from a right-to-health perspective.

In doing the rights analysis, some policy choices may be discarded because clearly better alternatives exist from a rights perspective. In other cases, some policy choices will clearly be better than others to enhance the right to health. In some circumstances, however, the choices will not be so clear or easy – there will be no easy right-to-health answers – and alternatives, trade-offs, mitigation and compensation will have to be considered.

Organizing the information collected to correspond with the government's right-to-health obligations should also make evident any areas where information is absent. For example, is there disaggregated information so that potential impacts on different groups with respect to all factors are part of the analysis? Or, is there information on how the policy will enhance or hinder participation by marginalized groups in health policy decision-making? Or, does the policy include mechanisms that will ensure accountability? Using the right-to-health framework will ensure that most, if not all, aspects of the right to health are taken into consideration.

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<sup>158</sup> This part of Step 4 is unique to human right impact assessment. It is essentially the legal analysis in which the laws – or the human rights obligations – are applied to the facts – the likely impacts of the proposed policy – in order to determine which policy alternatives would be best to comply with legal obligations and realize human rights. There is no comparable step in other types of impact assessment. This Step corresponds to Step 5 in the HOM instrument, which requires drawing the links between the government's human rights commitments and the potential impacts of the proposed policy. In addition to the legal analysis, this Step also involves preparing the draft report, which is often called "reporting" by impact assessment experts.

For the purpose of illustration, we assume again that the State has ratified ICESCR and that the Article 12 normative framework for the right to health is therefore applicable. This framework could again serve to organize the information collected in a manner that corresponds to the State's legal obligations for the right to health, including the AAAQ of health care services and the underlying determinants of health, and the six concepts crucial to the right to health: progressive realization, core obligations, non-discrimination and equality, participation and accountability.

Based on this rights analysis, the government should be able to answer the following questions in the draft impact assessment report:

- Is the policy consistent with the government's right-to-health obligations under international and national law?
- Is the policy consistent with the government's national health strategy and plan of action?
- Does the rights analysis of the policy reveal any potential right-to-health violations?
- How can the policy be modified to prevent any right-to-health violations?
- Are any mitigating measures necessary?
- Is compensation to people adversely affected necessary?
- Could this policy better promote the right to health?
- What modifications should be considered to improve the right-to-health impacts?
- What are the alternative policy choices to the proposed policy that would better enhance enjoyment of the right to health?

The tables in ANNEX 4 provide guidance for analyzing the links between the potential impacts of the policy and the government's right-to-health obligations. In most cases, the rights framework for the analysis will need to be developed in more detail for the particular right-to-health aspects that are at issue for the particular policy. On the other hand, the proposed policy may present no potential impacts on other aspects of the right to health. In other words, the guidance in ANNEX 4 provides an overall right-to-health framework that will require modification depending on the right-to-health obligations of the particular country and the specific policy that is under consideration.

In sum, the rights-based analysis should provide the government with a framework for including human rights in the policy-making process, for improving policy-making from a rights perspective and for complying with its obligation to progressively realize the right to health. The rights analysis also serves as the rights-based rationale for the policy choices that the government makes.

## Step 5: Debate Options

At this Step, the government should circulate a draft report on the rights analysis to all stakeholders, engage them in debating the alternatives and welcome comments and advice from everyone.<sup>159</sup> The purpose of this step is to announce the results of the impact assessment, make recommendations and then hear from all stakeholders with a view to improving the policy from a rights-based perspective. At the conclusion of this step, the government should have taken into consideration the views of all stakeholders and be prepared to adopt the policy that will best realize human rights.

In Step 5, the government distributes a draft report, including the results of the impact assessment, the rights-based analysis, the recommendations and the policy options. In all circumstances, the analysis or comparison prepared above should be made available to all stakeholders in a form that clearly shows the policy choices from a right-to-health perspective. In some cases, the right-to-health analysis will plainly indicate that the right to health would best be promoted by (1) the policy as proposed; (2) the policy with certain modifications; or (3) alternatives to the proposed policy. In such cases, distributing the rights analysis draft report may complete the assessment by indicating the best policy choice and providing the rationale. Of course, continuing evaluation of the implementation and mechanisms for further feedback then come into play.

Unfortunately, the analysis will not always show such a clear-cut answer. In cases where the right-to-health framework does not provide any clear answers, the rights analysis will provide one of the bases for informing stakeholders of the decisions and trade-offs that must then be made. Here, the government turns again to the people affected to receive comments on the draft report and to hear their views on which trade-offs should be made, what mitigating measures are necessary and what compensation will be due. In sum, where the analysis reveals that there are difficult policy choices to be made, the government should provide the opportunity for stakeholders to participate in making those choices based on the government's rights-based analysis as well as information and analyses provided by civil society.

Indeed, full participation in policy-making requires an active and engaged civil society. Thus, the government should also provide the data and the analysis to civil society organizations, welcome their comments on the draft report and encourage their participation in the impact assessment and the policy-making processes. If the government has respected and encouraged their development and participation, these organizations will have prepared other own analyses and reports to inform stakeholders, which may provide alternative views to the one prepared by the government, enriching the debate and analysis. Often civil society organizations will be able to access information, ideas and views that may be more difficult for the government to obtain, but will be crucial to gaining a full understanding of the

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<sup>159</sup> This step may be called "reporting" by impact assessment professionals. Not all impact assessments include an opportunity for public comment on a draft report. From a rights-perspective, however, it is crucial that the stakeholders have an opportunity to review the government's findings and conclusions, give feedback on the draft and offer their advice. In the Rights & Democracy Initiative, which pays particular attention to the participation aspect of a rights-based impact assessment, Step 7 involves the development and circulation of the draft report.

potential impacts of a policy. This is particularly true where the people likely to be affected by the policy – for example – undocumented workers – are not willing to participate in the government impact assessment process due to the associated risks.

In addition, the government should ensure that the draft report is circulated to women and men, marginalized people, particularly people living in poverty and people most likely to be adversely affected by the policy. The results and recommendations should also be summarized and presented in local languages and alternative formats to inform and encourage participation by everyone. Further, the government should welcome comments from all parts of society with a view to improving the policy from a rights-based perspective. Through this process the community or country is involved in the decision-making, and this builds both capacity for rights-based analysis and ownership of the policy decisions.

In sum, Step 5 involves informing stakeholders of a right-to-health perspective on the policy proposal and engaging them in considering the choices, generating alternatives, suggesting improvements, balancing trade-offs, debating options and recommending mitigating measures or reparations – in other words, including stakeholders in the policy-making process.

## Step 6: Decision and Evaluation

At this Step, the government makes the final decisions, adopts a policy, provides a rationale for the decision, plans for implementation and establishes mechanisms for evaluation of the policy and its implementation.<sup>160</sup> The purpose of this Step is to complete the impact assessment and the policy-making and to plan for implementation and evaluation. At the conclusion of this step, all this information should be detailed in a final report that is made available to all stakeholders.

In this Step, the government makes the final decisions and rejects or adopts the policy with or without modifications and mitigation measures. The government also provides a rationale for its decision. The rights-based assessment process and the rights-based analysis should provide the government with a rights-based rationale for the policy decisions it makes. This step also involves formulating a plan for implementing the policy and a framework for the ongoing evaluation of the impacts of the policy and its implementation. Evaluation mechanisms should be participatory, requiring information on the impacts of the policy to be made available and accessible to all stakeholders and providing opportunities for people to give feedback on the impacts of the policy and its implementation, the effectiveness of mitigating measures and recommendations for improvements.

All of this information should be detailed in the final report of the impact assessment. In summary, the final report should include:

- the policy as first proposed
- the relevant national and international human rights law
- the relevant governmental human rights obligations
- the results of the impact assessment and the rights analysis
- the comments received on the draft report
- various alternatives and/or modifications considered
- an evaluation of the policy choices
- the final policy adopted
- a rights-based rationale for the policy choices made
- a plan for implementing the policy
- the framework for continuing evaluation of the policy and its implementation

The final report should be available to all stakeholders, and therefore should be produced in local languages and alternative formats. The report forms the basis for government accountability for any rights violations resulting from implementing the

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<sup>160</sup> This step may be called “monitoring and evaluation” by impact assessment professionals. Some forms of impact assessment may divide this step into two separate steps. For example, environment impact assessment differentiates “decision-making”, which involves approving or rejecting the proposal and establishing the terms for implementation, and “follow up”, which involves monitoring the impacts and the effectiveness of mitigation measures. See IAIA Environmental Impact Assessment, *supra* note 15, at § 2.2. The Rights & Democracy Initiative includes “Step 9 - Final Report”, involving agreeing on the final report and making it available, and “Step - 10 Monitoring and Ongoing Evaluation”, which involves ongoing monitoring of the impacts and setting up a channel for communication of concerns. We have combined these two steps here as we believe that the final report developed and distributed at this Step should include both (1) the final decisions with rationale, and (2) the framework and mechanisms for continuing evaluation and feedback.

policy. The government should be able to rely upon this report to show that it made every effort to progressively realize human rights in adopting this policy, and the people should be able to rely upon this report to hold the government to the policy choices that best promote human rights, particularly for people living in poverty and other marginalized people.

The final task is to evaluate the impact assessment process and to consider how human rights could be better promoted in future impact assessments and policy-making. For this evaluation also, it would be helpful to hear the views of the people who participated in the assessment, both the researchers and the stakeholders in the policy decision. The final report could also include recommendations for future human rights impacts based on this evaluation.

## **V. Conclusions and Follow Up to this Report**

Human rights impact assessments will help States ensure that their policy-making is guided by the legal obligations that they have undertaken with respect to human rights. And by realizing human rights, States will alleviate poverty. Indeed, poverty has been defined as deprivation of the resources, capabilities, choices, security and power necessary to enjoy human rights. In particular, the right to health is central to the government's obligation to realize human rights and to alleviate poverty. Health is crucial to the exercise of other rights, such as the right to work or the right to education, and other rights are crucial to health, such as the rights to food, housing and health information. Health and poverty are also closely linked. Ill health is both a cause and a consequence of poverty. Thus, the States obligations toward human rights, health and poverty alleviation are all inter-dependent.

The approach developed in this report is intended specifically for governments to use in performing impact assessments to predict the likely human rights, or more specifically right to health, consequences of a proposed policy in order to make modifications or choose alternatives that would ensure more right-to-health benefits. The assessment process itself should be rights-based, providing opportunities for people to learn about and exercise their human rights. A rights-based process also provides opportunities to make decision-making more transparent, to encourage debate on policy reform, to build capacity for policy analysis, and to develop community ownership of policy choices.

The human rights impact assessment should also be based on a normative framework, which in this case study is the right to health guaranteed by Article 12 of the ICESCR and clarified in General Comment 14 of the Committee on Economic, Social and Cultural Rights. This framework should be integrated into all aspects of the assessment. It should be applied: (1) to determine whether there is any potential right-to-health issue raised by a proposed policy that requires further assessment; (2) to plan for the participatory human rights-based assessment process; (3) to collect information on the potential right-to-health impacts of the proposed policy; (4) to compare these potential impacts to the State's right-to-health obligations; (5) to share this right-to-health analysis with stakeholders to inform debate on policy choices; and (6) to provide a rights-based rationale for the policy adopted.

We hope this report will contribute to the development of methodologies and tools for governments to perform human rights impact assessment as part of their policy-making process. There is, however, much more work to be done in this area. Below we list some suggestions for follow up to this report and for future work on human rights impact assessment.

### **A. Special Rapporteur on the Right to the Highest Attainable Standard of Health**

The Special Rapporteur supervised production of this monograph and plans to follow up on right-to-health impact assessment by:

- summarizing this report in one of his formal annual reports to the UN General Assembly or the UN Human Rights Council

- posting this report on the Right to Health Unit website at the University of Essex, and with the permission of UNESCO, posting the full monograph on this website
- advocating on country missions for incorporation of right-to-health impact assessment as part of all policy-making
- using this monograph, with the permission of UNESCO, to illustrate to States how the right to health could be incorporated into other forms of impact assessment that the State is already carrying out
- informing ministries of health about this monograph and recommending it for use in lobbying for right-to-health impact assessment in all policy-making

## **B. Other Suggestions for Follow up to this Report**

Subject to obtaining additional funding, there are several other possible follow-up activities that could include:

- distributing this report more widely for comment and as a basis for obtaining recommendations for follow up activities
- holding a workshop to present this report, discuss the ideas herein and consider recommendations for moving forward
- presenting this report at the annual meeting of the International Association for Impact Assessment in 2007 and advocating for human rights impact assessment to be included as a topical field at the annual meetings

## **C. Methodologies for Human Rights Impact Assessment**

In this report, we outline considerations for integrating human rights, and more specifically the right to health, into other types of impact assessment. There are good reasons for taking this approach, including the generally accepted notion that human rights should be mainstreamed into governmental policies and procedures. There are also good reasons for developing self-standing human-rights or right-to-health impact assessments, including the difficulties that may be found in implementing the mainstreaming approach. These issues require more consideration:

- Is it possible to integrate human rights into other types of impact assessments?
- Even if it is possible to integrate human rights into other types of impact assessment, is this feasible?
- Is it preferable to integrate human rights into other types of impact assessments or to develop separate human rights impact assessment methodology?

There are advantages and disadvantages to both approaches, as noted above, and thus these issues will require further consideration.

#### **D. Case Studies on Integrating Human Rights into Impact Assessment**

While these questions are debated at a theoretical level, it would also be helpful to go one step further with the approach outlined in this monograph by undertaking some case studies to determine whether it is possible and feasible to integrate human rights into other types of impact assessments. For example, case studies should be undertaken on incorporating the right-to-health into various types of impact assessment in order to evaluate the approach of mainstreaming the right to health into impact assessment. If it turns out that it is not possible or not feasible to integrate human rights – or more specifically the right to health – into other impact assessment methodologies, then developing self-standing human rights impact assessment will be necessary.

More specifically, however, case studies are also needed to determine (1) whether the steps outlined herein for incorporating human rights into impact assessment methodologies can be implemented, (2) what problems are encountered in doing so, (3) how the steps outlined herein could be improved and further developed, and (4) whether this approach will improve impact assessment methodology, policy-making and policy implementation from a human rights perspective. These cases studies are also work for the future.

#### **E. Practical Tools for Incorporating Human Rights in Impact Assessment**

To integrate human rights, or right-to-health, considerations into impact assessment, it is helpful to have checklists, interview guidelines, tables for collecting information, and charts that clarify the links between potential impacts and human rights or right-to-health obligations. This monograph begins to develop these tools, however, there is much more to be done in this respect. Further development of these tools is another important project for the future.

Another question raised by this study concerns the extent to which human rights impact assessment should be applied at the policy-making level or at the program and project level. Here, we have presented considerations for integrating human rights into policy-making, but we believe that it is also important for governments to perform human rights impact assessments for proposed projects and programs. Future work is also needed to develop tools for governments to perform human rights impact assessments, or to integrate human rights into impact assessments, for projects and programs.

#### **F. Lobby for Human Rights in Impact Assessment**

Finally, if human rights are to be incorporated into other types of impact assessments, human rights professionals will need to promote this idea and the tools for its implementation with both governments and impact assessment professionals. The Special Rapporteur is planning to use this monograph to promote the integration of human rights into impact assessment when he goes on country missions. In particular, ministries of health may find it helpful in their efforts to lobby other

governmental departments to consider health and right-to-health consequences of their policies. Ministries of development may also be key to mainstreaming human rights into impact assessment.

We will also need to lobby impact assessment professionals. To carry out case studies to test the integration of the right to health into impact assessment, the participation of impact assessment professionals in other fields will be essential. Health impact assessment, environmental impact assessment and social impact assessment are all good candidates for such cases studies because they already involve many of the same concerns for health and human rights. This work will require interdisciplinary collaboration, which is a key feature of the mainstreaming approach. If this approach is determined to be feasible, we will need to lobby impact assessment professionals in all fields to fully implement the proposal. One place to lobby for integrating human rights in impact assessment is the annual meeting of the International Association of Impact Assessment. Another important link is the health impact assessment work of the World Health Organization.

Crucial to this lobbying work will be developing links between organizations, groups and people interested in and doing work on human rights impact assessment. These links are now being made in various ways, including, notably, by the Human Rights Impact Resource Centre, which is collecting information and resources on human rights impact assessment and making it available to the public on their website: [www.humanrightsimpact.org](http://www.humanrightsimpact.org). This resource is a major step forward for human rights impact assessment. We hope that others will contribute by making their work on human rights impact assessment available through this resource.

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## ANNEX 1

### Step 1: Preliminary Checklist

AAAQ	Health goods, facilities and services	Underlying determinants
Availability	Is the proposed policy likely to enhance or jeopardize the <i>availability</i> of health goods, facilities and services in the State?	Is the proposed policy likely to enhance or jeopardize the <i>availability</i> of clean water, adequate sanitation, safe housing, food and nutrition, education, fair employment conditions and/or a healthy environment?
Accessibility	Is the proposed policy likely to enhance or jeopardize the physical and economic <i>accessibility</i> of health goods, facilities and services?	Is the proposed policy likely to enhance or jeopardize the <i>accessibility</i> of clean water, adequate sanitation, safe housing, food and nutrition, education, fair employment conditions and/or a healthy environment?
Acceptability	Is the proposed policy likely to enhance or jeopardize the ethical and/or cultural <i>acceptability</i> of health goods, facilities and services?	Is the proposed policy likely to enhance or jeopardize the <i>acceptability</i> of clean water, adequate sanitation, safe housing, food and nutrition, education, fair employment conditions and/or a healthy environment?
Quality	Is the proposed policy likely to enhance or jeopardize the <i>quality</i> of health goods, facilities and services?	Is the proposed policy likely to enhance or jeopardize the <i>quality</i> of water, sanitation, housing, food and nutrition, education, employment conditions and/or the environment?
<b>Six Concepts</b>		
Progressive Realization	Is the proposed policy likely to enhance or jeopardize the <i>progressive realization</i> of the right to health goods, facilities and services?	Is the proposed policy likely to enhance or jeopardize the <i>progressive realization</i> of the rights to clean water, adequate sanitation, safe housing, food and nutrition, education, fair employment conditions and/or a healthy environment?
Core Obligation	Is the proposed policy likely to enhance or jeopardize the <i>core obligation</i> for the right to health care, including a national health strategy and plan of action and essential primary health care and medicines?	Is the proposed policy likely to enhance or jeopardize the <i>core obligation</i> for the underlying determinants of health, including a national health strategy and plan of action and minimum levels of water, food, housing and sanitation?
Equality and Non-Discrimination	Is the proposed policy likely to enhance or jeopardize <i>equality and non-discrimination</i> in provision of health goods, facilities and services?	Is the proposed policy likely to enhance or jeopardize <i>equality and non-discrimination</i> in provision of the underlying determinants of health, including clean water, adequate sanitation, safe housing, food, education, fair employment conditions and/or a healthy environment?
Participation	Is the proposed policy likely to enhance or jeopardize <i>participation</i> of the population in all decision-making related to health goods, facilities and services that affects them?	Is the proposed policy likely to enhance or jeopardize <i>participation</i> of the population in all decision-making related to the underlying determinants of health that affects them?
Information	Is the proposed policy likely to enhance or jeopardize government dissemination of <i>information</i> related to health goods, facilities and services and the rights to seek and impart such information?	Is the proposed policy likely to enhance or jeopardize government dissemination of <i>information</i> related to the underlying determinants of health and the rights to seek and impart such information?
Accountability	Is the proposed policy likely to enhance or jeopardize <i>accountability</i> for the right to health goods, facilities and services?	Is the proposed policy likely to enhance or jeopardize <i>accountability</i> for rights to the underlying determinants of health?

## ANNEX 2

The following three tables for Step 2 illustrate how the information on rights-based impact assessment and the right to health might be presented to stakeholders in pamphlets, brochures or flyers.

### Step 2: Time Table

<b>STEP #</b>	<b>ACTIVITY</b>	<b>OBJECTIVE</b>	<b>PARTICIPATION</b>	<b>DATES</b>
<b>Step 1</b>	Preliminary check	To consider whether the proposed policy may have any impacts on the right to health that would indicate a need for a full-scale rights-based impact assessment.	Announce to public decision on whether proposed policy will be subject to full-scale impact assessment.	From:  To:
<b>Step 2</b>	Assessment plan	To prepare an assessment plan of action and time table for the research team and the public to follow and against which the State may be held accountable.	Inform stakeholders on <ul style="list-style-type: none"> <li>• proposed policy</li> <li>• impact assessment</li> <li>• time table</li> <li>• formal mechanisms</li> </ul>	From:  To:
<b>Step 3</b>	Information Collection	To collect information, data and views on the potential right-to-health impacts of the proposed policy from a variety of sources, including the views of all stakeholders.	Organize focus groups, interviews, public surveys and so on to gather the views of all stakeholders.	From:  To:
<b>Step 4</b>	Rights analysis	To compare and link the information collected in Step 3 on the potential impacts of the proposed policy to the State's legal obligations for the right to health and prepare a draft report.		From:  To:
<b>Step 5</b>	Debate options	To distribute the draft report with results and recommendations and engage all stakeholder in evaluating the proposed policy, options, alternatives, mitigating measures, modifications and reparations.	Distribute draft report to stakeholders and provide forums for public debate, including civil society, on the policy choices.	From:  To:
<b>Step 6</b>	Decision and Evaluation	To adopt a policy, explain how the decision was reached, provide a right-based rationale for the policy choices made, establish mechanism for implementation and evaluation.	Announce policy decision and rights-based rationale to public and explain monitoring/accountability mechanisms.	From:  To:

## Step 2: What is a Human Rights-Based Impact Assessment?

	Seven Principles of Human Rights-Based Impact Assessment
1	Use an explicit human rights framework
2	Aim for progressive realization of human rights
3	Promote equality and non-discrimination in process and policy
4	Ensure meaningful participation by all stakeholders
5	Provide information and protect the right to freely express ideas
6	Establish mechanisms to hold the State accountable
7	Recognize the inter-dependence of all human rights

These principles are applicable to human rights-based impact assessment. In this case study on the right to health, these principles are applied as follows:

(1) Use an *explicit human rights framework* – in this case a right-to-health framework as set forth on the following page.

(2) Aim for the *progressive realization* of all human rights. In this case study, the impact assessment should also specifically promote the progressive realization of the right to health by, for example, providing stakeholders with information on the right to health and engaging them in participatory policy-making on policies that may affect their right to health.

(3) Promote *equality and non-discrimination* at all stages of the impact assessment process, as well as in the data collection and analysis, paying particular attention to vulnerable and marginalized people. In this case study, particular attention should be paid to information concerning, and the views of, people whose health is most at risk in the community and to alternatives that could better promote their right to health. Which groups are at most risk will depend on the country and on the proposed policy, however, generally, poor people, people living in rural areas, women, minorities, older people, adolescents may often be most at risk.

(4) Ensure meaningful *participation* by all stakeholders by providing all with information, opportunities to be heard, and ability to influence decision-making. In the context of the right to health, researchers may wish to consult specifically with health professionals and their associations and/or with people with specific expertise on the health impacts of the proposed policy.

(5) Provide *information* to all stakeholders on the impact assessment process and on the proposed policy. For this case study, also provide information on the right to health and protect the rights to seek, receive and impart health-related information.

(6) Establish mechanisms to hold the State *accountable* for ensuring the assessment process respects human rights, and specifically the right to health here, and inform all stakeholders of these mechanisms.

(7) Recognize that, while focusing on particular human rights – in this case the right to health – all human rights are *inter-dependent*.

## Step 2: What is the Right to Health?

	<p><b>The Right to Health</b></p> <ul style="list-style-type: none"> <li>• The right to health is not the right to be healthy.</li> <li>• The right to health is the right to enjoy a variety of goods, facilities and services that are necessary to realize the highest attainable standard of health.</li> <li>• The right to health includes both health care and the underlying determinants of health, such as clean water, adequate food, safe housing and sanitation, healthy workplaces and environments, and access to health information and education.</li> </ul>
<b>AAAQ</b>	<b>Four essential elements of the right to health</b>
Available	Health goods, facilities and services must be <i>available</i> in sufficient quantity everywhere the country. This includes, for example, hospitals, clinics, trained health professionals and essential medicines, as well as underlying determinants, such as safe drinking water and adequate sanitation facilities.
Accessible	Health goods, facilities and services must be <i>accessible</i> to everyone without discrimination. They must be physically accessible, meaning within safe physical reach of all sections of the population, including people with disabilities and people in rural areas. They must be economically accessible, meaning affordable to all.
Acceptable	Health goods, facilities and services must be <i>acceptable</i> , in other words, respectful of medical ethics, including the right to confidentiality, and they must be sensitive to cultures, communities and gender.
Quality	Health goods, facilities and services must be scientifically and medically appropriate and of good <i>quality</i> . The underlying determinants of health, such as water and health education, must be of good quality too.
<b>Six concepts</b>	<b>Six concepts crucial to the right to health.</b>
Progressive Realization	The right to health is subject to <i>progressive realization</i> . This means that States must take clear steps toward realizing the right to health for all. It also means that any steps backward in relation to the right to health are presumed to be impermissible.
Core Obligation	States have a <i>core obligation</i> for the right to health that applies now. It requires, at least, essential primary health care, food, housing and sanitation and drugs. It also requires a national health strategy and plan of action; reproductive health care; immunizations; measures to prevent epidemics; and training for health professionals.
Equality and Non-Discrimination	The right to health prohibits discrimination in access to or provision of health care and the underlying determinants of health. The State must promote the equality of women and men and of vulnerable and marginalized groups.
Participation	The right to health requires <i>participation</i> by the population in all health-related decision-making at the community, national and international levels. This requires health education, the right to express views freely and transparent policy-making.
Information	Access to health <i>information</i> is also essential to the right to health. States must ensure that health information is available and accessible to all, including in local languages, and protect the right to seek, receive and impart information on health. However, personal health data must be treated with confidentiality.
Accountability	The right to health demands access to effective mechanisms of <i>accountability</i> . This includes judicial remedies at national and international levels. Victims of violations of the right to health are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition.

**ANNEX 3**  
**Step 3: Guideline Questionnaire A**  
**AAAQ Health Care**

<b>Right to Health</b>	<b>Health goods, facilities and services</b>
<b>Available</b>	Health goods, facilities and services must be <i>available</i> in sufficient quantity everywhere in the country.
	Does the policy enhance or jeopardize the availability, throughout the country, of <ul style="list-style-type: none"> <li>• health care to promote and protect physical and mental health?</li> <li>• functioning hospitals and clinics?</li> <li>• trained health professionals receiving domestically competitive salaries?</li> <li>• essential medicines as defined by the World Health Organization?</li> <li>• programs for prevention, treatment and control of epidemic and endemic diseases?</li> </ul>
<b>Accessible</b>	Health goods, facilities and services must be <i>accessible</i> to everyone on an equal basis and without discrimination.
	Does the policy enhance or jeopardize accessibility of health goods, facilities and services <ul style="list-style-type: none"> <li>• without discrimination on any of the prohibited grounds?</li> <li>• in terms of the physical distance from, and the public transportation available to access, facilities, goods and services, particularly in rural and poor areas?</li> <li>• for people with physical, sensory and mental disabilities?</li> <li>• in economic terms, including potential health care–related impacts on resource allocations, health insurance, free health care or user fees?</li> <li>• or accessibility to health information and health education?</li> </ul>
<b>Acceptable</b>	Health goods, facilities and services must be <i>acceptable</i> to everyone, respecting medical ethics and sensitive to cultures and gender.
	Does the policy enhance or jeopardize the acceptability of health facilities goods and services, specifically by respecting <ul style="list-style-type: none"> <li>• the requirement of informed consent for all medical treatment?</li> <li>• the confidentiality of personal health information?</li> <li>• the cultures of individuals, minorities, peoples and communities?</li> <li>• the perspectives and needs of women, men, older persons and adolescents?</li> </ul>
<b>Quality</b>	Health goods, facilities and services must be medically appropriate and of good <i>quality</i> .
	Does the policy enhance or jeopardize the quality of <ul style="list-style-type: none"> <li>• health care to address the physical and mental health needs in the country?</li> <li>• hospitals, clinic and other health-related buildings?</li> <li>• scientifically and medically appropriate hospital, clinic and laboratory equipment?</li> <li>• skilled health professionals trained to address the health needs in the community?</li> <li>• scientifically approved and unexpired medicines?</li> <li>• programs for prevention, treatment and control of epidemic and endemic diseases?</li> </ul>

**Step 3: Guideline Questionnaire B**  
**AAAQ Underlying Determinants of Health**

<b>Right to Health</b>	<b>Underlying determinants of health</b>
<b>Available</b>	The underlying determinants of health must be <i>available</i> in sufficient quantity everywhere in the country.
	<p>Does the policy enhance or jeopardize the availability throughout the country of</p> <ul style="list-style-type: none"> <li>• safe and potable drinking water?</li> <li>• food and nutrition?</li> <li>• safe housing with adequate sanitation facilities?</li> <li>• healthy workplace and natural environment conditions?</li> <li>• access to health-related information and education?</li> <li>• any other underlying determinant of health?</li> </ul>
<b>Accessible</b>	The underlying determinants of health must be <i>accessible</i> to everyone on equal basis and without discrimination.
	<p>Does the policy enhance or jeopardize the accessibility of the underlying determinants of health</p> <ul style="list-style-type: none"> <li>• without discrimination on any of the prohibited grounds?</li> <li>• in terms of distance to physically access underlying determinants particularly in rural and poor areas?</li> <li>• for people with physical, sensory and mental disabilities?</li> <li>• in economic terms, including potential impacts on resource allocations or user fees?</li> <li>• or information on the underlying determinants of health?</li> </ul>
<b>Acceptable</b>	The underlying determinants of health must be <i>acceptable</i> to everyone, culturally appropriate and sensitive to gender.
	<p>Does the policy enhance or jeopardize the acceptability to everyone of the underlying determinants of health, specifically by respecting</p> <ul style="list-style-type: none"> <li>• the cultures of individuals, minorities, peoples and communities?</li> <li>• the perspectives and needs of women, men, older persons and adolescents</li> <li>• the need for privacy at home, school and work for various aspects of daily living</li> <li>• the need for community in various aspects of daily living</li> </ul>
<b>Quality</b>	The underlying determinants of health must be of good <i>quality</i> for everyone.
	<p>Does the policy enhance or jeopardize the quality of</p> <ul style="list-style-type: none"> <li>• drinking water, food and nutrition?</li> <li>• housing and sanitation facilities?</li> <li>• workplace and natural environment conditions?</li> <li>• health-related information and education?</li> <li>• any other underlying determinant of health?</li> </ul>

**Step 3: Guideline Questionnaire C**  
**Six Human Rights Concepts for Health Care**

<b>Right to Health</b>	<b>Health goods, facilities and services</b>		
<b>Progressive Realization</b>	The State must take deliberate steps to ensure <i>progressive realization</i> of health facilities, goods and services for all as expeditiously and effectively as possible.		
	<p>Does the policy make deliberate steps to ensure progressive realization of accessible, acceptable and quality health goods, facilities and services for all,</p> <ul style="list-style-type: none"> <li>• recognizing right-to-health obligations in international and national law?</li> <li>• recognizing the right to health as a crucial concern in policy-making?</li> <li>• consistent with a national health strategy and plan of action based on the right-to-health legal framework?</li> <li>• as indicated by the benchmarks established to monitor progressive realization</li> <li>• consistent with allocating maximum available resources for the right to health?</li> <li>• avoiding any retrogressive measures and/or adopting mitigating measures?</li> </ul>		
<b>Core Obligation</b>	The State has an immediate <i>core obligation</i> for minimum essential levels of health goods, facilities and services.		
	<p>Does the policy enhance or jeopardize the State’s core obligation to everyone for</p> <ul style="list-style-type: none"> <li>• equitable distribution of all health goods, facilities and services?</li> <li>• provision of health facilities, goods and services on a non-discriminatory basis?</li> <li>• essential primary health care?</li> <li>• essential medicines as defined by the World Health Organization?</li> <li>• reproductive and child health care?</li> <li>• immunization against major infectious diseases?</li> <li>• provision of adequate training for health personnel, including on human rights?</li> </ul>		
<b>Equality and Non-Discrimination</b>	Health goods, facilities and services must be available to everyone on an <i>equal basis and without discrimination</i> on any of the grounds prohibited by law.		
	<p>Does the policy enhance access to and provision of goods, facilities and services, including access to health insurance and health entitlements</p> <ul style="list-style-type: none"> <li>• without discrimination on any grounds prohibited by law?</li> <li>• by promoting equality for people whose health is at greatest risk, including people living in poverty and other marginalized people?</li> </ul> <p>The prohibited grounds of discrimination are:</p> <table style="width: 100%; border: none;"> <tr> <td style="vertical-align: top;"> <ul style="list-style-type: none"> <li>• race, colour and ethnicity</li> <li>• sex and gender</li> <li>• sexual orientation</li> <li>• health status</li> <li>• physical or mental disability</li> <li>• language</li> </ul> </td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> <li>• religion</li> <li>• political or other opinion</li> <li>• national or social origin</li> <li>• property</li> <li>• birth</li> <li>• civil, political, social or other status</li> </ul> </td> </tr> </table> <p>Does the policy enhance or jeopardize resource allocations for health goods, facilities and services primarily used by people whose health is at greatest risk, such as people living in poverty and other marginalized people?</p>	<ul style="list-style-type: none"> <li>• race, colour and ethnicity</li> <li>• sex and gender</li> <li>• sexual orientation</li> <li>• health status</li> <li>• physical or mental disability</li> <li>• language</li> </ul>	<ul style="list-style-type: none"> <li>• religion</li> <li>• political or other opinion</li> <li>• national or social origin</li> <li>• property</li> <li>• birth</li> <li>• civil, political, social or other status</li> </ul>
<ul style="list-style-type: none"> <li>• race, colour and ethnicity</li> <li>• sex and gender</li> <li>• sexual orientation</li> <li>• health status</li> <li>• physical or mental disability</li> <li>• language</li> </ul>	<ul style="list-style-type: none"> <li>• religion</li> <li>• political or other opinion</li> <li>• national or social origin</li> <li>• property</li> <li>• birth</li> <li>• civil, political, social or other status</li> </ul>		

<b>Participation</b>	The State must promote <i>participation</i> by everyone in decisions related to health goods, facilities and services made at community, national and international levels.
	<p>If the proposed policy has any potential impact on the availability, accessibility, acceptability or quality of health goods, facilities and services, did the State consult with a wide range of organizations and groups of people, including those people most likely to be effected, in designing (and/or implementing) the policy by</p> <ul style="list-style-type: none"> <li>• informing all stakeholders that a policy proposal was being developed?</li> <li>• providing all stakeholders with information explaining the need for a policy, the issues to be addressed, and the forums for receiving their views?</li> <li>• respecting the rights of everyone to seek, impart and receive health-related information?</li> <li>• promoting the free exchange of ideas concerning the proposal being developed?</li> <li>• providing opportunities to be heard and to influence decision-making?</li> <li>• encouraging participation by women and men and by marginalized people, especially those living in poverty, and ensuring that their voices were heard?</li> <li>• engaging in transparent policy-making processes that were accessible to all?</li> </ul> <p>Does the policy enhance or jeopardize the participation of people in decision-making related to health goods, facilities and services by</p> <ul style="list-style-type: none"> <li>• improving access to information on proposals and decisions that may affect health goods, facilities and services?</li> <li>• providing mechanisms to receive feedback on the impacts of the policy?</li> <li>• providing for transparent self-monitoring</li> <li>• providing information on the effects of the policy to others, including nongovernmental organizations, to ensure third-party monitoring?</li> <li>• providing opportunities for all stakeholders to participate in regular reviews of the policy to ensure that adjustments, modifications or complete changes in policy are carried out where the evidence of the impacts justifies such action?</li> </ul>
<b>Information</b>	The State must ensure that health <i>information</i> is available and accessible to all.
	<p>Does the policy enhance or jeopardize the availability and accessibility of health information, including information on health goods, facilities and services, and health issues and problems relevant to the community, by</p> <ul style="list-style-type: none"> <li>• respecting the right to seek, receive and impart health-related information?</li> <li>• providing health information accessible to all, including in local languages and alternative formats, such as large print, Braille or audio recording?</li> <li>• collecting and distributing data on the health of the population?</li> <li>• ensuring that personal health information is confidential?</li> </ul>
<b>Accountability</b>	The State must provide effective mechanisms of <i>accountability</i> for ensuring the progressive realization of the right to health goods, facilities and services.
	<p>Does the policy enhance or jeopardize the availability and accessibility of mechanisms of accountability for the progressive realization of the availability, accessibility, acceptability and quality of health goods, facilities and services by providing</p> <ul style="list-style-type: none"> <li>• for transparent monitoring of policy making and implementation?</li> <li>• judicial, quasi-judicial or administrative review of policies and/or their impacts</li> <li>• reparations if the policy, implementation or impacts violate the right to health</li> </ul>

**Step 3: Guideline Questionnaire D**  
**Six Human Rights Concepts for Underlying Determinants of Health**

<b>Right to Health</b>	<b>Underlying determinants of health</b>		
<b>Progressive Realization</b>	The State must take deliberate steps to ensure <i>progressive realization</i> of the underlying determinants of health as expeditiously and effectively as possible.		
	<p>Does the policy make deliberate steps to ensure progressive realization of the underlying determinants of health for all,</p> <ul style="list-style-type: none"> <li>• recognizing right-to-health obligations in international and national law?</li> <li>• recognizing the right to health as a crucial concern in policy-making?</li> <li>• consistent with a national health strategy and plan of action based on the right-to-health legal framework?</li> <li>• as indicated by the benchmarks established to monitor progressive realization</li> <li>• consistent with allocating maximum available resources for the right to health?</li> <li>• avoiding any retrogressive measures and/or adopting mitigating measures?</li> </ul>		
<b>Core Obligation</b>	The State has an immediate <i>core obligation</i> for minimum essential levels of the underlying determinants of health.		
	<p>Does the policy enhance or jeopardize the State’s core obligation to everyone for</p> <ul style="list-style-type: none"> <li>• equitable distribution of all underlying determinants of health?</li> <li>• provision of the underlying determinants of health on a non-discriminatory basis?</li> <li>• minimum essential food, nutritionally adequate to ensure freedom from hunger?</li> <li>• basic housing with adequate sanitation and a supply of safe and potable water?</li> <li>• education and information concerning the main health issues in the community?</li> </ul>		
<b>Equality and Non-Discrimination</b>	The underlying determinants of health must be available to everyone on an <i>equal basis without discrimination</i> on any of the grounds prohibited by law.		
	<p>Does the policy enhance access to and provision of underlying determinants of health</p> <ul style="list-style-type: none"> <li>• without discrimination on any grounds prohibited by law?</li> <li>• by promoting equality for people whose health is at greatest risk, including people living in poverty and other marginalized people?</li> </ul> <p>The prohibited grounds of discrimination are:</p> <table style="width: 100%; border: none;"> <tr> <td style="vertical-align: top;"> <ul style="list-style-type: none"> <li>• race, colour and ethnicity</li> <li>• sex and gender</li> <li>• sexual orientation</li> <li>• health status</li> <li>• physical or mental disability</li> <li>• language</li> </ul> </td> <td style="vertical-align: top; padding-left: 20px;"> <ul style="list-style-type: none"> <li>• religion</li> <li>• political or other opinion</li> <li>• national or social origin</li> <li>• property</li> <li>• birth</li> <li>• civil, political, social or other status</li> </ul> </td> </tr> </table> <p>Does the policy enhance or jeopardize resource allocations for underlying determinants of health that are primarily used by people whose health is at greatest risk, such as people living in poverty and other marginalized people?</p>	<ul style="list-style-type: none"> <li>• race, colour and ethnicity</li> <li>• sex and gender</li> <li>• sexual orientation</li> <li>• health status</li> <li>• physical or mental disability</li> <li>• language</li> </ul>	<ul style="list-style-type: none"> <li>• religion</li> <li>• political or other opinion</li> <li>• national or social origin</li> <li>• property</li> <li>• birth</li> <li>• civil, political, social or other status</li> </ul>
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<b>Participation</b>	The State must promote <i>participation</i> by everyone in decisions related to the underlying determinants of health made at community, national and international levels.
	<p>If the proposed policy has any potential impact on the availability, accessibility, acceptability or quality of the underlying determinants of health, did the State consult with a wide range of organizations and groups of people, including those people most likely to be affected, in designing (and/or implementing) the policy by</p> <ul style="list-style-type: none"> <li>• informing all stakeholders that a policy proposal was being developed?</li> <li>• providing all stakeholders with information explaining the need for a policy, the issues to be addressed, and the forums for receiving their views?</li> <li>• respecting the rights of everyone to seek, impart and receive health-related information?</li> <li>• promoting the free exchange of ideas concerning the proposal being developed?</li> <li>• providing opportunities to be heard and to influence decision-making?</li> <li>• encouraging participation by women and men and by marginalized people, especially those living in poverty, and ensuring that their voices were heard?</li> <li>• engaging in transparent policy-making processes that were accessible to all?</li> </ul> <p>Does the policy enhance or jeopardize the participation of people in decision-making related to the underlying determinants of health by</p> <ul style="list-style-type: none"> <li>• improving access to information on proposals and decisions that may affect the underlying determinants of health?</li> <li>• providing mechanisms to receive feedback on the impacts of the policy?</li> <li>• providing for transparent self-monitoring</li> <li>• providing information on the effects of the policy to others, including nongovernmental organizations, to ensure third-party monitoring?</li> <li>• providing opportunities for all stakeholders to participate in regular reviews of the policy to ensure that adjustments, modifications or complete changes in policy are carried out where the evidence of the impacts justifies such action?</li> </ul>
<b>Information</b>	The State must ensure that health <i>information</i> is available and accessible to all.
	<p>Does the policy enhance or jeopardize the availability and accessibility of health information, including information on the underlying determinants of health, and health issues and problems relevant to the community, by</p> <ul style="list-style-type: none"> <li>• respecting the right to seek, receive and impart health-related information?</li> <li>• providing health information accessible to all, including in local languages and alternative formats, such as large print, Braille or audio recording?</li> <li>• collecting and distributing data on the health of the population?</li> </ul>
<b>Accountability</b>	The State must provide effective mechanisms of <i>accountability</i> for ensuring the progressive realization of the underlying determinants of health.
	<p>Does the policy enhance or jeopardize the availability and accessibility of mechanisms of accountability for the progressive realization of the availability, accessibility, acceptability and quality of the underlying determinants of health by providing for</p> <ul style="list-style-type: none"> <li>• transparent monitoring of policy-making and implementation?</li> <li>• judicial, quasi-judicial or administrative review of policies and/or their impacts</li> <li>• reparations if the policy, implementation or impacts violate the right to health</li> </ul>

## ANNEX 4

### Step 4: Guide to Rights Analysis

AAAQ	Health goods, facilities and services
<b>Availability</b>	<b>Health goods, facilities and services must be <i>available</i> in sufficient quantity everywhere in the country.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures:
<b>Accessibility</b>	<b>Health goods, facilities and services must be <i>accessible</i> to everyone on equal basis and without discrimination.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures:
<b>Acceptability</b>	<b>Health goods, facilities and services must be <i>acceptable</i> to everyone, respecting medical ethics and sensitive to culture and gender.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures:
<b>Quality</b>	<b>Health goods, facilities and services must be scientifically and medically appropriate and of good <i>quality</i>.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures:
<b>Six Concepts</b>	
<b>Progressive Realization</b>	<b>The State must take deliberate steps to ensure <i>progressive realization</i> of health goods, facilities and services for all as expeditiously and effectively as possible.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures:
<b>Core Obligation</b>	<b>The State has an immediate <i>core obligation</i> for minimum essential levels of health goods, facilities and services.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures:
<b>Equality and Non-Discrimination</b>	<b>Health goods, facilities and services must be available to everyone on an <i>equal basis and without discrimination</i> on any of the grounds prohibited by law.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures:
<b>Participation</b>	<b>The State must promote <i>participation</i> by everyone in decisions related to health goods, facilities and services that affect them.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures:
<b>Information</b>	<b>The State must ensure that health <i>information</i> is available and accessible to all.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures:
<b>Accountability</b>	<b>The State must provide effective mechanisms of <i>accountability</i> for ensuring the progressive realization of the right to health goods, facilities and services.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures:

### Cont. Step 4: Guide to Rights Analysis

AAAQ	Underlying determinants of health
<b>Availability</b>	<b>The underlying determinants of health must be <i>available</i> in sufficient quantity everywhere in the country.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures:
<b>Accessibility</b>	<b>The underlying determinants of health must be <i>accessible</i> to everyone on equal basis and without discrimination.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures:
<b>Acceptability</b>	<b>The underlying determinants of health must be <i>acceptable</i> to everyone, culturally appropriate and sensitive to gender.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures:
<b>Quality</b>	<b>The underlying determinants of health must be of good quality for everyone.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures:
<b>Six Concepts</b>	
<b>Progressive Realization</b>	<b>The State must take deliberate steps to ensure <i>progressive realization</i> of the underlying determinants of health as expeditiously and effectively as possible.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures:
<b>Core Obligation</b>	<b>The State has an immediate <i>core obligation</i> for minimum essential levels of the underlying determinants of health.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures:
<b>Equality and Non-Discrimination</b>	<b>The underlying determinant of health must be available to everyone on an <i>equal basis without discrimination</i> on any of the grounds prohibited by law.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures:
<b>Participation</b>	<b>The State must promote <i>participation</i> by everyone in decisions related to the underlying determinants of health that affect them.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures:
<b>Information</b>	<b>The State must ensure that health <i>information</i> is available and accessible to all.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures:
<b>Accountability</b>	<b>The State must provide effective mechanisms of <i>accountability</i> for ensuring the progressive realization of the underlying determinants of health.</b>
	Potential right-to-health violations: Alternatives to enhance right-to-health: Mitigating measures: