

MATCHING PRACTICE WITH PRINCIPLES

Human Rights Impact Assessment: EU Opportunities

An outline for the development of Human Rights Impact Assessment
for EU policy measures with an external effect

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PREFACE

Dealing with human rights is a complex and widely branching issue in the complex political and bureaucratic environment of the European Union. There can be no doubt that human rights are at the heart of EU policies. They are so for historical reasons: Western Europe has been the cradle of much essential human rights conceptualization, from the democratic system in classical Athens, through the Magna Carta, the Bill of Rights and the French Declaration on the Rights of Man and the Citizen, up to the European Convention on Fundamental Rights and Freedoms and most recently the European Charter of Human Rights. Human rights are also at the core for reasons of a most pertinent present-day significance: the European Union is one of the most influential political and economic bodies of our world and has relations with most countries of the world.

The ways in which human rights are being attended to, vary enormously. So do appreciations of the success or failure of EU policies in this area. Coherency, consistency, transparency and effectiveness are notions that are often emphasised in discussions on EU human rights policy. They require implementation in the daily practice of policy making.

The 'mainstreaming' of human rights is now one of the EU's prime objectives. Closely related is the growing political support for the idea of Human Rights Impact Assessment. On various occasions the EU has underlined the need to develop instruments and procedures to measure the effect of external policies on a particular human rights situation. This was again highlighted in the European Commission Communication on *The European Union's role in promoting human rights and democratisation in third countries* (May 2001).

At all levels of EU political decision making, human rights impact should be taken into account. Human Rights Impact Assessment is a means to ensure that this is being done in a systematic way. The Netherlands Humanist Committee on Human Rights (HOM) has explored ways in which Human Rights Impact Assessment could be made an effective instrument, and so improve the quality of human rights policies. HOM proposes seven procedural steps that will facilitate a continuous checking and adapting process.

This report, *MATCHING PRACTICE WITH PRINCIPLES - HUMAN RIGHTS IMPACT ASSESSMENT: EU OPPORTUNITIES*, provides many examples, issues for reflection and a series of recommendations, for the benefit of political decision makers, NGOs, academics and others involved.

Gerritjan van Oven
*President of the Humanist Committee on Human Rights,
Member of Parliament, the Netherlands*



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With this report the Humanist Committee on Human Rights (HOM) concludes its two-and-a-half year project *Towards Human Rights Impact Assessment for EU policies*.

Support of different kinds has been indispensable in realising this project.

First, HOM expresses its gratitude to the sponsors of this project: The European Commission, which through the *European Initiative for Democracy and Human Rights* contributed largely to the project; NSDO (the Dutch Commission for Sustainable Development and Development Cooperation) and HIVOS (the Dutch Humanist Organisation for Development Cooperation).

Second, HOM very much appreciates the input and support that we received over this period from a large and diverse group of people. In particular, we would like to mention Frans Huijnen, who as a chair of the Expert Meetings and the Conference guided us through sometimes complex and challenging discussions. Margaret Jungk and Hans-Otto Sano, both from *The Danish Centre for Human Rights*, were always willing to comment on ideas and kindly contributed to a brainstorming meeting with HOM and the human rights unit of EuropeAid, in January 2002.

Finally, we would like to mention the interns and volunteers that contributed to the realisation of this project. For an NGO such as HOM, working with interns is a necessity to get the work done. But more than that it is a source of ideas and creativity.

We thank Gwendy van der Aa, Karlijn van Arkel, Nienke van der Burgt, Maurice Claessen, Margo Hoek, Boukje Pieters and Ida Thoenes for their enthusiasm and the occasionally long hours that they have invested in this project.

EXECUTIVE SUMMARY

MATCHING PRACTICE WITH PRINCIPLES

Human Rights Impact Assessment: EU Opportunities

At all levels of EU political decision making, human rights impact should be taken into account. Human Rights Impact Assessment (HRIA) is a means to ensure that this is being done in a systematic way. The Netherlands Humanist Committee on Human Rights (HOM), has explored ways in which HRIA could be made an effective instrument and so improve the quality of European Union policies. HOM convened several meetings to discuss approaches towards human rights measurement and impact assessment. At the Conference on Human Rights Impact Assessment organised by HOM in Brussels (November 2001), participants elaborated on the question of how to implement HRIA in EU decision making processes. The findings are reflected in this report.

The worldwide human rights community, research institutions and intergovernmental bodies have initiated the development of instruments to measure human rights performance. Concomitantly, there has been an increasing call at the political level to assess the impact of policy measures. Emphasis is shifting from preaching principles to obtaining and measuring results. For EU policies there is now a real opportunity to combine these strands for the benefit of human rights promotion and protection.

The 'mainstreaming' of human rights is one of the EU's objectives. Consequently, there is a growing need for clear objectives and criteria for a coherent and effective human rights policy. There is also a need for precise and transparent formulation of policy initiatives, with criteria, indicators, benchmarks and a timeframe being set. These arguments speak in favour of a more systematic, in-depth and transparent reporting on the formulation and implementation of policies. Only then can combined impact be assessed and can policy makers learn from the results. HRIA is an essential element of this process.

Using the metaphor of the *Game of Goose* (a popular Dutch game) the authors describe some of the steps to be taken for bringing HRIA to its well deserved materialization.

The report defines HRIA as a systematic process to ensure the integration of human rights aspects in decision making throughout the policy formulation, implementation, checking and adapting process. HRIA should include a fixed set of criteria derived from international law and standards, according to which human rights performance can be held accountable. Country assessments, using both quantitative and qualitative indicators, are an essential element of HRIA. They should be open for scrutiny by politicians, experts and NGOs. HOM proposes seven procedural steps that will facilitate a continuous checking and adapting process: 1. Assessment of the actual human rights situation; 2. Political analysis; 3. Selection of the essential questions and outline of policy options; 4. Political decision making on policy measures; 5. Implementation of policy actions; 6. Monitoring; and 7. Evaluation.

The core recommendations of the report are summarized in three 'squares of opportunities'.

I A role for the EU

Human rights are at the heart of EU policies. EU policy makers should feel the (historical) obligation to be at the forefront of human rights promotion and protection, both inside and outside EU borders. Also because of its economic and political influence, the EU can be a 'role model' for the international community.

The various EU institutions, in particular the Council, Parliament and Commission, should enhance the development and implementation of long-awaited mechanisms that will assist the EU in translating its principles into practice. To ensure progress in this area, consecutive EU Presidencies should make human rights a priority.

The EP should take up its primary role in human rights: to hold Council and Commission accountable and develop and apply appropriate instruments to that end. As regards its own activities, the EP should ensure a systematic inclusion of a human rights focus in the work of the various committees and delegations for relations with third countries, including improved coordination and follow-up of activities.

The Commission should invest in the development of mechanisms and instruments as well as in capacity building and resources.

II Implement a system of human rights reporting

Fair and consistent periodic reporting on human rights performance – of Member States, candidate members and states linked to the EU – provides the basis for policies that take due account of human rights and the evaluation of these policies. Initiating a human rights reporting regime should be an immediate priority of the EU.

The reports now being produced by EP committees, as in extensive resolutions, and the EU Annual Report on Human Rights produced by the Council are a fine fundament for periodic country and theme specific reporting on all countries and areas of concern to the EU. However, so far they have been largely descriptive and have lacked an analytical approach. Developing a structure and practice for periodic human rights monitoring is by all means a feasible undertaking. This report provides various examples of reporting formats, with various approaches to human rights measurement and use of indicators.

III Implement a systematic Human Rights Impact Assessment

As regards EU policies with an external effect, the subject of this report, the main purposes of HRIA are to enhance the effectiveness of external policy measures with respect to the improvement of the human rights situation in third countries; and to prevent any negative impact of policies with an external effect ('do no harm principle').

The report recommends that the EP should adopt the principle of applying HRIA to both EU internal and external policies and that it calls on the Council and the Commission to take the appropriate steps towards the development and implementation of such an instrument.

ABOUT THIS REPORT

The Humanist Committee on Human Rights (HOM) is a Dutch non-governmental organisation that aims to stimulate public debate on human rights issues. HOM critically follows European human rights policy. In 1999 HOM started the project on Human Rights Impact Assessment (HRIA), aiming at the development of the idea of HRIA for policies with an external effect. In the framework of this project HOM carried out several activities, including research and the organisation of debates. To feed the discussion, HOM published a book *Dealing with human rights (2001)*, with essays by Asian and European authors. The book reflects different cultural perspectives on enforcing human rights in international relations.

Various approaches towards human rights measurement and impact assessment have been discussed at meetings convened by HOM. The purpose of these meetings was to explore ways to develop and implement HRIA for EU policies with an external effect.

In June 2001 HOM organised an international expert meeting, bringing together experts from different backgrounds and active in various international fora.¹ The expert meeting helped to assess the process at different levels as regards the scope of HRIA and the development of methodology and tools. It also identified critical issues and areas for more in-depth research, discussion and co-operation.

At the Conference on HRIA organised by HOM in Brussels in November 2001, academics, NGOs, representatives of international bodies and political decision makers gathered to discuss various approaches to impact assessment and human rights measurement. Participants elaborated on the question of how to apply HRIA in EU decision making processes.² Both meetings underlined the support for the concept of HRIA as proposed by HOM.

HOM thanks all contributors, whose names and identifying organisations are listed at the end of this report. Quotes of contributors have been inserted into this report. Ultimate responsibility for views and recommendations expressed in this report rests with HOM.

PART A of this report covers various aspects of HRIA, in five chapters. The first two chapters consider the purpose, preconditions and framework for HRIA. The third chapter offers issues for debate: with reference to the *Game of Goose*, it sketches the pitfalls and opportunities that await implementation of an impact assessment on its road through the EU mechanisms. The fourth chapter describes seven procedural steps to implement HRIA, emphasising the need for sound country reports as a basis. The fifth chapter concludes with three 'squares of opportunities' for the EU: what could and should be done to make impact assessment a reality.

In PART B summaries of the presentations made at the European Conference have been collected. Together they provide a broad picture of the current debate and the various approaches regarding this subject.

PART C consists of appendices: basic principles for HRIA, the use of indicators, different approaches to human rights measurement and reporting, examples of impact assessment in other areas, a selected bibliography and a list of those who participated in HOM conferences.

- ¹ The Background Paper and the Report of the Expert Meeting that took place on 15-16 June in Noordwijk aan Zee, are available at HOM. A list of participants is included in the Annex.
- ² The Introductory Paper that was prepared for the Conference on HRIA for Policy Measures with an External Effect, 19-20 November, Brussels, is available at HOM.

1 Introduction: background and definitions

The worldwide human rights community, research institutions and intergovernmental bodies have initiated the development of instruments to measure human rights performance. Concomitantly, there has been an increasing call at the political level to assess the impact of policy measures. For EU policies, there is now a real opportunity to combine these strands for the benefit of human rights promotion and protection.

As regards the observance of human rights in foreign policy, emphasis is shifting from preaching principles to obtaining and measuring results. A case in point is the EU. The 'European Commission Communication on the European Union's role in promoting human rights and democratisation in third countries' (2001) stated:

... In addition to its approach towards co-operation programs, the Commission (...) will ensure that in the formulation of other policies, any negative effect on human rights and democratisation is always avoided, and wherever possible, policies are adapted to have a positive impact (...). A methodology for assessing impact will be developed on the basis of international experience.

At present there is insufficient perspicuity regarding the input, results and effectiveness of EU human rights policy. Also, the effects of the various other areas of external relations (economic, trade, cultural and others) and instruments of foreign policy on particular human rights situations lack visibility.

In policy making, there is a need for clear objectives and criteria for a coherent and effective EU human rights policy. There is also a need for precise and transparent formulation of policy initiatives, with criteria, indicators, benchmarks and a timeframe being set. These arguments speak in favour of a more systematic, in-depth and transparent reporting on the formulation and implementation of policies. Only then can combined effects be assessed and can policy makers learn from the results. Human Rights Impact Assessment is an essential element of this process.

The significance of impact assessment was underlined in, among other documents, the 'European Parliament resolution on human rights in the world in 2001 and EU human rights policy' (A5-0106/2002). To quote:

EU Annual Report

21. (...) requests that future reports provide an analysis of the impact of EU activities on the human rights situation addressed and a follow-up on the fulfilment of the clauses of cooperation agreements; (...)

European Initiative for Democracy and Human Rights

28. Calls on the Commission to include an impact assessment of non-structural measures as part of its efforts to incorporate human rights and democracy aspects in EC aid programs (...)

For the purposes of this report, core terms will be used according to the following definitions:

HUMAN RIGHTS LAW AND STANDARDS: The international law and principles embedded in international conventions and declarations, either as *jus cogens* (obligations) or as international customary law. See Appendix 1 for a short list.

CRITERIA: The translation of such law and standards into accountable and assessable minimum norms. For example, whilst human rights law stipulates the right to be protected from torture, in a Human Rights Impact Assessment the criteria could be that the state has prohibited torture by law, has instituted complaint mechanisms, does offer compensation to victims, etc.

BENCHMARKS: The targets set in a particular program or project, e.g. the target that access to primary education will be increased by at least 50 percent within a period of five years.

INDICATORS: The aggregated and combined summaries of facts, as 'signposts' for what a situation is and how it is developing. For example, the existence of freely operating political parties and of major newspapers that are not controlled by the state is an indicator of the observance of civil liberties. Indicators may be strictly quantitative (such as the UNDP Human Development Index), largely qualitative, or a mix of both. See Appendix 2 for considerations on the use of indicators.

IMPACT ASSESSMENT: Monitoring and evaluation of the results and, eventually, the longer term impact of a policy, on the basis of international *law and standards*, from which *criteria* have been derived. The assessment will take account of the *benchmarks* that have been set for particular programs or projects, and will make use of *indicators* which reflect the real state of affairs. Appendices 3 and 4 give examples of impact assessment undertaken by various institutions in various areas.

INSTRUMENTS: There is a large range of means available to the EU to institute and elaborate human rights within a wider policy framework. These instruments include guidelines, directives, regulations, agreements, conventions, charters; steps such as démarches, statements, decisions, resolutions; structured policy measures such as political dialogue, common strategies, common positions; documents including white papers, annual reports, briefings; and more.

"Measuring the impact of policies and trying to shift public management from input- to output-oriented and result-based budgeting, is a hot issue in the civil service nowadays. At the Dutch Ministry of Foreign Affairs, we continually ask ourselves what the effects are of our human rights policy and how we should best measure its results. And of course Parliament and NGOs ask us on a day by day basis to account for our policies and actions."

(Renée Jones-Bos, Human Rights Ambassador, Netherlands Ministry of Foreign Affairs)

"We need to ensure that we have a kind of internal look ahead. And have a more transparent approach to policy making, which means that we can alert our colleagues in Justice and Home Affairs that there is a potential human rights impact in what they do - and could they please collaborate with us in an early stage of policy making. The Commission has committed itself to take more notice of human rights within its policies. We have to ensure that on specific questions the politicians, the commissioners concerned are prepared to make, if necessary, difficult decisions or change their original approach."

(Vicky Bowman, Cabinet of the European Commissioner for External Relations, Brussels)

"Political will, a comprehensive framework of human rights, a shift to the national level, participatory approach and looking at the process, how do you apply all that to the EU? I wonder whether there should not be a more comprehensive view developed to take a rights based approach which is much more cross-cutting for all European policies than has ever been advanced before. Human rights often come up almost as a footnote - whereas human rights are so much in the heart of all the things that now confront the EU."

A Human Rights Impact Assessment tool that would force you to address these issues, would at least help in making policies more transparent and hopefully accountable. Some of these things are so obvious that you wonder why it hasn't been thought of before."

(Dick Oosting, Director, Amnesty International EU Office)

"There are no easy answers, meaning that there will be persistent trade-offs between obligations, between rights, between people - the policy maker's dilemma will not go away. HRIA could be a very useful tool for dealing with these issues, if we take it seriously and make it as rich as it needs to be."

(Kate Raworth, Policy Researcher, Oxfam UK)

~Probably the most central element is the emphasis on the need to improve the integration of human rights within the wider context of all areas of foreign policy. The real challenge is in mainstreaming human rights in everything we do.~

(Renée Jones-Bos, Human Rights Ambassador, Netherlands Ministry of Foreign Affairs)

~Accountability implies assessing the fulfilment of an obligation with clearly defined performance criteria. This requires the setting of benchmarks and standards. Accountability of duty bearers is central to security and the promotion of human rights. This means that one has to identify the principal actors, defining precisely what their accountabilities are.~

(Sakiko Fukuda Parr, Director, Human Development Report Office, UNDP)

~Our report is a tool that we use, but beyond the report there is the process. And for human rights implementation, the process is more important. The Social Watch coalition which is active in 60 countries has been tracking the evolution of indicators that measure poverty in Amartya Sen's sense: assessing the effectiveness of social policies in achieving set goals.~

(Marina Ponti, Mani Tese and Social Watch International Network)

~There are two advantages in assessments that do appeal to most government officials. The first advantage is that you can show them what a good impact assessment will do: it will avoid necessary delays due to unforeseen problems later on. The second advantage is that you can avoid costs related to unnecessary measures.~

(Rob Verheem, Commission for Environmental Impact Assessment, The Netherlands)

2 Human Rights Impact Assessment

In this report we deal with Human Rights Impact Assessment (HRIA) for policy measures with an external effect. Such measures stem from foreign affairs policies and development cooperation, but also from policy areas such as economic, trade and agricultural relations. HRIA should simultaneously be implemented for measuring internal EU policies.

The focus in this paper is on the 'macro' (policy) level and to a lesser extent the 'meso' (program) level. However, HRIA is also a valuable instrument for initiatives at the 'micro' level.

As a *definition* of HRIA, HOM has adopted the following:

Human Rights Impact Assessment is a systematic process to ensure the integration of human rights aspects in decision-making throughout the policy formulation, implementation, checking and adapting process. It includes a continuous system of monitoring and evaluation of the results of policy measures in terms of actual human rights observance.

The *purpose* of HRIA for EU policies with an external effect is twofold:

FIRST, it should enhance the effectiveness of foreign policy measures with respect to the improvement of the human rights situation in third countries. SECOND, it should prevent any negative impact of a particular policy or program with an external effect on the human rights situation ('do no harm principle').

In its practice, HRIA should be supportive to various aspects of EU policies and programs – in their preparations, proceedings, evaluation and follow-up. HRIA will facilitate:

- The consistency, coherency and effectiveness of human rights policy, including the awareness of and positive attitudes towards human rights aspects of policy measures.
- The identification of areas of concern and critical issues, and the selection of the best mix of instruments in a particular situation.
- The translation of general objectives of human rights policy into priorities and tailored measures geared towards achieving well-described goals in a specific situation.
- The monitoring and evaluation of the chosen strategies and policy measures.
- The sustainability of policies, including the benefits of money, effort and time saved in the formulation of effective policies and the prevention of failures and negative effects.
- An accountability framework.

A *precondition* for an effective HRIA is, first of all, the political will to implement such impact assessment. In order to be a useful instrument in policy making, HRIA has to be an integral part of all stages of the process of policy development and decision making.

Governments, academics, NGOs or other experts can implement HRIA. If undertaken by an external party, the EU or government body still holds final responsibility for the entire process. In any case, HRIA should include a framework for external monitoring, through parliament, outside experts, NGOs and public media.

~Although we try to think of human rights as embracing economic and social issues as well as civil and political issues and gender issues, we also have to recognize that these various concerns and objectives are being dealt with by various institutions. Each with different traditions and with different conceptual frameworks.~

(Hans-Otto Sano, Danish Centre for Human Rights)

~The potential benefits of using an inter-cultural set of parameters can provide for a structured and focused analysis and dialogue, and enable development of fair, culturally sensitive and universal baselines for such analysis and dialogue.~

(Jonas Grimheden, PhD Candidate, Faculty of Law, Lund University, Sweden)

~We are preparing a report on the implications of EU assistance to Mediterranean countries in the framework of the MEDA programme. And the preliminary finding we have now is that on a country strategy basis very little thought has been given to human rights. On a national indicative programme level: even less. When you come to project level, when you come to social evaluations, overall judgements and so on: no mention of human rights, except the right of the EU to stop a project. If you want to include Human Rights Impact Assessment into the programs, you need to do some kind of training. It is a question of mainstreaming human rights perspectives into all departments.~

(Marc Schade-Poulsen, European Mediterranean Human Rights Network)

~Equivalent standards-based measures of human rights protection are needed. To this end, several issues need to be addressed: ethical questions; the choice between using raw numbers or more abstract scales; the level of analysis; the accessibility of information. One should also address the political problem - that governments and NGOs refuse to rank countries for fear of recrimination and loss of credibility.~

(Todd Landman, Deputy Director, Human Rights Centre, University of Essex, UK)

~Number one is the company ownership of the tool. So a Human Rights Impact Assessment should actually be flexible enough to be modified according to the different circumstances. Second is the idea of a reasonable investment of resources. Company managers indicated that they would be willing to spend 40 hours per year per operational unit - quite a limited amount of time. Third, we recognized that the Impact Assessment should be user-friendly because of the lack of knowledge about human rights. In the end we managed to develop a computer program which fulfilled all three of these requirements.~

(Margaret Jungk, Danish Centre for Human Rights)

The EU death penalty and torture guidelines are quite new, but they are very clear and useful and could be applied in a pilot of Human Rights Impact Assessment. Basically you have the tools there, you only have to apply them. If you bring them into a practical framework, you could actually advance what is now too much of an ad hoc instrument - depending on the capacities and the inclinations of a Presidency - into a more systematic instrument.~

(Dick Oosting, Director, Amnesty International EU Office)

3 Game of Goose: the road towards HRIA

Game of Goose is a popular Dutch game – a local variant of popular games in other countries, such as *Snakes and Ladders*. The players compete to reach square 63, something of a goose heaven. But pitfalls and obstacles, plus some advantageous squares, await them on their way. At some squares, they have to go back a few steps, or even right back to Start. At others, they may proceed an extra few steps – though never right through to the final square.

The *Game of Goose* is not an inapt metaphor for the process of bringing Human Rights Impact Assessment (HRIA) to its well-deserved materialization. There is the serious intent of the players to reach that end. They bet their dice on it. They foresee quite a few of the obstacles, and hope that at certain stages they will be helped on and land on the right square. More often than rarely, there is an element of luck – bad luck or good luck. Of political developments and events. Of individual EU commissioners, functionaries, parliamentarians who may or may not be interested in helping the process. Of NGOs, academics, individual activists who may or may not contribute at crucial moments.

What does the Goose Board of HRIA look like? Let's spot a few essential squares.

Human rights – START? – ■ □ □ □ □

Human rights are arguably the most established and most widely accepted standards of international conduct. They have been embedded in numerous covenants, treaties, agreements, declarations and resolutions. But do we agree about their contents?

We agree that human rights are indivisible and interdependent. We assume that they include both 'classic' rights, those of integrity and civil-political participation, and social, economic and cultural rights. Maybe they also include collective rights, although their implications are being debated and there is a risk that the supposed rights of a 'people' or community override fundamental individual rights.

Fulfilment of one set of rights is often a condition for the realisation of others. Civil and political rights allow people to strive for enjoyment of their social, economic and cultural rights. The 'basic needs' of food and housing, on the other hand, are a precondition for a functioning democratic system. Yet, assuming we agree about a common concept of core rights, we should also accept that different rights demand different ways of acting. The expertise and efforts that are necessary to tackle, say, poverty or health care in a particular country are mostly useless for tackling police violence or censorship in that country – and vice versa.

Core rights – PROCEED? – □ □ □ □ ■

Can we agree about a shortlist of rights to be monitored?

Human rights reports by official, government-type bodies are based on varying lists of 'indicators', 'benchmarks' or 'areas'. *Examples of such models are given in Appendix 3.*

In general, civil and political rights (in particular 'integrity rights') are more prominent in such reports than are social and economic rights. Yet the latter categories of rights are often being addressed, largely indirectly, through the concept of 'right to access'.

The underlying reasoning is that a state cannot be expected to fully implement social-economic rights on its own. The right to work, for example, is dependent on such factors as natural resources, the state of technology and professional expertise, the stage of economic development, investments and the presence of international corporations. But a government can be committed, as a minimum, to fully observe the principle of non-discrimination in access to that right.

EU external human rights policies – GO BACK? –

We may have to take a step back to deal with the fundamentals of EU external policy making and practice, in particular regarding (but not restricted to) its human rights targets or effects.

The achievements of the EU with respect to the development and implementation of human rights policy present a mixed picture.

The EU has at various occasions fulfilled not much more than a marginal role regarding the major political and humanitarian crises of the 1990s. Clearly, there is not much meaningful ‘impact’ to monitor if the policies as such are weak or unknown. However, EU policies have made their contributions as well. The EU has initiated quite a few assistance programs for the judiciary and police, among other things. And it has been an active partner in UN activities which militate against gross human rights violations. Invariably, a modicum of consistent, result-oriented, even intrepid policies is a precondition for answering any questions regarding the monitoring of their effects.

Various interesting initiatives and mechanisms have been implemented, promoted or suggested in recent years. The range of instruments available now includes human rights clauses in bilateral and multilateral agreements; ‘dialogues’ and programs to foster human rights performance, as in assisting the training of law enforcement officers and judges and the provision of legal advice. Rarely however, is the performance of such instruments strongly connected to clear-cut benchmarks or evaluation criteria.

On a more positive note, the EU has adopted promising new instruments over the last few years. They include the European Charter of Fundamental Rights; the EU Annual Report on Human Rights; the European Parliament’s Annual Report on Human Rights; and the annual EU Human Rights Discussion Forum. The European Commission has made an important contribution through its Communication on the EU’s role in promoting human rights and democratisation in third countries. Much work is still left to be done in putting into practice the instruments that are at hand. Additional initiatives are needed to work towards a comprehensive human rights policy for the EU as a whole.

Indicators, assessment instruments – PROCEED? –

Over the last decade or so, quite a few instruments have been developed to ‘score’ human rights performance. For corporate business, for example, there is the SA8000 standard. There is the model of the Danish Centre, called the Human Rights Commitment Index, and that of the NORAD Handbook. There is the model of the Dutch/Scandinavian/Austrian *Yearbook Human Rights in Development* which, up to 1997, reported on 120 countries. There is the overview of human rights indicators presented by Maria Green for the United Nations Development Program. *And more. Examples of such performance measurement models are dealt with in Appendix 3.*

Every chosen model has its limits and handicaps. It may be wise advice to opt for a model which is securely founded on both academic literature and practical experience. This model should not be so gross as to result in very general observations only, nor be so refined that it can only be properly understood and implemented by highly specialized professionals. A ‘seven steps framework’ for developing an EU model of assessment is introduced in Chapter IV.

The desired situation – PROCEED? –

Human rights will rarely lead to utopia. But when we go ‘back to basics’, we generally have a not too vague idea of what a human rights regime should be. The question is: can we prescribe the same level of performance to each and every country, or do we adapt the demands to the particular circumstances? Assessments should mirror the highly varying stage of political and economic development of countries that are external partners of the EU.

Best practice seems to be a flexible approach based on sound benchmarks, taking due account of progress in a specific situation and the commitment of the parties involved. Those benchmarks can be derived from the various UN and regional texts – they are listed in *Appendix 1*. In all cases, realistic aims should be set for definite periods of time.

Achievements of human rights policies – GO BACK? –

It would be nice if one could point out clear causal correlations between a policy, its effects and even longer term impact. But in particular in international politics, this is seldom possible.

Suppose country X showed widespread police violence and arbitrary arrests in 1992. Ten years later, and after an EU association agreement has been implemented, such violations have largely disappeared. This could be (partly) due to EU involvement. Or rather be the result of Amnesty International and Human Rights Watch campaigns. Or be an internal political development – a new government, a new president. Or be due to pressure from domestic NGOs and civil society. Or be connected to the international market. If not a caprice of one of the many factors of international political, economic, social, environmental and other developments.

What we would need first of all is a description of the human rights situation which is based on set principles and which is periodically reviewed. This will show us at least the main changes from year to year. Only then can one start to identify causes and effects.

Human rights EU reporting – GAME BREAK? –

Various non-governmental and government-sponsored periodic human rights reports, including reports by UN special rapporteurs, have over the years become respected sets of documentation. Among them, the US State Department Country Reports on Human Rights have gained a reputation for fairness among critical US-based human rights NGOs. Such examples have proven that it is possible for a government agency to produce decent human rights reporting. *Appendix 1 deals with this in more detail.*

The question is obvious: Why has nothing similar been undertaken by the EU? When HRIA intends to measure the *change* in a human rights situation, indisputably there should be sound documentation of the previous state of affairs.

Any kind of reporting is useful only to the extent that there is purpose in the selection and presentation of facts. This implies that when considering EU human rights reporting, we should simultaneously consider the political use that could and should be made of such documentation.

In any case, human rights reporting is an instrument of assessment that cannot be sidelined.

~Policy assessment should start with measuring the initial situation in a certain country and the situation after a certain period of time, thereby measuring the change between these two situations. It will however remain extremely difficult to assess what caused a change.~

(Renée Jones-Bos, Human Rights Ambassador, Netherlands Ministry of Foreign Affairs)

~It is crucial that local civil society and local human rights defenders are involved in any Human Rights Impact Assessment. The European Commission delegations in third countries have a crucial role to play in that regard.~

(Isabelle Brachet, Permanent delegate to the EU for the International Federation of Human Rights)

~Would there be room for some kind of human rights agency that could have a role in this process of analysing EU policies with an external effect? Policy making within the EU is so complex and touches so many different areas of action that it is essential to invest in analysis.~

(Catherina Ventura, University of Coimbra)

~The first lesson learnt is that basically environmental impact assessment is a process for evaluation. I underline this, because in the old days we made the mistake that we immediately focused on information on indicators, on getting nice reports. What we have found over the last 20 years of experience with environmental impact assessment, is that it is not the report that makes the difference in the minds and hearts of planners. What makes the difference is to create a platform for discussion with all stakeholders throughout the planning process. You clearly need good information for that discussion, but the information is not an end in itself. So, Human Rights Impact Assessment is not about what the process is, but what the process should do.~

(Rob Verheem, Commission for Environmental Impact Assessment, The Netherlands)

~One stage of Human Rights Impact Assessment may be a formal or informal consultation amongst the services of the Commission, at which point the Justice and Home Affairs Directorates would turn to their colleagues in External Relations, to their colleagues in the Legal Service, to their colleagues in the Employment Directorate. It does require somebody somewhere to think: yes! we need to move.~

(Vicky Bowman, Cabinet of the European Commissioner for External Relations, Brussels)

4 Implementing HRIA – seven procedural steps

A Human Rights Impact Assessment under EU responsibility should be geared towards gaining insight into expected (internal and external) developments, responses by third parties, the interaction with other policy initiatives with an external effect, the calculated effects of different policy options and the expected longer term impact.

In broad outline, the following *procedural steps* can be formulated:

- 1 Assessment of the actual human rights situation
- 2 Political analysis
- 3 Selection of the essential questions and outline of policy options
- 4 Political decision making on policy measures
- 5 Implementation of policy actions
- 6 Monitoring
- 7 Evaluation

These steps will ensure consideration of human rights aspects in their context. Using the framework would be of assistance in the translation of general objectives of human rights policy into priorities and tailored measures and projects. It would help in the selection of the best mix of instruments in a particular situation. And it would facilitate the monitoring and evaluation process and the identification of expected and unexpected effects. Finally, it will avoid unnecessary delays and costs. Impact assessment is the process of going through this whole cycle, not just steps 6 and 7.

Among the practical requirements, first and foremost a certain level of understanding of human rights is needed at civil servant level, in order to be able to identify human rights issues at stake in a specific situation and to assess the possible implications of policy measures for a specific human rights situation. To this end, manuals and training should be developed. Moreover, tailored checklists are needed for different sectors. Evidently, these checklists should be user-friendly.

Now we will deal briefly with each of these steps.

Ad1 Assessment of the actual human rights situation

This step entails the identification of critical areas and in-depth analysis in a number of areas. Comprehensiveness is needed in order to establish a baseline and to obtain a broad overview. A fixed set of criteria, based on international human rights law, is to be used throughout the process. The assessment should reflect the reality of a situation as represented in consistent indicators. It should be open to public scrutiny, in particular by specialized NGOs.

Thorough assessments should be made available for all countries with which the EU maintains relations. Preferably, such country assessments should be prepared within the EU itself. Alternatively, outsourcing to qualified agencies would be a solution. The final responsibility stays however with the governmental body.

Ad2 Political analysis

This step comprises an analysis of the actual political situation and the expected developments in the areas of politics, economy, culture and external relations.

This contextual understanding is an essential element of HRIA and is complementary to the analysis of the human rights situation. The analysis should include the historical and present-day EU and Member States relations with the third country.

Ad3 Selection of the essential questions and outline of policy options

At this step, concrete targets (benchmarks) should be set as to what the EU sees as the desired human rights situation in a particular country or relative to a particular thematic development. First, the targets should refer to the time-frame and objectives of a policy or program. Second, the HRIA should identify possible contributions and interventions. It should define goals to be realised in order to achieve solutions.

This stage should take into account public opinion in the third country. In particular, it should reflect views and findings of major NGOs of both domestic and international origin.

Ad4 Political decision making on policy measures

This is the stage of political decision making. It involves the testing of the policy proposals on the criteria of acceptability and feasibility. This step will be always be taken by the political decision makers. The final weighing of interests takes place at the political level, not within the HRIA.

Ad5 Implementation of policy actions

When implementing a policy, HRIA should be an integrated part throughout the process. One option is to assign HRIA responsibility to one particular EU officer within each project or program. Another option is to organize a regular meeting, a type of 'HRIA forum', where policy makers and participants convene to check observance of HRIA. In both cases, a clear line of accounting responsibility should be established. This includes a framework of regular communication with NGOs and research institutions which are best placed to signal human rights developments at 'ground level'.

Since a human rights situation may go through major changes within a short period of time, in particular as a result of political developments within the country, any policy and its targets (benchmarks) should be open for reconsideration and adaptation at appropriate moments. Evidently, the criteria laid out for the initial assessment should be applied without adaptation.

Ad6 Monitoring

Systematic monitoring of the implementation of policy-measures, as well as new developments in the human rights situation, can be undertaken within the scope of the HRIA. The indicators will be used to assess developments, alongside additional analysis of developments in the international context.

This step should involve external organisations and other experts, including domestic NGOs, in the monitoring process. A continuous and transparent process should be ensured.

Ad7 Evaluation

The final step is that of evaluation of the implementation of policy measures, and their impact on the human rights situation. This evaluation is to be used as a starting point for a new cycle – feedback to the policy-makers and the formulation of future policies and targets, on the basis of 'lessons learnt'.

Evaluation could be carried out within the HRIA structure. Again, external organisations, experts and NGOs should be involved in this process so as to ensure transparency.

5 Three squares: opportunities for EU policies

In this chapter, we translate the main findings of the project and the Conference held in Brussels in November 2001 into *three squares of opportunities for EU policies*.

Once again we draw from our *Game of Goose* metaphor. In this game, there are squares which offer the player a special opportunity – they may be rewarded with a few extra steps forward. We feel that three such ‘squares of opportunity’ – pivotal, decisive moments – are now at the table of EU decision makers, parliamentarians and officials. When used well, they could spur on the dynamic evolvement of a much improved theory and practice of EU human rights policies, including well-documented reporting on human rights performance and the implementation of Human Rights Impact Assessment.

There are various reasons why a EU human rights policy could serve as a role model for the international community.

History is one of those reasons. From the days of Solon of Athens, around 600 BCE, human rights have been part and parcel of state and community policies on European territory. Europe has been the cradle of major innovations both in governmental and legal practice and in the work of major thinkers, such as in Stoa philosophy (from around 300 BCE), the Magna Carta (1215), the works of Marsilius of Padua (around 1326), the Habeas Corpus Act (1640), the Bill of Rights (1689), the French Declaration of the Rights of Man and the Citizen (1789), the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953) and the European Charter of Fundamental Rights (2000).

This does not make human rights a ‘Western’ concept. Human rights are based and are being promoted on tenets of philosophy, morality and good governance which can be detected in all major philosophical and religious systems of the world. And many of the human rights ‘breakthroughs’ in the last decades have been achieved outside Europe.

Nowadays, the territory of the European Union is not free from human rights violations. NGOs report, in particular, police brutality against ‘foreigners’, serious deficiencies in the protection of asylum seekers, discrimination based on race, ethnicity and sexual orientation, and more. By addressing these issues the EU should demonstrate that it will not relax its vigilance as regards the situation of human rights within the Member States, also in light of the future enlargement of the EU.

To conclude the considerations of this report, we summarize its core recommendations in three ‘squares of opportunities’. Together, they aim to enhance the effectiveness of EU human rights policies and be instrumental in matching practice with principles.

- 1 A role for the EU
- 2 Implement a system of human rights reporting
- 3 Implement a systematic Human Rights Impact Assessment

~The experience of the Norwegian Human Rights Action Plan and Human Rights Assessment has shown that setting targets is far from enough. If targets are to become more than fine words, we have to set our benchmarks, overcome barriers and focus on results. The Norwegian Plan of Action adopts a coherent approach, comprising both international and national measures to strengthen human rights, and addressing political and civil rights as well as economic, social and cultural rights.~

(Olav Kjørven, State Secretary for International Development, Norway)

~Monitoring is something that has to become part and parcel of everything that the Council does, that the Commission does. Also the European Parliament could apply it more systematically. The European Parliament does not have the habit of taking human rights into account systematically, as an issue for which it wants to hold other institutions, the Council and the Commission, accountable.~

(Dick Oosting, Director, Amnesty International EU Office)

~I can imagine that the results of a study on HRIA will be of great interest for the members of the European Parliament. The findings should be discussed with interested members of the European Parliament, in order to see how they can lead to improved mechanisms for dealing with human rights.~

(Jan Kurlmann, Human Rights Unit, European Parliament)

~The Council's Annual Human Rights Report is a descriptive document, not analytical. I think that we could ask for a report that is rather inside-looking and referring to the activities that the Council took. A report that also assesses the results and the kind of follow up that is needed in the next year.~

(Catherina Ventura, University of Coimbra)

Ad1 A role for the EU

EU policy makers should feel the (historical) obligation to be at the forefront of human rights promotion and protection. Both inside and outside EU borders. Human rights are also at the core for reasons of a most pertinent present-day significance: the European Union is one of the most influential political and economic bodies of our world and has relations with most countries of the world. The EU can be a 'role model' for the international community.

EUROPEAN UNION

- The various EU institutions, in particular the Council, Parliament and Commission, should put human rights at the heart of their policies in order to enhance the development and implementation of long-awaited mechanisms that will assist the EU in translating principles into practice.
- In particular one should take initiatives to ensure that human rights are being taken into account from the start of the decision making chain, throughout each policy, program and project, and up to its evaluation. This would enhance the often-stressed need for consistency, coherency, transparency and effectiveness. A comprehensive EU strategy on human rights also requires consistency and coherency between the EU's external and internal approaches to human rights.
- To ensure progress in this area, consecutive EU Presidencies should make human rights a priority.

EUROPEAN COMMISSION

- The Commission should invest in the development of mechanisms and instruments as well as in capacity building and resources in order to ensure that promotion of human rights effectively becomes a priority at all levels and for all policy areas.
- As a first step, the Commission should follow up on its own proposals included in various documents, such as the 2001 Communication on Human Rights and Democratisation, the Annual Evaluation Review 2001 and the White Paper on European Governance (2001).

EUROPEAN PARLIAMENT

- The EP should take up its primary role on human rights: to hold Council and Commission accountable and develop and apply appropriate instruments to that end.

This is in accordance with the EP Report on Human Rights in the World 2000, which stated that '...the role of the European Parliament in the EU human rights policy should, in light of the recent development of human rights policy instruments by the Council and the Commission, be more targeted towards controlling the policies of these institutions'. In national political systems, it has been people's representation that has provided the major impetus to such instruments.

- The EP needs to follow up on its decision of 5 July 2001, to undertake a review of the structures and working methods of its competent bodies dealing with human rights and democracy.

- As regards its own activities the EP should ensure a systematic inclusion of a human rights focus in the work of the various committees and delegations for relations with third countries and ensure better coordination and follow up of activities.

Ad2 Implement a system of human rights reporting

Fair and consistent periodic reporting on human rights performance – of Member States, candidate members and states linked to the EU – provides the basis for policies that take due account of human rights and the evaluation of these policies.

The reports now being produced by EP committees, as in extensive resolutions, and the EU Annual Report on Human Rights produced by the Council are a fine fundament for periodic country and theme specific reporting on all countries and areas of concern to the EU. However, they have been largely thematic and descriptive, quoting country specific examples by way of illustration. There is no systematic and long-term process of scrutiny and evaluation of activities.

Developing a structure and practice for periodic human rights monitoring is by all means a feasible undertaking. In Appendix 3, we describe various reporting formats used by government bodies, such as the US State Department, and by inter-governmental and non-governmental organisations. There is no lack of academic literature on indicators, best practice examples, etc. Reliable information is available on a wide range of human rights issues, covering virtually all countries of the world, from UN, governmental and NGO sources.

- Initiating a human rights reporting regime should be an immediate priority of the EU.

Ad3 Implement a systematic Human Rights Impact Assessment

On the basis of country and theme reporting, a system of human rights impact assessment (HRIA) is a logical and necessary corollary. Existing practices of assessment related to environmental and development issues have proven that such evaluations are possible, reliable and valuable. Obviously HRIA is not an easy task. One needs to find one's way through a plethora of documentation. One has to attract experts from within and outside the EU apparatus. One needs to combine elements from models and approaches that have a sound theoretical basis and have proven to be 'best practice'. In other words, one has to invest in the development of an instrument that is both user-friendly and tailored to its needs.

The *purpose* of HRIA is to enhance the effectiveness of external policy measures on the human rights situation in third countries and to prevent any negative effects. HRIA provides an accountability framework and facilitates democratic control. It can be of assistance in avoiding unnecessary measures and costs.

HRIA is a *systematic process* to ensure the integration of human rights aspects in decision-making throughout the policy formulation, implementation, checking and adapting process. It includes monitoring and evaluation of the results in terms of human rights of the applied policy measures.

HRIA should include a fixed set of criteria derived from international law and standards, according to which human rights performance can be held accountable. It should make

use of indicators, both quantitative and qualitative, such as has been developed by (inter)governmental organisations and NGOs. It should be open for scrutiny by politicians, experts and NGOs. Methods of HRIA and human rights analysis are already an area of intense research and development at various academic institutions, private firms and non-governmental organisations. There is no theoretical or practical impediment for the EU to mine this wealth of expertise and use it for EU-sponsored Human Rights Impact Assessment.

HRIA cannot pretend to trace incontestable causal relationships between the human rights elements of EU policies regarding a particular country and the improvement, or absence thereof, of human rights observance in that country. Neither is this necessary. HRIA should primarily be construed as a 'heuristic' instrument. By applying professional skills of scrutiny to human rights developments, policy makers and program executives can detect: which human rights developments are prospering, deteriorating or stalling; which factors appear to contribute most to those changes, for better or worse; which actors come to the fore as most influential in those developments; and which external policies and programs stand out as being most instrumental. From there, they can wisely adapt and re-orientate their assistance and interventions.

- The EP should adopt the principle of applying HRIA to both EU internal and external policies and call on the Council and the Commission to take the appropriate steps towards the development and implementation of such an instrument.
- EU political decision makers should match their stated political will to enhance the coherency, consistency, transparency and effectiveness of EU human rights policies by taking the decision to develop and implement HRIA for both internal and external policies.
- The EU should involve outside experts, academic institutions and NGOs in the process of development and implementation of a framework for HRIA.
- EU political decision makers should make HRIA an element of all steps of any major EU policy, program or project with an 'external effect': its conception, preparation, elaboration, implementation, adaptation and evaluation. In addition to systematic human rights reporting, checklists need to be developed for the various policy areas, as well as training programs and handbooks to assist officials in the effective and systematic implementation of HRIA.
- A databank with more detailed analysis of exemplary or otherwise significant human rights developments should be installed for the benefit of policies relative to the country concerned and to comparable developments in other countries.

CONFERENCE ON HUMAN RIGHTS IMPACT ASSESSMENT, BRUSSELS, 19-20 NOVEMBER 2001

1 Conference Program

MONDAY 19 NOVEMBER

Welcome by the Chair of the Conference, Mr Frans Huijnen

Welcome and introduction by Ms Marike Radstaake, HOM

Opening statement by Ms Renée Jones-Bos,
Ambassador for Human Rights, The Netherlands

Mr Olav Kjørven,
State Secretary for International Development, Norway
*The Norwegian Human Rights Action Plan and Human Rights
Assessment*

Analogy with other impact assessments:

Human Rights Impact Assessment for Companies
Strategic Environmental Impact Assessment

Ms Margaret Jungk,
Danish Centre for Human Rights
The Human Rights and Business Project

Mr Rob Verheem,
Commission for Environmental Impact Assessment,
Technical Secretary for Strategic Environmental Assessment
Strategic Environmental Impact Assessment

TUESDAY 20 NOVEMBER

Measuring impact – tools and instruments – examples

Dr Todd Landman,
Deputy Director, Human Rights Centre, University of Essex
Measuring Human Rights and the Impact of Human Rights Policy

Mr Jonas Grimheden,
Doctoral candidate at the Law Faculty, Lund University, Sweden
Case study on judicial independence in China - using indicators

Indicators as a policy and monitoring instrument: various perspectives

Ms Sakiko Fukuda Parr,
Director Human Development Report Office, UNDP
Indicators of human rights and human development: overlaps and differences

Ms Kate Raworth,
Policy Researcher at Oxfam GB
The guidance of human rights law

Ms Marina Ponti,
Member of the Coordinating Committee of Social Watch and representative of
Mani Tese, Italy
*The Social Watch initiative: monitoring economic and social rights. Using indicators
to monitor government's compliance with set goals*

Ways to move forwards with Human Rights Impact Assessment at eu level – making use of international experience

Ms Vicky Bowman,
Cabinet of the European Commissioner for External Relations, Mr Christopher Patten
Developing HRIA in the EU context

Mr Dick Oosting,
Director Amnesty International EU Office Brussels
Reflections on the discussions - translation into EU practice

Ms Isabelle Brachet,
Permanent delegate to the EU for the International Federation of Human Rights (FIDH)
Practical steps to start developing HRIA at EU level

Closing remarks by the chair of the Conference, Mr Frans Huijnen

B CONFERENCE ON
HUMAN RIGHTS IMPACT ASSESSMENT,
BRUSSELS, 19-20 NOVEMBER 2001

2 Summaries of Presentations

The Dutch government's human rights policy

*Renée Jones-Bos, Ambassador for Human Rights, Ministry of Foreign Affairs,
The Netherlands*

In her opening statement, Renée Jones-Bos emphasised the importance of the conference theme both from an academic's point of view, but also, and especially, for a government that has to account for day-to-day handling of its human rights policy: 'The organisation of this conference is very timely, because measuring the impact of policy and trying to shift public management from input to output-oriented and results-based budgeting, is a hot issue in the civil service nowadays. At the Ministry of Foreign Affairs, we continually ask ourselves what the effects are of our human rights policy and how we should best measure its results. And of course parliament and NGOs ask us on a permanent basis to account for our policies and actions.'

Jones-Bos briefly outlined the Dutch 'Memorandum on human rights in foreign and development co-operation policy (2001)'. A core element of the Memorandum is the emphasis on the need to improve the integration of human rights within the wider context of all areas of foreign policy. 'The real challenge is in mainstreaming human rights in everything we do. Another important observation in the Memorandum is that the focus of human rights policy is gradually shifting from standard setting to implementation. This includes monitoring of compliance as well as technical assistance.'

There is a need for a more integrated policy in relation to human rights and development. To this end the Netherlands Minister for Development Cooperation ensures that any long-term bilateral development relationship is underwritten by a commitment by the government in question to work towards good governance, which is assumed to include respect for human rights. In addition, the Dutch government provides support to other countries on working towards good governance, human rights and peace building.

MEASURING IMPACT OF POLICIES

To measure the impact of policies, according to Jones-Bos, 'you first of all need to have policies and then look at the implementation in practice. Two examples, the Dutch human rights policy on China and the good governance and human rights program in Guatemala, show that project activities are maybe easier to measure than general policies.'

'In order to assess more systematically the impact of government policies in terms of real effects on a human rights situation, an assessment should start with measuring the initial situation in a certain country and the situation after a certain period of time. Of course, it will remain extremely difficult to assess what caused a change, taking into account a number of factors, of which our own policy is only one.'

'Another challenge is how to make human rights reporting objective, systematic and quantifiable. Is it possible to set up a system of human rights rating, enabling policy makers to make an objective, quantitative assessment of the human rights performance of a country rather than the present more qualitative one? In developing such a system, the following elements could be taken into consideration:

- Has the country concerned ratified the most relevant international human rights covenants?

- Does the country concerned have independent institutions, such as courts, an ombudsman?
- Has it incorporated the most relevant international human rights norms in national legislation?
- Has it implemented these norms in such a way that the actual practice is satisfactory?

By rating these kinds of aspects, one could try to make up a total assessment. So far, we have not been able to do this satisfactorily.'

Measurement, transparency and accountability are notions of the utmost importance in conducting governmental human rights policy, but, said Jones-Bos, 'one should keep in mind that:

- A human rights policy requires a long term approach, a lot of stamina and does not always lead to quick results;
- Because of the complex nature of human rights policies and the wide array of factors in play, it is difficult to assess the real impact of a certain policy action;
- Total transparency and maximum effectiveness do not always go hand in hand, sometimes silent diplomacy works better.'

Moreover, different political situations require different political actions. They require a qualitative approach which leaves room for a mix of instruments. It is precisely this wide range of political and development co-operation instruments which can make human rights policy effective.

Jones-Bos: 'Everything which contributes to improving accountability and transparency is worth exploring with the utmost effort and dedication, especially in the field of human rights.'

The integral text of this speech is available at HOM.

The Norwegian Human Rights Action Plan and Human Rights Assessment

Olav Kjørven, State Secretary for International Development, Norway

Based on his experience in the field of environmental assessment, Olav Kjørven made a plea for setting benchmarks, overcoming barriers and focussing on results. He outlined the close link between development and human rights. The UN has defined development in terms of a process of expanding people's choices: growth, economic or otherwise i.e. as a means, not an end. Nobel Prize laureate Amartya Sen's innovative research suggests very strongly the positive synergy between expanding the various dimensions of freedom and equitable economic development. This provides us with a significant insight if we want to focus on results. Assessment of progress has to be done primarily in terms of whether the freedoms that people are entitled to are enhanced. This is why it is so important to assess the impact on human rights.

PLAN OF ACTION

Referring to the Norwegian Human Rights Action Plan, Kjørven explained that the Universal Declaration of Human Rights and other human rights instruments are considered to be an integral part of Norway's legal and political system. In 2000 Norway adopted the National Plan of Action for Human Rights. It embodies a coherent approach, both in terms of a need for improved coherency and effectiveness of aid programs, as well as in terms of policy coherence between development cooperation and other policy areas. Any potential negative impact on human rights should be avoided before project planning starts. The plan comprises 325 projects and initiatives to improve the human rights situation in Norway and abroad. Each Cabinet Minister is responsible for promoting human rights in his or her field. A committee of State Secretaries ensures that human rights issues receive the necessary political emphasis and attention.

As a follow-up to the Plan of Action, Norway publishes an annual report that evaluates the efforts and enables the public to see the progress in the practical implementation of the plan. Kjørven remarked that the whole process itself has increased the awareness of human rights and has paved the way for closer contacts between ministries and external groups. It has ensured that many areas of the Norwegian public administration now feel responsible for it.

HANDBOOK FOR HUMAN RIGHTS ASSESSMENT

In addition, Norway has developed a strategic tool to enhance the human rights profile of any development program, by assessing how far it respects the promotion and protection of human rights. This tool is NORAD's *Handbook for Human Rights Assessment*, published in February 2001. It is a handy booklet, including a basic introduction to human rights concepts and a list of questions to be asked at all stages of the program. The key words of the assessment are awareness and empowerment. The analytical model addresses whether and to what extent a program:

- Is consistent with the human rights treaty obligations of the partner country;
- Strengthens human rights awareness among the target population and other persons or groups affected by a program; and
- Empowers target groups or groups otherwise affected by a program to enjoy their internationally recognized human rights.

Kjørven compared HRIA with the strategic environmental assessment, which simply puts the impact assessment at the aggregate level of policies, plans and programs. HRIA should also strive towards the strategic level rather than the project level. The lesson drawn from experiences in the environmental field is that 'for HRIA to have an impact on people's lives, the assessment process must be 'in sinc' with the policy and decision-making processes of the country in question. If not, the benefits will be limited.'

Human Rights Impact Assessment for Companies

Margaret Jungk, Danish Centre for Human Rights

In recent years, publicity surrounding the operations of several multinational companies has brought the subject of human rights and corporate conduct into the public domain. No business, large or small, is immune. Companies need guidance on specific human rights issues – and to ensure that their practices remain compatible with the everyday needs and rights of local communities. Jungk explained how these developments stimulated Danish companies to seriously address these issues. In June 1999, three organisations, the Confederation of Danish Industries, the Danish Centre for Human Rights and the Industrialisation Fund for Developing Countries, began a collaborative project to meet these needs.

Anybody trying to operationalise human rights in an impact assessment is facing three basic questions:

WHAT CONCEPT OF HUMAN RIGHTS SHOULD BE THE FUNDAMENT FOR THE HRIA?

In the context of business different concepts of human rights exist, mainly relating to labour rights which are derived from ILO standards. The definition of human rights should be expanded beyond labour rights issues and be defined properly. In the framework of this project an agreement was reached that the companies would refer to international human rights law as the basis of their business responsibility, so that companies would not fall too low in the observation of human rights standards. HRIA became an attempt to take some of the international standards up to this level and apply them to the immediate level of the businesses.

WHAT IS THE PREMISE OF (BUSINESS) RESPONSIBILITIES THAT WILL BE USED?

In this case one needs to define the companies' duties in relation to human rights and the limitations of those duties. Ultimately it was agreed to use negative duties to define their responsibility, rather than using ethical concepts. In cooperation with ten companies, areas related to some 30 different rights were identified, in order to be able to assess when the companies would come into conflict with the duty to respect. Indicators were developed in order to provide companies with a practical tool.

HOW CAN THESE RIGHTS BE MADE OPERATIONAL IN (BUSINESS) DECISION MAKING PROCESSES?

Three things are key in this area. First, the ownership of the tool. Dealing with about 4.000 companies that are operating abroad, the tool should be flexible enough to apply to different companies which work in different areas and under different circumstances. Second, HRIA should only require reasonable effort and limited time from the company. Third, it should be user-friendly because most managers have no prior experience with human rights issues.

Margaret Jungk: 'We managed to develop a computer program meeting these three requirements. This management tool helps companies to assess the way they deal with human rights issues. The tool consists of questions and indicators which can be applied to specific areas of operations. It is modelled on a scenario-plan which most large companies use. It had a test run with Shell in South Africa that held up pretty well. The program will be made available free of charge for all companies in Summer 2002.'

Strategic Environmental Assessment

Rob Verheem, Technical Secretary, Strategic Environmental Assessment, Commission for Environmental Impact Assessment, The Netherlands

Rob Verheem began by saying that he would speak about international experiences and more particularly experience gained by the International Association of Impact Assessment (IAIA), an Association of impact assessment experts. These experts do work on environmental issues, and are working in social, economic and technological fields. He stressed that it was time to put HRIA on their agenda as well.

The Strategic Environmental Impact Assessment is trying to do the same thing as HRIA, which is, according to Verheem: 'How do we get an issue into the hearts and minds of the planners? Evidently that does not happen automatically.'

SOME CRITERIA OF A GOOD QUALITY PROCESS ARE:

- Impact Assessment is a process for evaluation, not a project. Its major significance is in the discussion between all parties throughout the process.
- All stakeholders should be involved in an effective way. Structural, continuous interaction with all stakeholders throughout the planning process makes a difference – reports don't.
- Bringing human rights issues on a par with other issues creates room for acceptance: human rights are not *the* issue – it is one of the issues.
- IA is not about what the process is, but about what the process should do. It is recommended to develop mechanisms ensuring that for the most important policies an IA is carried out.
- IA should be the responsibility of the leading agencies in decision-making. The results should be made available early enough to influence and inspire the planning.
- Look for alternatives. Stretch existing criteria or find new ones.
- An independent check should be part of IA, to check the quality, the measurements preferably by a body that has a mandate by legislation.

Verheem stressed that 'one best HRIA process does not exist. The process depends on the level and culture of decision making, the characteristics of the planning process, whether it involves long or short-term planning etc. Pre-conditions for a successful HRIA process include: a good knowledge of the existing human rights situation; the availability of a clear policy and clear objectives; and a structured planning process.'

Politicians need to be made aware of the *advantages* of HRIA. To mention two of them: HRIA avoids delays or unforeseen problems during the implementation of a policy, and it can avoid costs related to unnecessary or ineffective measures.

The ultimate test is whether HRIA works in practice. One of the key messages from the IAIA discussions is: start flexibly and with an easy approach. And be willing to adapt your process according to the findings. All problems as to methodology and process will be solved within a couple of years, when there is the political will to do it. To achieve this, Rob Verheem recommended involving political decision-makers in the process of developing HRIA.

Measuring human rights and the impact of human rights policy

Todd Landman, Deputy Director, Human Rights Centre, University of Essex, UK

One of the questions raised in relation to Human Rights Impact Assessment is: why should we worry about measuring in the first place? In addition, Todd Landman posed the question: 'Upon what exactly is a policy meant to have an impact? If we think about the 'what'-question, I think the 'what' is human rights protection. In political science terms we call this the dependent variable, i.e. what is to be explained.'

There is a basic assumption behind HRIA that a policy is being applied to a country in the hope that that country's practices in terms of human rights improve. It is difficult to measure the correlation between a policy intervention and a human rights situation. Landman referred to two examples of a situation in which it is not clear what causes the improvement in human rights. First, the Pinochet regime in Chile, in which the Carter administration, as well as the Reagan administration, could equally claim that their policy had a positive impact on the human rights situation. Second, EU enlargement, where the political and economic criteria for accession to the EU lay out a series of targets. It could be argued that countries improve their practices to join the EU, but it could equally be argued that this new set of states has led the EU to rethink its policy on democracy and human rights. Human rights can be measured but the process of measuring is fraught with difficulties – difficulties which reside in ontology, epistemology and methodology.

MEASURE CAUSAL RELATIONSHIPS

According to Landman, measures of human rights promotion and protection are of paramount importance for public policy making. They offer a comparable set of indicators that serve as important dependent variables, useful for both descriptive accounts and more advanced statistical analysis. However, the direct causal relationship between policy intervention and improvement in human rights promotion and protection can only be estimated as a 'realised causal effect'. That brings up the question of how one can make causal inferences from analyses. Multi-varied analysis, using statistical techniques, is one way of controlling particular factors while isolating the independent effects of policy interventions.

Equivalent standards-based measures of human rights protection are needed. To this end, several issues need to be addressed: ethical questions; the choice between using raw numbers or more abstract scales; the level of analysis; the accessibility of information. One should also address the political problem – that governments and NGOs refuse to rank countries for fear of recrimination and loss of credibility.

Landman: 'Measuring human rights is important. I am optimistic that methods of political science can be applied to it, but I am cautiously optimistic, because I think a tremendous amount of work needs to be done in order for us to establish whether policies have a positive impact on human rights protection.'

Landman has addressed these issues in more detail in his paper 'Measuring Human Rights and the Impact of Human Rights Policy', 2001.

Case study on judicial independence in China - using indicators

Jonas Grimheden, Ph.D. Candidate, Faculty of Law, Lund University, Sweden

Jonas Grimheden outlined his research on the independence of the judiciary in the People's Republic of China (PRC). The focus is on the use of parameters to identify an independent judiciary and its application in cross-cultural dialogue.

International and regional instruments on human rights require the establishment or maintenance of an independent and impartial judiciary. However, the interpretation of the meaning of judicial independence varies according to the legal system, legal tradition and values. Moreover, no country would, in all probability, strive to establish a completely independent judiciary (e.g. completely independent from the executive or legislative branch).

According to Grimheden, indicators on judicial independence used so far are beneficial but are still very much aimed at measuring mechanical efficiency only. Efficiency should also be valued in terms of the credibility of the court in the eyes of the 'consumers' of justice. Therefore, parameters constructed to reflect the point of view of the consumers of justice should be emphasised. One must strive to depict the level of credibility that a judicial system enjoys in society as well as the reliability of the institution as a whole.

In identifying parameters, minimum standards on judicial independence should first and foremost be formulated based on common denominators, so as to avoid bias and double standards. This can be achieved by drawing on the sources of international law. Credibility is one of the parameters that should be applied and translated in qualitative indicators. 'A more objective, consumer-oriented approach will constitute a more solid base of credibility in cross-cultural dialogue,' argued Grimheden.

Grimheden highlighted the potential benefits of using an inter-cultural set of parameters:

- Providing for a structured and focused analysis and dialogue.
- Enabling development of fair, culturally sensitive and universal baselines for such analysis and dialogue.
- Facilitating steps to take us beyond organisational features of particular judicial systems towards solutions for particularly important facets of judicial dependence.
- Transferring good models enhancing judicial independence in practice rather than remaining confined to myths-theories about judicial independence that are not susceptible of translation into practice.
- A more general approach to the spectrum of rights that I used to exemplify parameters outlined above may also make the EU-China dialogue more productive.

Grimheden addressed these issues in his paper 'Human Rights Impact Assessment: A Productive and/or Feasible Strategy in Cross-Cultural Dialogue? – Parameters for Judicial Independence in PR China', 2001.

Indicators of human rights and human development: overlaps and differences

Sakiko Fukuda Parr,
Director, Human Development Report Office, United Nations Development Program

In her presentation, Sakiko Fukuda Parr focused on the overlaps and differences between development indicators and human rights measurement: 'Although economic, social and cultural rights indicators and human development indicators superficially look like identical concepts, in fact they are not. For example, notions of the right to education are richer and much more complex than the development goal of having more children in school.'

Human rights and human development was the theme of the *Human Development Report 2000*. Development goals are aspirations. Human rights involve claims on others to help secure their rights. Consequently, human rights and human development have quite different – though consistent and mutually reinforcing – conceptual frameworks. They involve rather distinct strategies and methods. These require measurement of achievements and shortfall in distinct ways. In addition, the data requirements are more complex than for human development measurement.

Accountability implies assessing the fulfilment of an obligation with clearly defined performance criteria. This requires the setting of benchmarks and standards. Accountability of duty bearers is central to security and the promotion of human rights. This means that one has to identify the principal actors, defining precisely what their accountabilities are.

RESULTS AND CONDUCT

Looking at the question: 'Why is 'conduct' important in human rights?' Fukuda Parr emphasised that securing rights depends on making social arrangements – by law, but also by institutions, norms and values of society and an enabling economic environment. 'This is the way in which human rights issues and ideas enrich development economics – we are concerned not only with results but also with issues of conduct. The principle of 'progressive realisation' recognises that time is needed to make the necessary changes to secure rights, and for all individuals to enjoy them. Where progress is normally emphasised in economic and social rights, such as education, there is no reason why this is not applicable to some aspects of civil and political rights. When looking at human rights we are concerned with progress of a particular kind: remove discrimination, increase participation and implement effective remedies.' (See sheet: 'Contrasting data requirements and availability')

Fukuda Parr stressed that the thinking on human rights has to change in this globalised world. There is a need to shift from looking at civil and political rights to taking a comprehensive approach and to look at all rights. Poverty eradication is the major human rights challenge of our age. We need to rethink the fundamental assumption that human rights is centred around the state's accountability, and add the notion that non-state actors have important implications for the enjoyment of human rights around the world. Finally, we need to move from punitive instruments to positive approaches.

Traditionally, the human rights movement had a focus on naming and shaming. Fukuda Parr: 'I am not saying one should stop naming and shaming, but as the only

instrument for external pressure on changing behaviour and addressing these issues, it has its limits. Additional positive reinforcement is an increasingly critical instrument for the promotion of human rights.'

| 'CONTRASTING DATA REQUIREMENTS AND AVAILABILITY' | | |
|--|--|--|
| DIMENSIONS | RESULT (human outcomes) | CONDUCT (inputs, effort) |
| Key Indicators | Conventional socio-economic indicators (national average) | Non-quantifiable Location specific Search for proxy indicators |
| Non-discrimination | Use conventional social-economic indicators (from disparity perspective) Data less readily available | Non-quantifiable Location specific Search for proxy indicators |
| | Important focus of analysis HDRs but not in all socio-economic analyses | |
| Progressive Realisation | Use conventional social-economic indicators in time trend from three perspectives: • Average • Deprivation • Disparity Data less readily available Conventional analysis often stops at average perspective | Non-quantifiable Location specific Search for proxy indicators |
| Participation | Non-quantifiable Location specific Search for proxy indicators | Non-quantifiable Location specific Search for proxy indicators |

The guidance of human rights law

Kate Raworth, Policy Researcher, Oxfam UK

Kate Raworth referred to her experience with working on the *Human Development Report 2000*, which focused on the relationship between human development and human rights. She stated that in assessing human rights we care about two different but interrelated things:

The condition of people's lives (have their rights been realised?)
The conduct of the state (has it met its obligations to let people enjoy their rights?)

'Take the example of an isolated island where a state is doing everything it can to make sure that the little amount of food available is well distributed, so it is meeting its obligations, but at the end of the day there is not enough food.' 'This example shows that we need to assess these things separately.'

Raworth raised the question: 'What guidance does international human rights law give when dealing with the international context?' For example article 28 of the UDHR states: 'Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.' And she continued: 'If you read the major treaties of international human rights law, you will find references to obligations throughout the treaties. There are three obligations of action: respect, protect and fulfil. And there are four obligations of process: non-discrimination, adequate progress or progressive realisation, participation and effective remedy. You can apply these obligations to both nation-states and international actors, the global community. The latter is becoming more and more important since globalisation shifts the focus from states to non-state actors. However, following these steps does not necessarily lead to clear-cut policy advice and there may be contradictions within the outcomes.'

To explain the meaning of the obligations for different actors, Raworth presented some examples of human rights obligations of nation states and international impacts. (See sheet 1: *Human rights obligations of nation states* and sheet 2: *Examples of HR obligations of international impacts*).

According to Raworth, it is advisable to keep three things in mind: 'First, there is no simple formula for the best policies to realise rights. Second, there are no easy answers, meaning that there will be persistent trade-offs between obligations, between rights, between people – the policy maker's dilemma will not go away. Third, there is no clear path, meaning that although human rights express a vision of how society should be, it is not clear how to get there from here. HRIA could be a very useful tool for dealing with these issues, if we take it seriously and make it as rich as it needs to be.'

SHEET 1: HUMAN RIGHTS OBLIGATIONS OF NATION STATES

| OBLIGATION | RIGHT TO EDUCATION | RIGHT TO FAIR TRIAL |
|-------------------|--|--|
| Respect | Don't ban children from school | Don't imprison without trial |
| Protect | Ban child labour that blocks education | Pay judges enough to prevent bribes |
| Fulfil | Build schools + Train teachers | Build courts Train judges |
| Non discrim. | No gender bias in education budgets | No ethnic bias in sentencing |
| Adequate Progress | Make progress in raising enrolments | Make progress in reducing case backlog |
| Participation | Community role in formulating local education policy | NGO monitoring and jury of peers |
| Effective Remedy | Administrative or judicial complaint procedure | Right of appeal against mistrial |

SHEET 2: EXAMPLES OF HR OBLIGATIONS OF INTERNATIONAL IMPACTS

| OBLIGATION | CHARITY (dev co-op) | POLICY (foreign policy) |
|-------------------|--|---|
| Respect | No dams that displace local communities | No economic sanctions in poor communities and countries |
| Protect | Monitor elections | Sanction dictators with chemical weapons |
| Fulfil | Food aid, Build schools, Rural electricity | Give trade concessions: Lomé: EU to ACP states |
| Non discrim. | Don't assume all farmers are men | WTO trade rule: most-preferred-nation status for all |
| Adequate Progress | Millenium Goals for 2015 ... | |
| Participation | Stakeholder consultation | DC voice in international negotiations |
| Effective Remedy | WB Inspection Panel | WTO Dispute Resolution Mechanism |

Using indicators to monitor government's compliance with set goals

Marina Ponti, Representative of Mani Tese and Social Watch

Ponti took the audience back to 1995, the World Summit on Social Development in Copenhagen, when crucial commitments were made by governments to eradicate poverty, social exclusion and unemployment. An important conclusion of the Summit was that these are crosscutting issues that need to be addressed both by the South and the North. Unfortunately, there was a lack of commitment to set specific dates, targets and goals, which makes it difficult to judge progress in these areas.

At that same occasion NGOs created a network, Social Watch, now present in sixty countries. Its primary role is to monitor the implementation of the agreed commitments of Copenhagen. Social Watch has designed new indicators that measure poverty in the sense of Amartya Sen's definition: assessing the effectiveness of social policies in achieving set goals. The results are being presented in the Annual Social Watch Report. The Social Watch Report shows that, if a country is serious about a problem, the first step is to gather and count reliable quantitative data. One needs to obtain a better-informed view on the size and specifics of a problem in order to be able to develop effective policies and monitor developments.

A growing number of legal experts agree on the need to define poverty as a denial of rights, capabilities and access to resources. Ponti refers to Nobel Prize winner Amartya Sen, who states that poverty must be seen as the deprivation of basic capabilities rather than merely a lack of income.

Ponti described the growing conflict between national and international human rights law and the rules of the globalising world economy. It is necessary to identify and address the human rights impact of issues such as the international macro-economic decision-making, poverty eradication, debt burden, international trade, the functioning of international financial institutions, technology-transfers and the fulfilment of international development commitments. What is good for the economy is not necessarily good for the people. Much has been done in the sense of inspiring speeches by governments but concrete action is badly needed. Social Watch has decided to double its efforts to hold governments and international organisations accountable to the high standards that they themselves have set.

'Some poverty situations are worse than others, but since a rights-based approach is about participation and empowerment, no one is 'too poor', or 'not poor enough' to be excluded from human rights protection,' Ponti concluded.

Developing HRIA in the EU context

Vicky Bowman, Cabinet of the European Commissioner for External Relations, Brussels

In her presentation, Vicky Bowman set out the current position of the European Commission and ways to move forward in the area of HRIA. The Commission has committed itself, through the 'Communication on the European Union's role in promoting human rights and democratisation in third countries' of May 2001, to take greater account of human rights within its policies.

The Commission should make efforts in three areas:

- To develop much clearer impact indicators to work on with NGOs when designing a project. Europe Aid is working on this.
- To 'mainstream' human rights in the development assistance budget.
- To look at any policy which has an external impact, so as to ensure that no harm, but also potentially some good is done.

Currently, the Commission is following up the Communication by collecting ideas of any organisation and member states active in the area. Bowman believes that the work HOM has done will be a fundamental input in that, because 'the discussions that we have had here and back in June [at conferences organised by HOM] have been groundbreaking in terms of the subjects discussed and in bringing together the different disciplines and the different actors.'

REQUIREMENTS FOR A GOOD HRIA PROCESS

FIRST OF ALL, the political will. As mentioned, the political commitment is there. Now we have to ensure that on individual questions the Ministers and Commissioners concerned are prepared to make, if necessary, difficult decisions or to change their original approach. The only way that this is going to happen is if you have HRAs which are credible and which offer solutions rather than throwing up more problems.

SECOND, it is important that human rights are taken into account at an early stage in the decision making process. The later, the less effective it is going to be: 'In any case it requires somebody somewhere to think: Yes! we need to move. At the moment there is nothing that says that as soon as the train of policy development starts, we must think about human rights.'

THIRD, different methods and formats are needed to adapt to different situations and the available time frame. Therefore, flexibility is key to HRIA.'

A FOURTH POINT of attention outlined by Bowman is the issue of human resources: the people and the skills to do this. This requires training and awareness raising within the Commission.

Finally, improved internal coordination is of importance. The Commission being a fairly vertically stratified organisation, Bowman suggested: 'We need a kind of internal look ahead and a more transparent approach to policy making, which means that we can alert our colleagues in other DGs that there is a potential human rights impact in what they do, and request their collaboration at an early stage of policy making.'

INTEGRATION IN POLICY-MAKING PROCESSES

As to integration in the policy-making processes, Bowman outlined several moments in the process of policy making in which a HRIA could be at a stake:

- The formal or informal consultation amongst the services of the Commission, which often consult widely with the interest groups in that particular area.
- The Inter Service Consultation, since this is the moment where the Directorate General for External Relations is virtually guaranteed to see the proposals. This may be the first point where a HRIA can be applied. The period allowed is two weeks, meaning that a quick methodology is needed, which people within that DG can immediately react upon. They can then start to raise questions and perhaps draw solutions.
- Discussion amongst the Cabinets of the Commissioners. It is much more effective to bring up human rights issues on a basis of factual analysis with systematic consideration of the human rights effects.
- The formal adoption by the College of Commissioners. Disputes may go to that level, depending on whether they have or have not been settled further down the track.
- The moment when proposals go to the Council and the European Parliament. The stage of proposal through to adoption by the Council and the Parliament is usually between 6 and 18 months. This also requires the EP to be politically committed to HRIA and to following up the results of the report.

Bowman concluded by expressing her hope that the HOM report would feed into this debate and that: 'In a year's time we will come back and tell you what the Commission is doing, rather than what the Commission might do.'

Reflections on the discussions – translation into EU practice

Dick Oosting, Director, Amnesty International EU Office

Dick Oosting was asked to make some reflections on what had happened during the Conference and then relate them to the practice of European Union policymaking. 'I have tried to synthesize what has happened, from the perspective not of a scholar or a government official or an EU official or a politician, but as one of the hacks here in Brussels who tries to influence the EU to do more, and to be more effective about human rights. I have been as confused as everyone of you, at times. It is very complex indeed. So one of the things we should do is to try to demystify and to simplify at least to the point that some of the stuff that we have been absorbing here becomes manageable and accessible and applicable, in particular in the EU context.'

Oosting summarised four elements that have been advanced by various speakers as preconditions of HRIA:

POLITICAL WILL

Over the past year the EU has set its standards very high in terms of human rights ambitions. The time has now come for the EU to show political will to include a human rights perspective in all of its policies. In addition, the EU should invest in research and build up expertise and capacity on how to mainstream human rights into other areas of activities. This includes tackling the problem of coherency between the Council and the Commission, and between EU institutions and individual member states.

COMPREHENSIVE HUMAN RIGHTS FRAMEWORK

HRIA requires a comprehensive human rights framework, including civil, political, economic, social and cultural rights. With respect to civil and political rights, HRIA is in a way continuing what has been done for a long time, but applying the instruments in a more specific and systematic way. For example, the guidelines on death penalty and torture could be applied more systematically and used as indicators, rather than as an instrument that you may apply in one particular situation but not in another, according to political expediency.

INTEGRATION AT NATIONAL LEVELS

Oosting stressed the importance of shifting the perspective from human rights work as an international pressure activity to one that has to be integrated in developments at a national level. Human rights is not just a question of foreign relations – human rights is also a question of looking at your own performance. Some EU countries have taken steps towards HRIA (there are national instruments, mechanisms, ombudsmen, etc), but so far none of the member states has developed a comprehensive system or a proper, integrated, national action plan that allows them to be accountable for their own performance. This also applies to the EU itself. It is very important that the EU starts to reflect on its own human rights values and policies, investigating how they are applied internally. As yet, the EU does not have a good track record in terms of assessing its own work.

HRIA AS A PROCESS

Four sub-items could be distinguished here:

FIRST, the importance of starting off with knowledge of the existing situation. This also

involves the introduction of a basic monitoring and evaluation system and having a notion of progress and achievement over time. Monitoring and continuous evaluation should become part and parcel of every undertaking of the Council, the Commission and the EP.

The SECOND aspect is that HRIA can become a tool that strengthens the accountability of governments and particular sectors of society. An example is the experience of The Danish Centre for Human Rights with corporations.

THIRD, HRIA in terms of attitude is conducive to identifying what particular problems, priorities or conflicts exist between or within countries involved.

The FOURTH aspect is being aware of interrelating notions, including developmental and environmental issues, human rights, conflict prevention and social justice. More and more it is a question of having a holistic concept of human rights and applying that to your policies.

Oosting noted that currently there is little connection between different circuits.

Cross-communication and networking between scientists, NGOs, governments and policy makers should be stimulated. They can open up enormous resources that are hardly used now. In addition, NGOs should seek broader alliances, especially in the fields of development, social affairs and environmental issues. The NGO voice should be heard more often and more loudly in Brussels, since so far, human rights have too often been looked upon in a very narrow way as being restricted to civil and political rights.

Oosting: 'When we succeed to transmit what we shared and worked out during this Conference, to other platforms, especially to the EU, being the sponsor of this project, and to the EU Human Rights Discussion Forum starting these days, we might be able to contribute substantially to the development of HRIA.'

Practical steps to start developing HRIA at EU level

Isabelle Brchet, Permanent delegate to the EU for the International Federation for Human Rights (FIDH)

Isabelle Brchet commented on the opportunities at EU-level: 'The political will to implement HRIA within EU policy is shown by ad hoc, and at the same time important, concrete examples.' Examples are the Commission Communication from last May, the recent study of the micro-program schemes within the field of human rights, and the draft program for the European Initiative for Democracy and Human Rights 2002-2004.

BRCHET RECOMMENDED THAT THE EU TAKES SOME PRACTICAL STEPS:

FIRST, it should identify relevant strategic decisions. Since it is impossible to assess all EU policies, it is imperative to make choices. A starting point is to identify the relevant strategic decisions, for the benefit of a systematic use of HRIA at all levels. As an example, Brchet quoted the case of the EU-Mexico cooperation agreement. The local Mexican NGO community is asking for an assessment of the human rights impact of this agreement, which covers many fields including trade, culture, science and policy dialogue. A way of dealing with this is to isolate the more relevant aspects of the agreement and to assess the impact in these areas.

SECOND, Brchet agreed with other speakers on the need to have a clear picture of the human rights situation in order to have a basis for assessing the impact of policies at a later stage. An example is the proposal of Mexican NGOs to establish a committee of experts, consisting of EU experts as well as Mexican experts. She wondered if such a mixed body could undertake the HRIA in this case.

THIRD, in order to assess the human rights impact of policy it is necessary to have clarity on the specific aims or objectives of that policy. Brchet recommended that these objectives be taken from UN sources (for example the Millennium Declaration), reports of the Special Rapporteurs, recommendations from UN Treaty Bodies and the plans of action of World Summits. One can also look at regional bodies like the Council of Europe and the Organisation of American States. Of course these objectives need to be adapted to the national and local level. To a certain extent this is being done already, as in the case of the EU-China human rights dialogue – however not in a systematic or transparent way.

FOURTH, several participants stressed the need to involve all stakeholders in the HRIA process. In addition Brchet noted that it is crucial to involve local civil society and local human rights defenders in any HRIA. Commission delegations in third countries have a crucial role to play in that regard.

FIFTH, Brchet suggested one question to be explored: 'how one can use the existing association agreements, that include a human rights clause, in order to do some good for the human rights situation on the spot.' The EU-Tunisia Agreement, for example, has been in force for three years now. It is difficult to identify a clear link between EU policy through that association agreement and the deteriorating human rights situation in Tunisia. However, one could look at ways to use that agreement in order to do some good. At the same time the EU should be more creative in combining the different instruments at hand, such as supporting NGOs through the appropriate budget lines, with a view to promoting human rights protection.

Closing Remarks

Frans Huijnen, Chair of the Conference

In his closing remarks, the chair elaborated on some of the topics discussed, starting with the question of ownership. 'Can HRIA really involve people on the ground; can it be explained to the people in the target countries? This point was stressed very much and it is certainly something you should pursue. You should bring that element into your strategies since it is essential to make HRIA an effective instrument.'

Huijnen noted statements by several participants that the political will to develop HRIA exists. However, some objections and criticisms also were being voiced. A crucial issue is whether this political will can overcome the objections and address the difficulties and complexities of HRIA.

ADDRESS THE COMPLEXITIES

'Looking over the list of problems and complexities, there are some that we have to live with and to work on', Huijnen stated. 'The lack of authoritative data, for example, is a problem that will always be with us. So let's work on improved data-collection but not wait until they are perfect, because they will never be.'

Other objections are directly linked to the acceptance of HRIA as an instrument of policy making, such as the competition between the various impact assessments on different subjects. Huijnen: 'How can HRIA enter the market of impact assessments of a different nature, like environmental IA, conflict IA and others? That problem should be studied beforehand in order to enhance the acceptance of the instrument. We should involve policymakers in this process in order to device it widely.'

USE THE POLITICAL WILL TO WORK ON PRACTICAL INSTRUMENTS

Huijnen cited Olav Kjørven, the State-Secretary from Norway who said: 'We knew it was difficult, we experienced resistance but we did it because we had the political will to do it. So if you address the resistance, it can be done'. We heard the Dutch Human Rights Ambassador say: 'We have to have assessments anyway in order to undertake short term interventions in the framework of long term policies'. So it seems to be effective, Huijnen said, to have a very pragmatic approach on the one hand, and a very aspirational approach on the other. As Kjørven put it: 'We just have to follow on this road, in order to prove that we are not only calling for more action and more human rights focus in general policies, but we should also bring in the instruments to make that happen.'

To handle that balance between the complexity and the political will, it is very important to make the instrument fit the situation. Therefore, we need various types of instruments that can be used in various situations and thus might be more acceptable for those who have to work with them.

KEEP UP THE EXCHANGE OF VIEWS

Huijnen stressed the importance of bringing together people from the academic world, people from the NGO world and policymakers, as was the case at this conference. He encouraged the audience to keep up the exchange of views: 'As Todd Landman has said, some of these worlds of discussions are really separated and they should integrate more into yielding results in this field. I believe this can lead to a lot of creativity in finding solutions and making HRIA an effective instrument of policy making.'

Appendix 1 Basic principles for HRIA

Human rights standards

International human rights law and practice, as embedded in a wide array of conventions and declarations, constitute the edifice of human rights: civil and political rights as well as economic, social and cultural rights. The 'European Parliament resolution on human rights in the world in 2001' provides a list:

(...) having regard to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and its Optional Protocols, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the UN Standard Rules on the Equalisation of Persons with Disabilities, the International Labour Organisation Convention to Eliminate the Worst Forms of Child Labour, the Geneva Conventions relative to the Treatment of Prisoners of War, and ILO Convention 169 on Indigenous and Tribal Peoples (...)

Human Rights Impact Assessment should be developed as an approach based on the universality of human rights. Consequently, whether or not an individual state is party to a certain human rights treaty should not make a difference to the application of HRIA. Human rights obligations are relevant for all countries, not only for the ratifying countries.

The purpose of HRIA

HRIA is a systematic process to ensure the integration of human rights aspects in decision-making throughout the policy formulation, implementation, checking and adaptation process. It includes monitoring and evaluation of the results in terms of human rights of the applied policy measures. HRIA is a cyclic approach: analyse – choose – plan – do – check – feedback – and adapt.

The purpose of HRIA is to enhance the effectiveness of external policy measures on the human rights situation in third countries and to prevent any negative effects. HRIA would contribute to the transparency, consistency and coherency of policy measures and add a practical meaning to the notion that human rights are an integral part of external policy. HRIA would also ensure accountability, as HRIA would help to facilitate democratic control and stimulate the public debate on the development and implementation of EU and national human rights policy. Applying HRIA could also be of assistance in avoiding unnecessary measures and delays as well as costs.

The *forward-looking aspects* of impact assessment can enhance policy development and prepare arguments for policy choices. The *backward looking* aspects facilitate measuring whether the applied policy did achieve the objectives, as well as looking at the process itself: do we do what we agreed to do.

Selection of an impact assessment model

The initiatives to design models and instruments vary depending on the level and the purpose of the impact assessment model:

THE POLICY LEVEL: there are models aiming at assessing the impact at the level of effects on *human rights protection in target countries*, either directly or through intermediaries (foreign policy, international fora intervention).

THE PROGRAM LEVEL: there are models aiming at assessing the impact of specific intervention techniques on *specific areas of human rights concern* (women, freedom rights, etc.).

THE PROJECT LEVEL: there are models aiming at assessing the impact of *projects* in the field of human rights.

For a funding institution, this implies that a broad context be formulated in which the identified needs can be placed:

- The rights that are considered instrumental in contributing to the overall objective of improving the protection of human rights.
- The target groups that are prioritized, including certain target countries.
- The working methods that are prioritized.

The requirements for the methodological approaches, instruments and techniques are not alike for all purposes and all levels. There are examples of models and techniques for assessment at project level or at the level of a program of activities of an organisation. However, these models and techniques have usually been developed for specific cases or circumstances and cannot easily be applied in other cases or at a higher level of abstraction. That goes for the methodological approach as well as for the indicators that are used for assessment.

HRIA at a more general level than project and program activities is still at a pioneering stage. An effort to develop impact assessment will not result in a ready-made model. Different circumstances require different tools. However, a framework based on basic principles of impact assessment can be developed, facilitating that in the design and implementation of activities due account is being taken of impact and assessment of impact.

Human Rights reporting

A key feature of HRIA is measuring results: the effects of policy measures on a specific human rights situation. Without appraising results, there can be no assessment of impact. Measuring results starts with a profound analysis of the situation at the outset of policy making. Therefore, the basis for any HRIA is sound country reporting – an assessment of the human rights situation as well as the political, economic, social and cultural environment.

Nowadays there is a high level of information and reporting on human rights violations. This information however requires, due to the many intricacies of research, reporting, coverage and availability of sources, an additional level of interpretation. Only then can agreement be reached on the assessment of a human rights situation and on what needs to be done. A combination of quantitative and qualitative indicators should provide a broad and comprehensive picture (see Appendix 2).

A rational approach is to make a selection of categories of rights, representing the entire range of human rights. This can be used to obtain a broader picture of a situation and to single out the problematic areas that need further consideration. The conventions and declarations listed above can serve as a generic framework for this analysis; they provide the 'benchmarks' for human rights performance.

Preconditions for fair and factual human rights reporting include:

- Data should be verifiable; they should be based on reliable information. It should be kept in mind that different data sources have their own interest in providing information.
- The data presented should be significant in terms of the right in question; they should be suitable for monitoring any changes in the human rights situation.
- Data should be collected preferably over a period of time, in order to be able to monitor any changes in the human rights situation.
- The data produced by investigation and the scanning of documentation should be 'replaceable' – when data are being collected by another agent, they should yield the same information.
- In some cases it is impossible to collect reliable data; the extent and reason for such lack of information in itself can constitute a significant indication of a human rights situation.

Appendix 2 The use of indicators

The status of indicators

Indicators are what the name implies – something that gives an indication of how well the duty-holder (governmental, non-governmental or private) is doing in complying with an individual right. Incorporating indicators into the discussion on results and progress will facilitate a rights-based approach. Generally more than one indicator must be used to determine whether or not the duty-holder is complying with and/or improving compliance by others with the right in question.

Indicators are not 100% foolproof. For example, the percentage of children under the age of 12 enrolled in full-time schooling is generally used as an indicator to assess government's fulfilment of the right to education. However, it might be the case that some children are being taught at home, or that some are physically present in a school building but not provided with the books or other equipment necessary for learning. In such cases the indicators can be misleading. To reduce the likelihood of this happening, indicators are best interpreted within the specific context and supplemented with field research if in doubt.

In relation to some rights, 'benchmarks' are also a useful tool. These are specific 'target' points on an indicator scale below which the duty-holder's practice should not fall. In relation to the above example, school enrolment can range anywhere from 0-100%, but 90% might be the recommended benchmark for a particular area.

There is a risk that statistics are applied without taking into account the context, and consequently take on a life of their own. A country's human rights situation cannot be described in statistics only, quantitative indicators in themselves are not sufficient to make an assessment. Next to the *quantitative, statistical* element, a *qualitative* element is needed.

Human rights indicators refer to subjects of conflicting interests. Human rights criteria are not neutral in a specific country situation. Therefore it is important that indicators, in order to be considered as a valid and useful tool, are:

- Verifiable and based on reliable information.
- Highly significant in terms of the right in question.
- Replaceable (when data on indicators are being collected by another actor, would they yield the same information?).
- Valid (does it measure what it should be measuring?).
- Based on reliable and available information.
- Preferably be developed and agreed upon at the outset of a policy/project.

One of the issues raised with the development and use of indicators is problems of data collection – and data collectors – which undermine the reliability and comprehensiveness of the data. Conditions that add to the reliability of data are mentioned in Appendix 1, under the heading *human rights reporting*.

The use and limits of indicators

Indicators always need to be interpreted in the light of knowledge and analysis of the full context in which they are applied. The idea of an additional analysis is to obtain a broader picture in which the data, derived from the use of indicators, can be viewed. The description of these longer-period trends with regard to economical, political and cultural issues can explain observed changes in a human rights situation. This supplementary approach may help to avoid unrealistic explanations of what kind of foreign policy has what kind of effect on a human rights situation. With the use of indicators alone it may be possible to draw a well-founded, though incomplete or wrong, explanation.

There are various categories of indicators for different situations, such as:

- To determine whether and to what extent states protect, respect and fulfil their obligations.
- To determine the access to rights, or institutions, in order to secure those rights.
- To determine progress and development with regard to a human rights situation.
- To hold governments accountable.
- To identify critical non-state actors.
- To assess the impact of (planned) actions.

Appendix 3 Examples of human rights reporting and impact assessment

This section provides information on a number of initiatives to develop approaches for systematic human rights reporting and impact assessment:

- A The *International Commission of Jurists* – Monitoring obligations
- B The EU Annual Report on Human Rights
- C US State Department Country Reports on Human Rights
- D Human Rights Commitment Index – *Danish Centre for Human Rights*
- E The Democratic Development Framework – *Rights and Democracy*, Canada
- F Human Development Report 2000
- G Human Rights Assessment – *NORAD*
- H Human Rights and Business Project – *Danish Centre for Human Rights*
- I Standards for Corporate Responsibility

A International Commission of Jurists

The ICJ, in a 1997 publication, proposes to measure the levels of respect, protection and fulfilment of a right. Monitoring these obligations should clarify progress made in all three respects. When determining the progress, or lack of it, the following principles need to be taken into account: non-discrimination, participation and effective remedies (accountability). The ICJ defines the core elements of such monitoring as follows:

TO RESPECT: This requires the state and all its organs and agents to abstain from carrying out, sponsoring or tolerating any practices, policy or legal measure violating the integrity of individuals or impinging on their freedom to access resources. It requires that legislative and administrative codes take account of guaranteed rights. It concerns appropriate legislation confirming the rights for all groups.

TO PROTECT: This obliges the state and its agents to prevent the violation of rights by other individuals or non-state actors. It requires that where violations do occur, appropriate remedies exist in the form of accessible and well-publicized complaints and inspection procedures. Basically, it concerns the framework of the rule of law and access to justice, whether through formal or traditional justice systems.

TO FULFIL: This obliges the state to a) provide opportunities (facilitate) or to b) provide directly for the enjoyment of the right. It requires enhancing opportunities of individuals or groups and the direct provision of benefits and services. It involves issues of public expenditure, regulation of the economy, provision of basic services and redistributive measures. The duty to fulfil covers those active measures necessary for giving opportunities to access the entitlements which citizens have rights to.

B The EU Annual Report on Human Rights

This report produced by the Secretariat of the EU Council covers a series of 'thematic issues'. In the report examples of country practices are amply quoted, but the focus is on general trends and on international initiatives in which the EU was a key sponsor or in which it was otherwise involved.

The areas covered in the 2001 Report are:

- *Economic, social and cultural rights*: the category includes labour rights and development cooperation.
- *Right to life*: death penalty.
- *Prohibition of torture*.
- *Right to freedom of opinion, expression and religion*.
- *Rule of law*: impunity, International Criminal Court, international tribunals.
- *Arbitrary arrest, disappearances, extra-judicial killings*.
- *Right to take part in government*: elections, local democracy, citizenship.
- *Freedom from slavery and forced labour*.
- *Right to freedom of assembly and association*.
- *Non-discrimination and respect for diversity*: the category covers racism, minorities and indigenous peoples.
- *Women's rights*: includes violence against women, trafficking of women, sexual and reproductive rights.
- *Rights of the child*: includes girl children, children in armed conflict, child soldiers, sexual exploitation of children, child labour.
- *Right to development*: includes 'full participation in the development process' under conditions of 'respect for the rule of law, effective administration, respect for property rights, absence of corruption and other aspects of good governance.'

C us State Department Country Reports on Human Rights

These annual country reports are very thorough. They result in bulky documentation each year – e.g. some 25,000 words on the Russian Federation in the 2001 report.

The Country Reports monitor:

- *Integrity rights*: deprivation of life, disappearance, torture, arbitrary arrest, fair trial, privacy, violations of humanitarian law.
- *Civil liberties*: freedom of speech, assembly, religion, movement.
- *Political rights*: right to change government.
- *Governmental attitude towards investigation*: access for international bodies and NGO to investigate compliance with human rights.
- *Discrimination*: women, children, disabled, indigenous people, religious, ethnic and national minorities.
- *Worker rights*: right to association and to bargain collectively, forced labour, child labour, conditions of work, trafficking in persons.

D Human Rights Commitment Index

The Danish Centre for Human Rights is in the process of developing a Human Rights Commitment Index (Sano and Lindholt, 2000). As a starting point, they list the following criteria that guide human rights analysis:

States hold the primary responsibility for the respect, protection and fulfilment of human rights. State commitment or conduct is therefore a crucial dimension of human rights assessment.

Human rights measurement must measure more than the formal acceptance of human rights, for instance: either the level of duty-holder violations (substantial human rights respect), or the progressive realisation initiatives of duty-holders.

The Human Rights Commitment Index (HRCI) should provide insight into the state's efforts with respect to the promotion and implementation of human rights. The focus is on conduct rather than result. Both the formal level and the practical or factual level are of importance.

The HRCI includes:

- An index measuring formal commitment to international and regional human rights standards by governments.
- An index of civil and political human rights violations by governments.
- An index approximating commitment to the fulfilment of economic, social and cultural rights.
- An index measuring commitment to gender equality by governments.

The HRCI is a qualitative improvement and quantitative enlargement of indexes such as those produced annually by Freedom House. Its standards are closely connected to the terms of international human rights law. They are most elaborated in category 2, violations of civil and political rights, where the following areas of concern are addressed:

- *Extrajudicial executions, disappearances*.
- *Torture and ill-treatment*.
- *Detention without trial*.
- *Unfair trial*.
- *Participation in the political process*.
- *Association*.
- *Expression*.
- *Discrimination*.

E The Democratic Development Framework

This analytical framework has been developed by the International Centre for Human Rights and Democratic Development, now known as Rights and Democracy, based in Canada. It is a qualitative grid for democracy, based on a series of human rights criteria. The categories are: participation, security, well-being, non-discrimination, collectivities and democratic institutions. These categories are drawn from the entire family of human rights. A small number of rights in each category have been chosen as proxies. Together with their component criteria they are representative of those rights which make a life of human dignity and meaning possible.

The framework can be used to:

- Identify key issues and actors for democratic development.
- Portray a baseline for the evaluation of impact.
- Analyse how civil actors have, through their policies and concrete initiatives, generated the enjoyment of rights (impact of their activities).

For a description, see the article and website mentioned under Nancy Thede in Appendix 5: Literature.

F Human Development Report 2000

In its 2000 edition, the Human Development Report considers the extent to which human rights indicators may differ from human development indicators. In this view human rights indicators assess:

Whether people are living with dignity and freedom.

The policies and practices of legal and administrative entities and the conduct of public officials.

Human development indicators assess the expansion of people's capabilities and focus on human inputs and outcomes. A human rights assessment requires additional information, in comparison with a developmental assessment, for example on the process of justice and social norms.

G Human Rights Impact Assessment for Companies

The *Human Rights and Business* project was established in 1999 by the Danish Centre for Human Rights, Confederation of Danish Industries and the Industrialization Fund for Developing Countries. The project takes international human rights law as the basis of business responsibility. In Summer 2002 a computer program for Human Rights Impact Assessment for companies will be made available. In this program all areas in relation to about 30 different rights were identified, looking at when they would come into conflict with the duty to *respect*. Indicators were developed in order to provide companies with a practical and user-friendly tool. (See Jungk, 2001)

H Human Rights Assessment - NORAD

The Norwegian Agency for Development Cooperation, NORAD, states that human rights are essential components of the development cooperation effort and that human rights treaties should serve as a common denominator for the dialogue between Norway and its partner countries. Human rights should constitute an integral part of all development cooperation, as human rights provide a benchmark and a framework for policy dialogue relating to country strategies and programs, as well as in planning and implementation of programs.

A Handbook for Human Rights Assessment assists NORAD staff in addressing relevant human rights concerns by means of a form, which records potential, planned and/or likely positive or negative effects of the program under review. The form should support the caseworker in identifying and documenting various types of effects and make a general assessment of the overall human rights impact that a program may have. (See NORAD, 2001)

I Standards for corporate responsibilities

Recent years have brought a rapidly growing interest in what is called the ethical way of doing business, or the social responsibility of companies. There has been a quite frantic search for rules and guidelines. Some, in particular NGOs, have promoted international law for that purpose. Others, in particular the companies themselves, have drawn up codes of conduct or general business principles. Others again have tried to develop means of measuring performance on issues of ethical value – means to clarify the accountability of corporate life.

Examples can be picked from a large array of initiatives. The Interfaith Center on Corporate Responsibilities has adopted a number of resolutions related to human rights issues. The Ethical Investment Research Information Service (EIRIS), a UK-based

non-profit research organisation established in 1983, has been promoting ethical considerations based on a list of benchmarks. Corporate Watch, an NGO operating from San Francisco, publishes an on-line magazine which provides information on the social, political and environmental impacts of transnational corporations. AccountAbility 1000 is a standard launched in 1999 which focuses on the processes rather than the performance. The UK Ethical Trading Initiative promotes a cooperative approach to improving labour conditions in the supply chains. The Business Impact Task Force, established in London in 1998, produced a 'Checklist of process indicators'.

Other major international initiatives are the principles and guidelines formulated by UN, OECD, ILO and national governments. UN Secretary General Kofi Annan, at the World Economic Forum in Davos in 1999, presented companies with a UN Global Compact program with six principles on human and labour rights, and three on the environment. The US Presidency promoted the Workplace Code of Conduct developed by the Fair Labour Association. The (adapted) Global Sullivan Principles were launched in 1999 and are being supported by the US State Department. The European Community also has a history of promoting codes of conduct, starting from the 1977 European Community Code of Conduct for Companies Operating under Apartheid and up to the December 2001 European Union Green Paper on Corporate Social Responsibility.

The US-based Council on Economic Priorities Accreditation Agency (CEPAA), since renamed Social Accountability International, has developed SA8000, the 'auditable standard for third party verification' first published in 1997 and designed on similar lines as ISO 9000 (the standard for quality control assurance) and ISO 14000 (on environmental management). Through periodic reviews, its provisions have become more and more exact. SA8000 is based on core ILO conventions which guarantee:

- *Protection from discrimination.*
- *Protection from forced and bonded labour.*
- *Freedom of association.*
- *Right to collective bargaining.*
- *Minimum age.*
- *Occupational safety and health.*
- *Fair wages.*
- *Fair working hours.*

Appendix 4 Examples of impact assessments in other areas

Experience with other impact assessment regimes can be used in the development of HRIA. The International Association for Impact Assessment brings together expertise with various types of impact assessment. On its website (www.iaia.org) information can be found on developments regarding environmental impact assessment, social impact assessment, sustainability impact assessment, health impact assessment and others. In particular the strategic environmental impact assessment (see below) provides useful elements for HRIA.

Strategic environmental impact assessment (sEA)

This can be described as a systematic process for environmental evaluation in the preparation of strategic decisions. A good quality sEA process informs planners, decision-makers and affected sectors of the public on the sustainability of strategic decisions. It facilitates the search for best alternatives and ensures a democratic decision-making process. This enhances the credibility of decisions and leads to more cost and time effective environmental impact assessment at the project level.

Strategic environmental assessment procedures can range from very simple and short to complex, comprehensive and lengthier processes. In general it is applied for the why, what and (sometimes) where questions. Environmental impact assessment is applied for the how questions. (See Verheem, 2000). An EU Directive on Strategic Environmental Assessment was adopted in June 2001 (2001/42/EC).

Gender impact assessment

Gender impact assessment is carried out to avoid unintended negative consequences of policy measures and to improve the quality and effectiveness of policies. The impact assessment can be described as a study of policy proposals in order to check systematically the effects of a certain policy on the structural unequal balance of power between men and women. There is no legal obligation attached, which implies it will only influence the development of policy proposals insofar as it offers perspectives, alternatives and solutions meaningful in the eyes of policy makers. (See European Union, 2000)

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