

*European Master's Degree in Human Rights and Democratisation*

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***STUDY ON A POSSIBLE APPROACH TO  
HUMAN RIGHTS IMPACT ASSESSEMENT  
IN DEVELOPMENT POLICIES***

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## ***Abstract***

*While development and human rights have long been pursued in isolation from one another, the two concepts are now being reintegrated into the human rights approach to development. Their potentially conflicting goals create trade-offs that need be identified and reconciled by means of an appropriate decision-making tool. The environmental and social experiences suggest the use of impact assessment to bring human rights concerns into development policies.*

*Human Rights Impact Assessment has a twofold objective: ex-ante identification of human rights harm and proactive stance to positive human rights change. It assesses states' compliance toward human rights obligations by measuring conduct and performance throughout development interventions. Focusing on governments' commitment rather than on results, human rights measurement proves a distinctive value added in the development discourse.*

*Human Rights set claims to be maintained vis-à-vis duty-bearers. Human Rights Impact Assessment enables right-holders to locate accountability for impacts of development and non realization of human rights. This explains the political obstacles that its application faces among international donors and urges further efforts for its operationalisation.*

Disclaimer:

I certify that the attached is all my own work. I understand that I may be penalised if I use the words of others without acknowledgement.

Roberta D'Arcangelo

## ***TABLE OF CONTENTS***

<b><u>INTRODUCTION</u></b> .....	p. 1
<b><u>CHAPTER I</u></b>	<b><u>The Theoretical Background</u></b>
I.1	<b>The Concepts Of Development And Human Rights Approach To Development.....</b> p. 5
I.2	<b>What Is Impact Assessment? The Road Towards Human Rights Impact Assessment.....</b> p. 14
I.3	<b>What Are We Measuring? The Scope Of HRIA.....</b> p. 25
<b><u>CHAPTER II</u></b>	<b><u>The Methodological Tools</u></b>
II.1	<b>Mainstreaming Human Rights.....</b> p. 36
II.2	<b>Indicators And Benchmarks .....</b> p. 46
II.3	<b>The Pros and Cons of HRIA.....</b> p. 55
<b><u>CHAPTER III</u></b>	<b><u>Processes of Operationalisation</u></b>
III.1	<b>The Dimensions Of HRIA: A Possible Common Set Of Indicators.....</b> p. 62
III.2	<b>Is It Possible To Reach Political Consensus? The Challenges Ahead .....</b> p. 68
<b><u>CONCLUSION</u></b> .....	p. 78
<b><u>ANNEX 1</u></b>	<b><u>Relevant Legal Provisions</u>.....</b> p. 79
<b><u>ANNEX 2</u></b>	<b><u>Millennium Development Goals</u> .....</b> p. 83
<b><u>ANNEX 3</u></b>	<b><u>Sources</u>.....</b> p. 87
<b><u>READING LIST</u></b> .....	p. 88

*“Information and statistics are a powerful tool for creating a culture of accountability and for realizing human rights”*

*United Nations Development Programme  
Human Development Report 2000*

*To my father, who first taught me that statistics are good companions, and my mother, who always shows me the human side of quantitative sciences. Thank you.*

## **INTRODUCTION**

The international commitment to human rights has witnessed a spectacular progress in the 20<sup>th</sup> century and has been integral to the mission of the United Nations (UN) over the last 50 years. After World War II, the aim to create a more just world order also inspired the growth of development theories and the fight against global inequality and poverty was to become one of the major focuses of the UN system<sup>1</sup>.

Since then human rights and development policies have followed two distinctive agendas within different institutional frameworks. It was only from the 1990s that the global community recognised the rapprochement of these two dimensions in the so-called “human rights approach to development”. This convergence reached an important peak in the Vienna Declaration and Programme of Action (1993) that stated: “Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing”<sup>2</sup>.

However, ten years after the Vienna Declaration and notwithstanding many conceptual efforts, examples of human rights based approach that have been applied in practice are hard to find, especially into the thinking and working of the most influential development institutions<sup>3</sup>. The human rights world is still wondering whether development policies are human rights-compliant and which kind of impact development activities have on the human rights situation in a given country. These questions, in my view, have been neither openly asked nor satisfactorily answered yet and thus constitute my motivation for further investigating into the integration of human rights and development.

I do not attempt to find answers either, but rather to suggest where and how those answers may be found. Impact assessment studies and measurement of States’ compliance to human rights obligations seem to me appropriate tools to acquire a deeper understanding of the extent to which human rights are integrated into the development process.

Thus, the purpose of this study is to concentrate on just one dimension of human rights in development assistance, namely the problem of how to operationalise such integration. I do not aim at presenting an assessment of the human rights impact of

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<sup>1</sup> Sano H-O., *Development and Human Rights: the necessary but partial integration of human rights and development*, in Human Rights Quarterly vol. 22, 2000, p. 739.

<sup>2</sup> Vienna Declaration on Human Rights (1993), paragraph 8, U.N. Doc. A/CONF.157/24.

<sup>3</sup> Frankovits A., Earle P., *Working Together, The Human Rights Based Approach to Development Cooperation*, Stockholm 2001, part II, p. 11.

development interventions<sup>4</sup> but rather at investigating methods of human rights measurement to be used as practical operational tools.

My research question, therefore, addresses the overall problem of whether and how human rights measurement tools may be put in place and contribute to assess the role of human rights in development policies, in the specific context of the human rights approach to development. In particular, I will analyse whether a comprehensive methodology of Human Rights Impact Assessment (HRIA) and indicators is needed and how it could be politically and practically conceived.

I have identified some sub-questions that are relevant and to which I will try to answer throughout the thesis:

- I. Is HRIA theoretically feasible in the context of development?
- II. How can human rights assessment be conducted?
- III. What value added would an international and common framework of HRIA have?

I deem necessary to first outline some background theories of human rights and development, impact assessment studies and human rights measurement so as to be able to analyse which political obstacles and practical difficulties are faced by HRIA and address the question of its feasibility and usefulness. Secondly, a methodological part on how human rights measurement can be conducted need be included. The main problems to be looked at will be how to mainstream human rights in development policies, how human rights change comes about and how it can be measured. Finally, I would identify a set of necessary and universal cross-cutting criteria for human rights impact assessment to be generally applied when planning, implementing and monitoring development activities. If such a common framework can feasibly be conceived, the following question is why international consensus on HRIA has not been reached yet and why its elaboration has been so scattered among different institutions. Apart from methodological problems, which are the political difficulties that may prevent an international and common framework of HRIA to be put in place in a comprehensive and responsible manner?

Throughout the thesis I will also point out issues of policy-making process at the national and international level, since they can explain why the language of human rights law has not been fully integrated in development activities so far. Tradeoffs between conflicting interests among potential resources allocations, fundamental rights and

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<sup>4</sup> Hereinafter, with the expression ‘development interventions’ I refer indistinctly to development policies, programmes or projects.

freedoms and social needs are the familiar domain of economists while human rights activists have largely failed to address the existence of such conflicts<sup>5</sup>. The need to reconcile these two positions is, therefore, a key issue.

I will argue that mainstreaming and assessing human rights objectives throughout the planning, implementation and evaluation of development policies and projects by means of HRIA will in turn transform these concepts into useful policy parameters and put emphasis on human rights accountability and responsibility of development actors. The aspect of accountability is, in my view, very relevant in the operationalisation of human rights impact assessment in both specific human rights intervention<sup>6</sup> and human rights mainstreaming in other kinds of development activity. I think that the latter perspective is very interesting and challenging because neither clarity nor consensus have been reached on how to mainstream and it touches upon the core content of development policies.

I will analyse the integration of human rights and development from a positive perspective, where the former should serve as the latter's "corrective", preventing development interventions from harming people and instead leading to the realization of human rights<sup>7</sup>. For this reason, I will not enter the ongoing debate on the "punitive" use of human rights conditionality in development aid.

The subject matter is organised in three main chapters to which the theoretical, methodological and operational parts of the thesis correspond.

The first chapter deals mainly with theoretical questions, starting on with the concepts of development and human rights as to provide the background framework of the research. Drawing on the analysis of impact assessment and its implementation in other fields, I will address some conceptual characteristics of HRIA and then define the concepts at stake, the specific objects of measurement and the potential value of human rights assessment.

Methodological issues are dealt with in the second chapter. First, I elaborate on possible approaches to mainstreaming human rights in development policies. Then, the question of human rights indicators and relative problems is addressed. The focus here will not be on proposing new lists of indicators or on evaluating present efforts of data collection but rather on addressing some conceptual and practical complications.

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<sup>5</sup> Raworth K., *Measuring Human Rights*, in *Ethics and International Affairs* vol. 15, New York 2001, p. 128.

<sup>6</sup> This issue will not be particularly expanded since it has already been dealt with by many scholars and also previous Master's theses; see for example Buhmann K., *Considerations on impact assessment of human rights development assistance*, Lund 1997.

<sup>7</sup> Tomasevski K., *Development aid and human rights revisited*, London 1993, p. 124.



The last chapter tackles on whether a common methodology of HRIA could be developed on which international consensus is to be reached. I attempt to outline a set of common dimensions of human rights indicators that, in spite of different contexts, could still be universally applied by recipients and donors in the design, implementation and evaluation of development projects. Processes of operationalisation of the human rights approach to development in the UN system are also analysed as to answer the question of whether political consensus on the implementation of HRIA could be reached.

## **CHAPTER I      The Theoretical Background**

### **I.1                      The Concepts Of Development And Human Rights Approach To Development**

An investigation on the role of international human rights law into development policies necessitates tracing the contents of some basic concepts, especially those of development and human rights, in order to identify the evolution of the human rights approach to development as the framework within which the two overlap.

In 1945 the founders of the United Nations “identified peace, development, human rights and international law as the four cornerstones of the Charter. Increasingly, we have come to understand that these elements are linked and intertwined”<sup>8</sup>. In an ideal world human rights would be the end and means of peace and development and the processes of lasting peace and development would be facilitated through international human rights law. In reality, human rights and development have been subjected to endless attempts to merge, none of which completely succeeded<sup>9</sup>.

Few years ago the Committee on Economic, Social and Cultural Rights affirmed the principle that “...development activities which do not contribute to respect for human rights, either directly or indirectly, are not worthy of the name. [The Committee] welcomes the commitment of the Secretary General to ensure that human rights, including economic, social and cultural rights, are part of the mainstream of all United Nations activities”<sup>10</sup>.

Such a strong statement reflects the evolution of the concepts of human rights and development from political declarations to legal commitments and a new understanding of their relationship. To understand why, however, this principle is still considerably far from being implemented in reality, it is important to spend some words on the theoretical framework against which human rights and development have developed in the past half-century.

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<sup>8</sup> Boutros – Boutros Ghali 1995, as quoted in Helmich H., Borghese E., *Human Rights in development cooperation*, Utrecht 1998, p. 74.

<sup>9</sup> Tomaševski K., *Human Rights in International Development Cooperation: between politics and policy*, Research Centre on Development and International Relations, Working Paper 69, Aalborg 1999, p. 4.

<sup>10</sup> *The incorporation of Economic, Social and Cultural rights into the United Nations Development Assistance Framework Process*, Comments adopted by the Committee on Economic, Social and Cultural Rights, 15 May 1998, paragraph. 1.

I would summarize the evolution of development theories drawing on Tomaševski's four UN Development Decades<sup>11</sup>. For the first two decades of UN activity, development theories have focused on economic growth and did not perceive social considerations as goals in themselves. The shift towards a new paradigm based on social goals and people's needs started in the 1970s, mostly in terms of the battle for a new world order put forward by developing countries against industrialized ones.

Linkages to human rights language focused on inter-state relations rather than on governments' commitment to develop peoples' opportunities and paved the way to the adoption of the UN Declaration on the Right to Development in 1986. Whereas the Declaration recognizes the right to development as an individual and collective human right conferred upon states, individuals, groups and peoples, it fails to identify the duty-bearers of the corresponding obligations and lacks a common and clear definition of what is meant by "development". The Declaration reflects development theories of the 1970s and 1980s, when development was optimistically conceived as a quasi-linear progress towards industrialization and modernisation, without questioning the limitations and sustainable possibilities of such a progress. The value of the Right to Development for strengthening human rights in general is still debated and its content has been employed more as a dividing line between North and South than as a tool to better understand the relationship between human rights and development<sup>12</sup>. The 1980s have also been the years of neo-classical development theories and World Bank's structural adjustment programmes. The result was a wider gap between the rhetoric of a "constant improvement of the well-being of the entire population" and the practice of weakening developing countries and moving social concerns away.

The impossibility to reach a political agreement on the right to development or even on human rights and development was overcome in the 1990s through the optimistic integration of the two in the outcomes of a series of global conferences sponsored by the UN<sup>13</sup>. The 1990s also witnessed a paradigmatic shift in the development agenda of the Bretton Woods institutions and other UN agencies. People's opportunity and ability to act and choose their livelihood became central on the agenda and the concept of an "enabling

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<sup>11</sup> The following analysis reflects my reading of Tomaševski 1999, pp. 6-14.

<sup>12</sup> Hamm B.I., *A Human rights approach to Development*, in Human Rights Quarterly vol. 23, 2001, p. 1009.

<sup>13</sup> In particular, the Vienna Conference on Human Rights in 1993, the World Summit for Social Development in Copenhagen in 1995, the Beijing Fourth World Conference on Women in 1995.

growth” was combined with social considerations with the aim of achieving “human development”<sup>14</sup>.

The theory of human development, embraced by The United Nations Development Programme (UNDP) in its *Human Development Report* series, defines development as the process of expanding people’s choices by enlarging their capabilities. Those concepts are rooted in the authoritative contribution of Amartya Sen who first analysed poverty and famine from the human rather than economic dimension and from the point of view of the poor. Development activities are conceived as “entitlements”, as “a person’s legal rights of ownership” either in terms of “legal rights enforceable in a court” or in the “broader form of accepted legitimacy”. From entitlements people derive capabilities, defined as the freedom to achieve the valuable things that a person can do or be in leading a life; ‘functionings’ are the exercise of that option<sup>15</sup>. Sen’s thinking brought the concepts of “quality of life” and basic freedoms into the understanding of development in a very similar way in which the human rights discourse focuses on human dignity and is grounded into fundamental freedoms. In this context, human development entails a series of corollary characteristics such as sustainability, people-centred and participation, full equality to women and all social groups, notably minorities, good governance and democratic processes, application of the rule of law that in many ways overlap with the human rights mandate<sup>16</sup>.

However, human development and human rights present quite diverse strategies and design. While human development theory is concerned with the reality of people’s lives, with *what is*, human rights are concerned with what *ought to be* according to international law<sup>17</sup>. The human rights dimension, therefore, adds something to Sen’s capabilities theory, that is, a comparative urge to move from reality to the normative standards set by human rights law. Without entering here into details of these conceptual differences, it is worth noting that both human development and human rights theories, being supported by similar motivations and shared principles, are enriched by a more integrated and complementary approach between the two.

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<sup>14</sup> Sano 2000, p. 740, who refers respectively to the World Bank *World Development Report 1990* and the UNDP *Human Development Report 1990*.

<sup>15</sup> Amartya Sen as quoted in Häusermann J., *A Human Rights approach to Development*, Rights and Humanity, London 1998, p. 121.

<sup>16</sup> Paul J. in UNDP, *Human Development and Human Rights. Report of the Oslo Symposium*, New York, 1998, p. 70.

<sup>17</sup> Häusermann 1998, p. 122.

Turning now to an overview of human rights theories, the historical perspective shows how they have also progressively moved towards an explicit recognition that the relationship between human rights and development is beyond question.

The international commitment to human rights can be traced back to the 1948 Universal Declaration of Human Rights when, on the legal basis of the UN Charter, human rights stopped being an exclusive internal matter of individual states and became the value framework and criteria for accountability for UN activities and governments conduct alike. It is a matter of historical record that the Cold War first and then the decolonisation process and the growing non-western constituency within the UN slowed down the concretisation of the Declaration into states' obligations and gave rise to a conceptual fracture between the so-called three generations of rights<sup>18</sup>. According to this categorization, the "first generation" comprises the civil and political rights included in the "Western" Covenant on Civil and Political Rights (hereinafter ICCPR); the "second generation" corresponds to the "Eastern" Covenant on Economic, Social and Cultural Rights (hereinafter ICESCR); finally, the third generation has been identified with the so-called solidarity rights or collective rights, as the right to self-determination and the right to development<sup>19</sup>. The "generation theory" has lost much of its theoretical importance thanks to historical changes but still the existence of two separate Covenants for two groups of human rights has practical implications in terms of definitions and distinctive features that deserve some attention, since I will come back to these concepts in the course of the thesis.

Very roughly, Civil and Political Rights refer respectively to the protection of the individual's physical, spiritual and legal existence (including classical freedom rights and procedural safeguards) and to the rights to take part in the political life and enjoy political freedoms. As regards the ICESCR, at the core of social rights are the subsistence rights necessary to enjoy the right to an adequate standard of living; in order to enjoy social rights certain economic rights should also be guaranteed (rights to property, work, social security); cultural rights refer to participation in the cultural life, cultural identity and to some extent education, education<sup>20</sup>.

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<sup>18</sup> Tomaševski 1999, pp. 15-16

<sup>19</sup> Sano 2000, p. 737. For some authors the distinction is largely artificial and does not apply to newer human rights instruments, as the Convention on the Rights of the Child (1989). See, for example Eide, in UNDP *Report of the Oslo Symposium*, 1998, p. 98. If not otherwise specified, with the term "human rights" I refer to civil and political rights and economic, social and cultural rights.

<sup>20</sup> This overview on the different categories of human rights is based on Symonides J. (Ed.), *Human Rights: Concepts and Standards*, UNESCO, 2000.

The neat separation between civil and political rights on the one hand and economic, social and cultural rights on the other has justified not only their prioritisation but also a series of “myths of difference” that are not holding true any more<sup>21</sup>. The former are of immediate realization, the latter of progressive realization; the former are negative rights, the latter are positive rights; the former are free, the latter call for resources; the former can be qualitatively described, the latter need quantitative statistics: all these myths can be dispelled and the relative characteristics applied to both categories as well<sup>22</sup>.

After the Cold War, the world has witnessed a paradigm shift towards a more cross-cutting approach to human rights and has also proclaimed the notion that genuine democracy and protection of human rights go together.

International conferences, including the 1993 Vienna Conference on Human Rights, reaffirmed and revitalised the commitment to the interdependence and indivisibility of human rights<sup>23</sup>. The principle of interdependence, apart from its use as a political compromise between the two Covenants, implies that all human rights, regardless of the categories to which they belong, cannot be logically or practically separated in watertight compartments<sup>24</sup>. Interdependence of human rights has meant that international case law under treaties on civil and political rights could afford protection to certain economic and social rights, traditionally neglected by the judicial system<sup>25</sup>. The next step is the indivisibility of human rights, exemplified by Scheinin with the case law of the Human Rights Committee on minority rights, which supports the position that these rights are not a separate category confined to art. 27 of the ICCPR but may be protected under any other relevant provisions<sup>26</sup>. The indivisibility principle requires also that improvements in the realisation of any human right cannot be at the expense of deterioration of any other right<sup>27</sup>. In his work, Scott affirms that while there is no great difference in how the terms

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<sup>21</sup> During the Cold War, it was alleged that: “We in the West live in a conservative society which defines human rights in civil and political terms. If we hope to influence that society we must adopt a similar restrictive definition”, McNitt A., *Some thoughts on the systematic measurement of the abuse of human rights*, in Cingranelli D.L. (Ed.), *Human rights: theory and measurement*, Basingstoke 1988, p. 92.

<sup>22</sup> UNDP *Human Development Report 2000*, p. 93.

<sup>23</sup> “All human rights are universal, indivisible and interdependent and interrelated”, Vienna Declaration (1993) paragraph 5, part I, U.N. Doc. A/CONF.157/24.

<sup>24</sup> For an extensive elaboration on the concept of interdependence, see Scott C., *Reaching beyond (Without Abandoning) the Category of “Economic, Social and Cultural Rights”*, in *Human Rights Quarterly*, vol. 21, 1999, pp. 633-660.

<sup>25</sup> For the related case law, see Scheinin M., *Interdependence issues under the Covenant on Civil and Political Rights*, in UNDP *Report of the Oslo Symposium*, 1998, pp. 36-39.

<sup>26</sup> *Ibidem*.

<sup>27</sup> Malhotra R., *Human Rights Indicators: a framework for discussion*, draft paper, Brussels 2002, p. 7, on file with author.

‘interdependence’ and ‘indivisibility’ have been used, yet the term ‘interdependence’ “is generally used to suggest the interactive and mutually supportive relationship of all human rights” and he prefers “indivisibility as a way to express the richer multidirectional web of relations among various human rights” that results in an amplification of human rights protection<sup>28</sup>. Interestingly, Scott also warns us of the danger of a possible “flattening effect” created by an undifferentiated reference to all human rights. While the interdependence of overarching categories of human rights implies their equal importance for human dignity, it does not mean that all legally recognised human rights have the same significance in every circumstance, especially in contexts where trade-offs among different human rights concerns and violations arise and legal distinctions or political choices might be necessary or more effective<sup>29</sup>.

The concepts of democracy and good governance, for their part, started being associated with human rights in the formulation of development policies in the 1990s, even if different donors attached to them different meanings. The understanding of “democracy”, in fact, varies from a pure focus on elections or form of government to a process of democratisation where a participatory political system is ensured by means of rights<sup>30</sup>. Good governance can merely refer to the absence of corruption in a government or to efficiency in public sector management or describe how power should be exercised in a democratic country and governments become responsible and accountable to the citizens<sup>31</sup>. The lack of agreement on those concepts and the risks underpinned in their overlapping with human rights as objectives of development cooperation complicates their measurement, as will be clarified further on.

Thus, the 1990s have been the years of the reaffirmation of the interdependence, indivisibility and universality of all human rights and conference after conference individuals and people’s development has been placed on the human rights agenda. Sano explains such a convergence with reference to two predominant tendencies: on the one hand, the increased capacity of developing countries to demand social and economic provisions to be prioritised in development policies and be implemented as international norms; on the other, the greater relevance acquired by the principles of democracy and

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<sup>28</sup> Scott 1999, p. 636 footnote 10 and p. 643, footnote 34.

<sup>29</sup> *Ibid.* p. 644.

<sup>30</sup> Frankovits, Earle 2001 (I), p. 25.

<sup>31</sup> *Ibidem.*

good governance and the emerging global order of democratisation<sup>32</sup>. In the new millennium, there is global consensus that development and democracy are overriding goals but are neither desirable nor sustainable without respect for all human rights. However, all this being true at a declaration level, the test of a practical implementation of human rights into development is still lacking.

The evolution of human development theory and human rights thinking shows that the two disciplines share much in common and through a more integrated approach could benefit each other. In the human rights framework, development could be seen as a process involving a universal set of claims towards states but also the society at large, that permits and sustain improvement in individual capabilities but more importantly offers the necessary opportunities to realise the rights and freedoms set forth in the International Bill of Human Rights<sup>33</sup>.

In a presentation at the Second Global Forum on Human Development, Marks described four different approaches as a starting point for a general understanding of the human rights framework of human development<sup>34</sup>. He sums up the discussion elaborated above and pinpoints how the same problem can be seen from different perspectives, each of them varying the focus of the discourse. First, the “holistic” approach adopted by the UNDP emphasizes that human rights and sustainable human development are interdependent and mutually reinforcing and that all human rights are universal and indivisible<sup>35</sup>. Secondly, SEN’s “capabilities” approach, more explicitly linked to the corresponding human rights by Martha Nussbaum, focuses on people’s enhanced choices. Then, the Right to Development approach, which “is more than development itself; it implies a human rights approach to development, which is something new”<sup>36</sup> and, in the words of Sengupta, puts the emphasis on the “particular process of development in which all human rights and fundamental freedoms can be fully realised”<sup>37</sup>. Finally, the

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<sup>32</sup> Sano 2000, pp. 735-738.

<sup>33</sup> Malhotra 2002, p. 3. The International Bill of Human Rights traditionally includes the Universal Declaration of Human Rights of 10 December 1948, the International Covenant on Civil and Political Rights - with its two Optional Protocols - and the International Covenant on Economic, Social and Cultural Rights, both of 16 December 1966.

<sup>34</sup> Marks P. S., *The Human Rights Framework: Its Relevance for Development*, 2000 at <http://www.undp.org/hdro/events/rioforum/marks.pdf>.

<sup>35</sup> UNDP, *Integrating Human Rights with Sustainable Development*, New York 1998, pp. 2 and 16.

<sup>36</sup> Working Group on the Right to Development, 4 September 1994, E/CN.4/1995/11, paragraph 44.

<sup>37</sup> Arjun Sengupta, Independent Expert on the Right to Development, Fifth Report, September 2002, paragraph 5, UN Doc. E/CN.4/2002/WG.18/6.



“responsibilities” approach, which in my view is the one that better emphasizes the value added of international human rights law into development and, therefore, will represent the framework of my study. This approach stresses the importance of all human rights as legal norms, implying obligations that fall directly on governments and recognising development activities as entitlements to which authorities are accountable. Accountability derives, *prima facie*, from the general proposition that for every right there is a corresponding duty of the state and those state obligations can be enforced through judicial or legal processes. The value added of the rights-based approach to development policies in terms of both accountability of duty-holders and empowerment of claimants is key also in the discussion on human rights measurement.

The human rights approach to development presents a number of benefits. First, it can be built upon an existing and coherent set of norms and correlative duties that states have already voluntarily and widely accepted, so that there should be no need to persuade governments to commit themselves to new obligations. It adds a focus on what needs to be done to improve the situation and sets development goals in raising the quality of people’s lives to the standards required by human rights law. Human rights norms provide benchmarks against which progress and performance can be measured. Where development focuses much attention on the provision of goods and accountability is often limited to questions of efficiency and effectiveness, a human right approach looks more at processes and priorities and transforms entitlements in rights that, in turn, involve claims against the correspondent duty-bearers<sup>38</sup>. In this way, it enables rights-holders to locate accountability and responsibility of different actors and institutions for failures to fulfil human rights<sup>39</sup>. Moreover, a human rights approach to development ought to incorporate the additional element of challenging structural inequities, which are part of the causes of poverty and marginalisation<sup>40</sup>.

The human rights discourse would as well benefit from its integration with development theories in that it might gain a wider range of means for the promotion of human rights, a pro-active strategy for turning rights into operational goals and standards and more definite analytical tools<sup>41</sup>. This interrelationship offers important implications for

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<sup>38</sup> Häsermann 1998, pp. 153-161.

<sup>39</sup> UNDP, *Human Development Report 2000*, p. 21.

<sup>40</sup> Jochnick C., *A challenge to donors: accountability, empowerment and structural change through human rights: the case of El Nino in Ecuador*, in Frankovits, Earle 2001, part I pp. 49-50.

<sup>41</sup> Sakiko Fukunda-Parr in UNDP, *Report of the Oslo Symposium*, 1998, p. 52.

the measurement of the outcomes of the process of development and the monitoring and assessment of progress in human rights.

Two very important arguments favouring a human rights approach need be further stressed. First, a human rights approach offers the immediate possibility of establishing international accountability, indispensable to ensure that governments comply with their commitments, both in the human rights and the development field. Second, the recognition of human rights strengthens and gives substance to the concept of empowerment, often abused in the development field. It is very different to acknowledge that individuals have a specific right, no matter how vague or imprecise its implications might be, than to simply promote policies that refer to an unspecified elimination of poverty or promotion of human security. The latter may be indispensable but not empowering; the former may be far more problematic for governments to commit to, but their content much less readily manipulatable<sup>42</sup>.

Hence, the human rights approach described above explains why development that does not contribute to respect for human rights is “not worthy of the name”, as stated at the beginning of the section in the words of the Committee on Economic, Social and Cultural Rights.

The commitment to ensure that all human rights are mainstreamed into development activities is a step forward to the gradual understanding that development policies should take human rights obligations into integral considerations. Making donors and recipient states accountable for how they consider human rights in their development policy and efforts will change moral commitment into acceptance of legal obligations. This, in turn, implies that development activities should be run in a way that also enhances States’ compliance with the international human rights law they voluntarily committed to. How to verify this assumption in practice is the key question of my thesis.

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<sup>42</sup> Alston P., *What’s in a name: does it really matter if development policies refer to goals, ideals or human rights?*, in Helmich, Borghese 1998, pp.105-106.

## **I.2 What Is Impact Assessment? A Road Map Towards Human Rights Impact Assessment.**

The increasing importance of impact assessment as a tool to improve the quality and coherence of development policies has been acknowledged from the 1950s, when development agencies began to assess, before the start of a project, its likely environmental, social and economic consequences in order to approve, adjust or reject it<sup>43</sup>. With time those efforts have reached highly refined standards, especially in sectors such as environmental, social or economic assessment and impact assessment has become a relevant mechanism for resource management decisions of the 21<sup>st</sup> century, especially in development policies. As a matter of fact, development intrinsically involves trade-offs between potentially conflicting goals, as it is often the case for human rights and economic growth. The challenge is to optimise these trade-offs and impact assessment is one of several tools that can be used to improve the way in which the decision-making process is managed. The faith that the world community places in impact assessment is reflected in its widespread inclusion in national and international legislation and in donor policy and practice in different sectors<sup>44</sup>.

Notwithstanding the conceptual progresses seen above towards the integration of human rights into development policies, international consensus on whether and how to evaluate impact of development interventions on human rights has so far not been reached nor has a common framework of Human Rights Impact Assessment (HRIA) been extensively implemented to determine if development activities are compliant with international human rights law and standards. Still, conceptual and methodological efforts in the measurement of human rights have been consistently debated, but do they represent just another plea from another branch of impact assessment or can they valuably complete the range of measurement and monitoring tools already in use in development cooperation? In order to raise the issues of difficulties faced, feasibility and value added of HRIA and, ultimately, its contribution to assess the role of human rights in the context of development, I deem necessary to outline some background theories of impact assessment

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<sup>43</sup> Roche C., *Impact Assessment for Development Agencies*, Oxford 1999, p. 18.

<sup>44</sup> Donnelly A., Dalal-Clayton B., Hughes R., *A directory of Impact Assessment Guidelines*, International Institute for Environment and Development 1998, p. 7.

looking first at those sectors where it has been thoroughly employed and then at the specificities of the human rights discourse.

Measuring processes, outcomes and impacts is central in development activities. As a result, concepts, theories and methods of impact assessment have been extensively defined by development experts but not so much by human rights practitioners. Therefore, I will borrow some definitions and notions from the ample literature on development impact and try to apply them to human rights.

First, there is a distinction between ‘impact’ and ‘effect’ or ‘outcome’ of development<sup>45</sup>: the latter refers to the more immediate and tangible change in relation to the initial situation brought about by an intervention, the former to the longer-term change both in the lives of the beneficiaries and in the institutional behaviour in terms of national human rights practices. ‘Impact’ can be related either to the specific objectives of an intervention or to unanticipated changes caused by it and may occur in the lives of the people who the project intended to benefit as well as of those not belonging to the beneficiary group. ‘Impact assessment’ is essentially concerned with the identification of foreseeable consequences, both adverse and beneficial, of a development intervention and with the measurement and evaluation of how and to what extent the intervention has caused change in a given context, with the aim of minimising negative impact and optimising positive impact<sup>46</sup>. In this working definition, the objects of assessment are both the effect and the impact brought about by the intervention. In the literature there seems to be a distinction between ‘impact evaluation’, which is retrospective, and ‘impact assessment’, which is predictive<sup>47</sup> but the definition of HRIA is at such a tentative stage that, for the purpose of this study, I will treat the two dimensions together.

In the process of preparing an impact assessment, especially if predictive, it is important to make explicit assumptions about how change happens, which aspects should be primarily investigated, what consequences and risks may be foreseen and what the context of the intervention is<sup>48</sup>. In any case, the purpose and focus of the assessment should be clarified as well as the resources available<sup>49</sup>. This latter issue is particularly important

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<sup>45</sup> Oakley P., Pratt B., Clayton A., *Outcomes and Impact: evaluating change in social development*, Oxford 1998, p. 36.

<sup>46</sup> Donnelly et al., 1998, p. 7.

<sup>47</sup> *Ibid.* p. 36.

<sup>48</sup> These methodological issues are dealt with in greater detail in chapter II.

<sup>49</sup> Roche 1999, p. 41.

for HRIA: the challenge of implementing a new assessment exercise is going to be considered by policy makers only if it can be economized, is not too complex and time-consuming, does not imply futile complications and, on the whole, remains manageable<sup>50</sup>.

In the exercise of impact assessment the choice of indicators of measures is therefore definitely crucial but by no means uncontroversial and a discussion on indicators becomes relevant only when they can be employed in a coherent and acceptable framework<sup>51</sup>. For this reason, the foremost challenge is to delineate such a framework and, especially for HRIA, to reach a consensus among donors, governments and other actors on its use and implementation. These theoretical issues are discussed in this chapter, while the analysis of possible human rights indicators is deferred to the methodological analysis in chapter II.

The European Commission has recently welcomed the implementation of impact assessment in all its cooperation activities and has defined it as the “process of systematic analysis of the likely impacts of intervention by public authorities”<sup>52</sup>. Hence, impact assessment would serve to identify the possible consequences of current or proposed policy actions, thus enabling informed political judgements and detecting trade-offs in achieving competing objectives. This approach points out a characteristic of impact assessment particularly relevant in the human rights field, that is its value added as a policy device or better “aid to decision making” processes. The European Union has in fact often affirmed the need for clear objectives, indicators and a time-frame for a coherent and effective human rights policy in order to ensure that cooperation activities would avoid any negative effect on human rights and democratisation and, wherever possible, be adapted to have a positive impact<sup>53</sup>.

A methodology for assessing such impact should be developed on the basis of the considerable experience accumulated in certain single sector type impact assessments. In particular, many lessons can be learned from Environmental Impact Assessment (EIA) and Social Impact Assessment (SIA), which have been thoroughly elaborated and offer a vast

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<sup>50</sup> Roche 1999, p. 53.

<sup>51</sup> Sano H.-O., *Human Rights Impact Assessment. Analytical steps and required indicators*, draft 2002, p. 6, on file with author.

<sup>52</sup> EU Commission, *Communication from the Commission on Impact Assessment*, COM(2002) 276 final, Brussels 2002, pp. 2-3.

<sup>53</sup> Radstaake M., Bronkhorst D., *Matching practice with principles. Human rights impact assessment: EU opportunities*, The Netherlands, 2002, p. 1.

and consolidate set of theories and methods applicable also to the question of human rights measurement.

Environmental Impact Assessment has been defined by the International Association for Impact Assessment as “the process of identifying, predicting, evaluating and mitigating the biophysical, social and other relevant effects of development proposals prior to major decisions being taken and commitments made”<sup>54</sup>. EIA has emerged from environmental regulation to be then recognised as an advanced approach to planning and decision-making and systematically incorporated in development interventions. EIA has become a widely employed tool thanks to serious efforts in research, pilot projects, actual operations, monitoring, evaluations and development of new approaches and techniques<sup>55</sup>. The aim of integrating human rights at all levels of development cooperation calls for similar efforts and for an analogical study of the two experiences.

Gibson has sketched the evolution of EIA in four stages:

- Stage 1: reactive control aiming at solving local and specific problems through technical and *ad hoc* measures;
- Stage 2: proactive impact identification to anticipate and mitigate adverse biophysical concerns (the focus here being on risk assessment);
- Stage 3: integration of broader environmental considerations (including socio-economic concerns) in project planning, examination of alternatives and best options and public reviews;
- Stage 4: planning positive steps towards sustainability, favouring precaution and empowering the public<sup>56</sup>.

He also concludes that over the last 30 years EIA has become “earlier in planning, more open and participative, more comprehensive, more mandatory, more closely monitored, more widely applied, more integrative, more ambitious and more humble”<sup>57</sup>. The evolution has, nonetheless, been contested, modest and tentative due to the potential disruptive effect of those changes. A shift towards a “sustainability-based assessment” challenges conventional assumptions and practices, forces decision makers to be exposed to greater

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<sup>54</sup> International Association for Impact Assessment, *Principles of environmental impact assessment: best practice*, 1999 p. 2.

<sup>55</sup> Lund Madsen H., *Towards human rights assessment of development projects*, Bergen 1991, p. 49.

<sup>56</sup> Gibson R.B., *From Wreck Cove to Voisey's Bay: the evolution of federal environmental assessment in Canada*”, in *Impact Assessment and Project Appraisal* vol. 20, 2002, p. 152.

<sup>57</sup> Gibson 2002, p. 152.

public scrutiny, thus it is often resisted<sup>58</sup>. The lesson of EIA is therefore paradigmatic of how innovations in policy and law that demand new thinking and new practices are unlikely to be easily achieved, unless they are both powerful and efficient. If the same holds true for other impact assessment studies, then also HRIA must be designed to be powerful, as to channel public attention and influence policy choices, and to ensure process efficiency and manageability, as to be seen as an effective and practical tool and systematically implemented by development actors.

While EIA has been formally adopted in the 1960s, the beginnings of social measurement date back to the last century. “The social indicators movement” not only inspired the progresses in environmental assessment but also affected international development agencies’ practices. Broadly speaking, social assessment aims at measuring the consequences of development on social conditions, well-being and quality of life and, therefore, plays an important role in the relationship between economic and human development. In the 1990s, both the UNDP and the World Bank acknowledged the importance of SIA and began to formulate indicators based on social conditions respectively in the *Human Development Reports* and the *World Development Reports* and *Social Indicators of Development*<sup>59</sup>.

The notion of sustainable development has brought about a new framework for developing impact assessment that focuses on the interrelationship among social, environmental and economic concerns. The International Association for Impact Assessment has recently elaborated a broad set of international principles for Social Impact Assessment understood as an “overarching framework that embodies the evaluation of all impacts on humans and on all the ways in which people and communities interact with their socio-cultural, economic and biophysical surroundings”<sup>60</sup>. This approach brings many different and specific forms of impact assessment under the umbrella of SIA. The International Association for Impact Assessment explicitly refers, among others, to ‘impacts on indigenous rights’, ‘political impacts’ (among which ‘human rights’, ‘governance’ and ‘democratisation’) and ‘gender impacts’. Respect for human rights and promotion of democratisation are also depicted as core values and fundamental principles

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<sup>58</sup> Gibson 2002, p. 158.

<sup>59</sup> Cobb C.W., Rixford C., *Lesson learned from the history of social indicators*, Redefining Progress 1998, p. 12, with an extensive historical overview.

<sup>60</sup> International Association for Impact Assessment, *Social Impact Assessment. International Principles*, May 2003, p. 2.

of SIA in the view that “developmental processes that infringe the human rights of any section of society should not be accepted”<sup>61</sup>.

Whereas it is certainly important that human rights impact has been recognised among the impacts of development interventions, the confusion of human rights concerns with the long sequence of all possible changes brought about by development leads to reasonable doubts on the precision and validity of this method of human rights measurement, especially if human rights are regarded not just as underpinned principles of development but as binding norms of international law in the framework of a rights-based approach. “Comprehensiveness may be the enemy of effectiveness”<sup>62</sup>. In my view, to appreciate the value added of the human rights approach to development, a detailed investigation on human rights impact still needs to be carried out at the international level. Tools of human rights measurement have not yet been sufficiently developed for HRIA to be integrated into a much broader assessment model. For this reason, I think it is important at least at this stage to advance first and solely in this discipline and to collect the information and experience needed for further refinement and applicability of HRIA.

Nonetheless, some important lessons learned from the theories and the experiences of SIA are worthy of mention since they can similarly be relevant for HRIA. The objective of SIA is twofold: *ex-ante* identification of negative and unintended outcomes and proactive stance to positive development outcomes with the purpose of minimising the harm and maximising the benefits of a planned intervention<sup>63</sup>. Impact assessment may suggest mitigation measures to modify the intervention as well as envisage alternative solutions. Similarly, the integration of human rights aspects in the overall mainstream development interventions has great potentials both for preventing human rights harm in the course of the project and for directly improving the human rights situation of the people affected<sup>64</sup>.

Finally, there is a saying in the field of social indicators that “if it is not counted it tends not to be noticed”<sup>65</sup> or better still “what gets measured gets done”<sup>66</sup>. These slogans

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<sup>61</sup> *Ibid.* p. 2.

<sup>62</sup> Cobb, Rixford 1998, p. 18. Referring to social indicators they affirm: “a narrow range of indicators is more powerful than a laundry list. Historically, the most powerful indicators work has focused on a single issue. It has moved people to look beyond the most obvious features of a situation and to ask deeper questions”.

<sup>63</sup> IAIA 2003, p. 3.

<sup>64</sup> Lund Madsen 1991, p. 4.

<sup>65</sup> Galbraith J.K., quoted in Malhotra 2002, p. 1.

<sup>66</sup> Douglas Draft, Chief Executive Officer Coca-Cola, cited in the UNDP Human Development Report 2000, p. 126.



imply that (statistical) measurement of performances and outcomes helps establish strong evidence, open dialogue and increase accountability. This theory, however, is not entirely true, in that measures do not necessarily induce appropriate actions. In social assessment there are many actual cases of completed statistics that did not affect any government policy and of actions that preceded the development of indicators<sup>67</sup>. Statistics unquestionably can be helpful when used in an “intelligent way” and put in a proper context but they “are no substitute for judgement”<sup>68</sup>. The following analysis of HRIA suggests that the context for human rights measurement should be normative and anchored to international human rights law and the human rights approach to development.

Having clarified what is meant by impact assessment in development activities and discussed how it has been implemented in the sectors of environment and social development, I will turn to look more closely at human rights impact assessment. At first glance, if impact assessment deals mainly with the effects and the long-term impact of a policy, HRIA should evaluate the impact of the intervention in question in terms of both human rights changes in the lives of the people affected and institutional compliance with human rights obligations. The realization of human rights is neither necessarily nor automatically facilitated in development interventions but in the framework of a rights-based approach it becomes fundamental that, from design to implementation, development activities bring in human rights concerns so as to redress and prevent development from harming people and, ultimately, to make it conducive to their realization<sup>69</sup>.

HRIA was first suggested by the UN in 1979 in the debate on the Right to Development but not followed up till the beginnings of the 1990s, when the Global Consultation on the Right to Development stated that all activities related to development should use explicit guidelines based upon the realization of human rights and that:

[HRIA] should address the possible adverse effect of the proposed activity, temporary and long-term, on the full enjoyment of human rights by any sector of the national

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<sup>67</sup> Cobb, Rixford 1998, p. 23. As an example of indicators not leading to any action they report studies conducted from the 1950s showing a statistical connection between smoking and various illnesses which were not followed up by any significant and direct action to prevent smoking deaths. An example of action taken regardless of statistical monitoring, are, instead, water pollution laws enacted in the 1960s and 1970s on the basis of pictures of dead fishes and not on refined measurement of water quality.

<sup>68</sup> Maxim quoted by Goldstain R.J., *the limitations of using quantitative data in studying human rights abuses*, in Jabine T.B., Claude R.P. (Eds), *Human rights and statistics: getting the record straight*, p. 56, Philadelphia 1992.

<sup>69</sup> Tomaševski 1993, p. 214.

society; the contribution of the proposed activity to the full enjoyment of human rights by the population affected; and the establishment of participatory mechanisms for monitoring and evaluation.<sup>70</sup>

In the early 1990s the inclusion of human rights in the measuring of development took the form of a number of studies ranking countries' human rights conditions. They have attracted the attention not only of scholars and academic circles but also of international organisations like the UNDP and the World Bank that in those years issued reports using human rights and freedom indices<sup>71</sup>. Those attempts have soon been dropped as a consequence of substantial critiques both in terms of methodological problems (especially their subjectivity and lack of transparency) and of political reluctance of member governments of having their human rights record exposed<sup>72</sup>. Not only they failed to assess the interrelationship between the enjoyment of human rights and the development process but were also strongly biased in favour of civil and political rights<sup>73</sup>. In the human rights thinking of the new millennium such a lack of attention for economic, social and cultural rights can no longer be maintained.

Human rights ranking can be used for a variety of purposes, as the identification of particularly repressive regimes or even the evaluation of effects of aid strategies and governments' policies but only if based on solid conceptual foundation and precise methods. Due to the very nature of human rights, the conceptual basis for human rights measurement ought to be government performances in relation to their obligations, as derived from international human rights law. In the human rights discourse, lack or scarcity of resources or poor economic performances *per se* are neither indications of the government's failure to comply with human rights law nor justifications for a low ranking in a human right index. Indices do not add much to our understanding of the impact of development policies on the human rights situation if they are unable to attribute

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<sup>70</sup> Global Consultation on the Right to Development as a Human Right, UN Doc. E/CN.4/1990/9/Rev.1, 26 September 1990, paragraph 190, as quoted in Lund Madsen 1991, p. 7.

<sup>71</sup> The UNDP *Human Development Report 1991* and *1992* published the 'Human Freedom Index' and 'Political Freedom Index' based on the work of Humana, and the World Bank *World Development Report 1991* contained the Freedom House Index elaborated by Gastil. For an extensive critique of these efforts see Barsh, *Measuring human rights: problems of methodology and purpose*, in *Human Rights Quarterly* 15, 1993, pp. 87-121; Gupta, Jongman, Schmid, *Creating a composite index for assessing country performance in the field of human rights: proposal for a new methodology*, in *Human Rights Quarterly* 16, 1994, pp. 131-162; Tomaševski, *Critique of the UNDP political freedom index 1991*, in *Human Rights in Developing Countries: Yearbook 1991*, pp. 3-24.

<sup>72</sup> Sano H.-O., Lindholt L., *Human rights Indicators: country data and methodology 2000*, Copenhagen 2000, pp. 57-59

<sup>73</sup> Barsh 1993, p. 121.

responsibility for the conditions they describe<sup>74</sup>. Also the political problem need be addressed: governments and NGOs refuse to rank countries for fear of recrimination and loss of credibility<sup>75</sup>.

Human rights measurement is useful and distinct from development measures as long as it assesses the ‘political will’ or ‘commitment’ of governments towards human rights and the kinds of policy choices they actually make to respect and fulfil the obligations to which they have committed themselves<sup>76</sup>. Efforts in the elaboration of commitment indices have been developed by researchers and practitioners<sup>77</sup> but caution and scepticism towards the elaboration of indices that tend to compress complex rights into a simple measure exist, especially among governments and within international organisations. This explains, in part, the reluctance of developing human rights indicators and implementing tools of human rights measurement in development interventions. As a matter of fact, a precondition for an effective HRIA in development policies is the political will to implement such a tool in all stages of the process of decision-making<sup>78</sup>. Up to now, political obstacles have, indeed, been the first and foremost impediment to measuring human rights and overcoming associated technical difficulties.

For this reason I have chosen not to focus on a ranking system nor on a comparative country assessment but on the possibility of applying human rights impact assessment at a more grassroots and disaggregated level, that is in the development programmes cycle as to see if it can help modifying or adjusting development interventions according to human rights law and standards.

From the year 2000, when human rights indicators have been the subject matter of the UNDP Human Development Report, academics, activists and policymakers have more and more stressed the importance of evaluating policies at both the national and international level in terms of their ‘impacts’ on human rights. Important initiatives to develop approaches for HRIA in the context of development policies have been already taken in Europe. In 2000, the Danish Institute for Human Rights (DIHR) produced a study

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<sup>74</sup> Barsh 1993, p. 114.

<sup>75</sup> Landmann T., quoted in Radstaake, Bronkhorst 2002, p. 6.

<sup>76</sup> Sano, Lindholt 2000, p. 60.

<sup>77</sup> See, in particular, the ‘Human Rights Commitment Index’ elaborated by the researchers of the Danish Institute for Human Rights (DIHR) in the year 2000 and currently under revision, Sano H.-O., Lindholt L., *Human rights Indicators: country data and methodology 2000*, Copenhagen 2000.

<sup>78</sup> Radstaake, Bronkhorst 2002, p. 5.

on ‘Human Rights Commitment Indicators’ which assesses the commitment of governments to respect and fulfil human rights in four dimensions: the formal commitment to human rights standards; civil and political rights violations; approximate commitment to the fulfilment of economic, social and cultural rights; and gender equality<sup>79</sup>. The ‘Human Rights and Business Project’, still within the DIHR, is building HRIA as a tool for better business practice: drawing from the method of EIA, this HRIA will comprise a concrete list of factors which businesses should consider when assessing the impact of their activities and is conceived as a preventative rather than re-active mechanism to be carried out before the project starts and during the operative phase<sup>80</sup>. In 2001, NORAD, the Norwegian Agency for Development Cooperation, published the ‘Handbook in Human Rights Assessment’, which provides an analytical model to address whether and to what extent a development intervention is consistent with human rights treaty obligations and affects rights and freedoms of the population in terms of awareness and empowerment<sup>81</sup>. Recently, HRIA has been outlined for EU policy measures with an external effect with the aim of enhancing their effectiveness with respect to the improvement of the human rights situation in third countries and of preventing any negative impact of policies with a negative effect (‘do no harm principle’)<sup>82</sup>.

It is important that those studies on HRIA are not confined to national or regional level analysis simply because they are seen as ‘political’ research and human rights are regarded as state responsibilities. It is true that HRIA relates to state behaviour, thus the unit of analysis should be governments but there is no reason why it cannot become part of an international policy analysis as it has happened for environmental quality<sup>83</sup>.

A number of efforts in clarifying how to operationalise human rights principles into international development strategies, also in terms of assessment and indicators, have been developed by international organisations<sup>84</sup>. However, effective and systematic monitoring and assessment of states’ compliance with human rights obligations in the process of development have been neither globally agreed upon nor fully applied yet in practice.

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<sup>79</sup> Sano, Lindholt 2000, p. 67.

<sup>80</sup> Jungk M., *Building a tool for better Business Practice – the Human Rights Impact Assessment*, Copenhagen 2000, p. 3.

<sup>81</sup> NORAD, *Handbook in Human Rights Assessment*, Oslo 2001, p. 16.

<sup>82</sup> Radstaake, Bronkhorst 2002, p. IX.

<sup>83</sup> Barsh 1993, pp. 120-121.

<sup>84</sup> For example, the Human Rights Approach to Poverty Reduction Strategies, developed by the Office of the High Commissioner for Human Rights in 2002, the integration of human rights concerns in the 2000 UN Millennium Declaration and the UN Development Assistance Framework and Common Country Assessment integrated guidelines of 2002.

The question of whether a comprehensive and common standard of HRIA can be feasibly designed and implemented requires first of all a conceptual framework to define *what* to measure before proceeding to discuss *how* and then move to the discussion on indicators.

### I.3 What Are We Measuring? The Scope Of HRIA.

The human rights approach to development can be brought into practice only if its framework is clear and based on clear principles, so that one can see how rights can shape economic policy-making. As a matter of fact, the (legal) language of human rights loses its power if used rhetorically without clear content behind its claims and if not translated into a policy-friendly tool to be picked up by development actors<sup>85</sup>. To speak meaningfully of human rights impact requires, therefore, concepts and contents to be clarified, at least to some extent, so as to achieve a common understanding on what the objects of the assessment are and what information need to be gathered to measure the realization of human rights. Without such clarification, human rights assessment and indicators cannot be developed and, what is more frustrating, they will find no place in serious policy discussion<sup>86</sup>. A discussion should then begin: what is that should be measured? Which aspect of human rights should be taken into account?

I derive the framework for discussion from international human rights law, focusing in particular on the International Bill of Human Rights, which sets the standards for the rights that ought to be protected. I interpret those standards not as moral guidelines or ideal criteria but rather in terms of positive and negative obligations to be respected by states parties, norms of conduct to be complied with by institutions, and commitments on the basis of which decision-makers can be held accountable by the respective right-holders<sup>87</sup>. The human rights framework should be interpreted in the light of the principles of indivisibility and interdependence of civil and political rights and economic, social and cultural rights. However, I deem more accurate to first identify separately some specific characteristics of the two Covenants and then analyse jointly the perspective that could be taken into account in human rights impact assessment. I deal only with individual rights, thus leaving aside the discussion on collective rights.

Efforts to measure civil and political rights can count on a greater legal codification, more elaborated interpretations a wider amount of sources than can economic, social and cultural rights. Especially ‘classic’ rights, those of integrity and civil and

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<sup>85</sup> Raworth 2002, pp. 6-7.

<sup>86</sup> Barry C., *The challenges of Conceiving and Measuring Human Rights*, 2000, on file with author, p. 1.

<sup>87</sup> Green M., *What we talk about when we talk about indicators: current approaches to human rights assessment*, Human Rights Quarterly vol. 23, 2001, pp. 1066-1067

political participation, have been globally recognised and elaborated upon by governments and international organisations since a long time, and they are more prominent in official human rights reports and their violations have traditionally been monitored by international NGOs<sup>88</sup>. This makes it easier to identify the contents of core rights to be assessed in development interventions. As a matter of fact and especially before the publication of the UNDP Human Development Report 2000, much of the literature on human rights measurement has limited itself to violations of civil and political rights and interpreted data on economic and social rights as unmet basic needs to fill up with increased resources<sup>89</sup>.

The legislative framework against which states' commitment toward civil and political rights can be assessed is based on article 2 of the ICCPR<sup>90</sup>, that defines the general characteristics, and the rights included in the UDHR and the Covenant. In addition, the authoritative normative interpretations contained in the General Comments of the Human Rights Committee, other global and regional documents, the jurisprudence of human rights courts and the work of many practitioners complete the basis for analysis. Notwithstanding this well-established framework, the methodology used to develop indicators has mainly aimed at ranking countries in scales that measure gross violations of human rights and political freedom rather than focusing on measurement of human rights impact of government performance in development interventions<sup>91</sup>. Freedom House, for example, surveys political rights and civil liberties around the world and offers an updated, wide-ranging and comparative assessment of countries' political situations but focuses mainly on voting processes and political parties, that is, on a concept of procedural democracy that does not say much on the commitment of governments to human rights respect, protection and fulfilment<sup>92</sup>. Indicators to assess governments' conduct and to inform development and monitoring work are still lacking also in the area of civil and political rights and the Office for High Commissioner has already called for efforts to arrive at internationally agreed standards of methodology and definitions<sup>93</sup>.

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<sup>88</sup> Sano, Lindholt 2000, p. 73 and Radstaake, Bronkhorst 2002, p. 7.

<sup>89</sup> Tomaševski 1991, p. 13.

<sup>90</sup> For the full text of Article 2 of the ICCPR see Annex 1.

<sup>91</sup> Landmann has called this latter approach "rights in practice" and has recognised that "especially civil and political rights have received the most attention to date, with numerous abstract scales of rights protection generated from qualitative rights reporting", Landmann T., *Measuring human rights: principle, practice and policy*, draft paper presented at the Seminar on Statistics and Human Rights, Brussels 2002, p. 14.

<sup>92</sup> Sano, Lindholt 2000, p. 59. Freedom House has been criticized for the lack of transparency of its methodology as well as for bias toward the American conceptualization of procedural democracy. See also Barsh 1993.

<sup>93</sup> UNHCHR - UNDP, *Workshop on Civil and Political Rights Indicators, Final Report*, Geneva, 1999, p. 2.

Civil and political rights are often associated with democracy as an integral part of the global efforts to its promotion and consolidation and measures of one concept have been confused with measures of the other one<sup>94</sup>. However, there are important conceptual differences between the two concepts that need not be conflated. Democracy is, to put it simply, a matter of organisation of the government, whereas civil and political rights are a question of individual rights and their defence and are meant to provide citizens with the space for effective participation<sup>95</sup>. Rights are more precisely defined and globally established than the concept of democracy, are reflected in international documents, national constitutions and laws, count on machineries for their enforcement and can be claimed before the competent authority. All these characteristics not only make them different from a general conceptualisation of democracy but also provide for a more defined framework for their measurement, so that it may be even easier to establish indicators for civil and political rights than for democracy<sup>96</sup>.

As regards economic, social and cultural rights, notwithstanding increasing efforts, their assessment presents major problems due to lack of data, scarce elaboration on their content and the fact that, so far, indicators in the economic and social field have been established mainly by the development sphere rather than from a human rights perspective, hence with a focus on poverty rather than on governments' commitment towards their fulfilment irrespective of development levels<sup>97</sup>. The lack of conceptual clarity with regard to the specific contents of economic, social and cultural rights has frequently been blamed for a failure to identify suitable indicators but the Committee on Economic, Social and Cultural Rights as well as other institutions and academics have undertaken major efforts in defining states obligations and violations in this area and some significant progresses have been achieved<sup>98</sup>.

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<sup>94</sup> Landmann 2002, p. 14.

<sup>95</sup> Sørbo G. M., Tostensen A., *Aid for human rights and democracy: challenges of design, management and evaluation*, in Human Rights in Development Yearbook 1999/2000, p. 225.

<sup>96</sup> Sørbo, Tostensen 2000, p. 226.

<sup>97</sup> Sano, Lindholt 2000, pp. 77-78. The authors elaborated an index approximating commitment to fulfilment of economic, social and cultural rights based on indicators of a preliminary nature.

<sup>98</sup> Green 2001, p. 1066, footnote 3. The American Association for the Advancement of Science together with HURIDOCS (Human Rights Information and Development System International) published a *Thesaurus on Economic, Social and Cultural Rights: Terminology and Potential Violations*, 2000 at <http://shr.aaas.org/thesaurus>. The Committee produced General Comments on the normative content and states parties' obligations in respect to certain rights, as the rights to education, food, housing and health. A group of experts elaborated the *Limburg Principles on the Implementation of the ICESCR* in 1986 and *The*



The methodological discussion concerning the measurement of economic, social and cultural rights has been influenced also by some misconceptions on their nature, reflected in large part in the wording of article 2, paragraph 1 of the ICESCR<sup>99</sup>. Many human rights scholars argue that these rights generate positive obligations (i.e. governments should ‘do something’ to be compliant), hence are hard to measure since their realization depend on the available resources and the stage of economic development of a country. However, it has been often clarified that all human rights imply both positive and negative duties and that the typical distinction among obligations to *respect*, *protect* and *fulfil* used in the context of economic, social and cultural rights applies in fact also to civil and political rights<sup>100</sup>. The duty to respect requires states to refrain from interfering with the enjoyment of the rights; the obligation to protect requires states to prevent violations of a right by third parties; the obligation to fulfil requires states to take appropriate measures toward the full realization and enjoyment of the guaranteed rights<sup>101</sup>. The latter incorporates an obligation to *facilitate*, i.e. states should pro-actively engage in positive measures to enable and assist people’s access to the right, and one to *provide* the right directly whenever an individual or group is unable, for reasons beyond their control, to enjoy it by the means at their disposal<sup>102</sup>.

Landmann has affirmed that if denial of economic, social and cultural rights is the product of particular government practices, then it should be equally possible to measure those practices with the same methods used for civil and political rights, demonstrating that it is neither for their different nature nor for insurmountable methodological and technical obstacles that measurement of this group of right is underdeveloped<sup>103</sup>.

General Comment 3 on the nature of states parties obligations introduces the concept of *progressive realisation* of economic, social and cultural rights, which recognises that full realization cannot be achieved in a short period of time because of

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*Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* in 1996 now published as UN Doc. E/C.12/2000/13.

<sup>99</sup> For the full text of Article 2 of the ICESCR see Annex 1.

<sup>100</sup> *Maastricht Guidelines*, paragraph 6.

<sup>101</sup> *Ibidem*. This classification, in a slightly different form, was proposed by Eide in 1989 and accepted by the Committee on Economic, Social and Cultural Rights in the General Comment on the right to adequate food in 1999. Since then it has been used in the General Comments on health and education and has become a common framework in the work of scholars also in the area of rights-based development. The three levels of obligations are very broad and may cover all aspects of human rights. For this reason, and in search of simplification, I apply this classification also to civil and political rights and do not use the dimensions of *ensure* and *promote* more often employed for this category.

<sup>102</sup> Committee on Economic, Social and Cultural Rights, *The right to adequate food (Art. 11)*, *General Comment 12*, 1999, E/C.12/1999/5, paragraph 15.

<sup>103</sup> Landmann 2002, p. 11.

resource constraints and practical difficulties faced by governments<sup>104</sup>. Progressive realisation, while not justifying deliberate retrogressive measures, allows for prioritisation among different rights but it should not be misused as a shield against any action. In this respect there seems to be a difference with article 2 of the ICCPR, which embodies an immediate obligation to respect and ensure all civil and political rights. In reality, progressive realisation can apply to some extent also to civil and political rights, for example for lack of necessary resources or for the very nature of the right or in terms of improvement of standards<sup>105</sup>. On the other hand, states parties have immediate obligations also in relation to some elements of economic, social and cultural rights, as the non-discrimination clause (art. 2, 2 ICESCR) and the obligation “to take steps” towards the full realization of these rights<sup>106</sup>. The satisfaction of minimum essential levels of each of the rights – core content – is incumbent upon states parties whatever their stage of economic development and is not subject to the principles of progressive realization and resources availability<sup>107</sup>. These principles, if applied to development policies, would contribute to the decision-making process in that they rule out interventions that lead to retrogression from the existing level of realization of a right or to non-fulfilment of its minimum core content<sup>108</sup>. The notion of sustainability is implicit in these principles, which means that the process of enjoyment and fulfilment of the rights of the present and future generations should not be compromised by unsustainable production or consumption patterns<sup>109</sup>. Impact assessment and indicators have a role to play in monitoring these dimensions of human rights obligations<sup>110</sup>.

The foregoing analysis described some relevant human rights standards that should be taken into consideration when elaborating human rights impact assessment and indicators. In HRIA, one first needs to specify the object of each right and to define what

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<sup>104</sup> Committee on Economic, Social and Cultural Rights, *The nature of States Parties obligations (Art. 2, Para. 1)*, *General Comment 3*, 1990.

<sup>105</sup> UN *Workshop on Civil and Political Rights Indicators*, Geneva 1999, p. 9. For example, reporting procedures or changes of institutional behaviour in a transitional context lend themselves to progressive realisation.

<sup>106</sup> Committee on Economic, Social and Cultural Rights, *The right to education (Art. 13)*, *General Comment 13*, 1999, paragraph 43.

<sup>107</sup> The Committee has developed the principle of a minimum core obligation since its *General Comment 3*, paragraph 10 and is working to define the core content of each right.

<sup>108</sup> OHCHR, *Draft Guidelines: a Human Rights Approach to Poverty Reduction Strategies*, 2002, p. 3.

<sup>109</sup> Malhotra 2002, p. 5.

<sup>110</sup> Hunt P., *State obligations, indicators, benchmarks and the right to education*, background paper, Geneva, 1998, U.N. Doc. E/C.12/1998/22.

governments are required to do, and then compare this against what they are willing and able to do and assess efforts and accomplishments<sup>111</sup>. Thus, two perspectives could be used in assessing rights and either one would significantly influence the conceptual basis of HRIA. The first one looks at government efforts, i.e. the compliance side, and sees HRIA as a means of measuring whether a government, or the persons who are held under duties, is fulfilling its obligation. The second one, instead, measures accomplishments, that is whether each person fully enjoys the objects of the rights guaranteed by the Covenants<sup>112</sup>. These two perspectives, that I would call respectively the ‘compliance approach’ and the ‘enjoyment approach’, can be seen as two different but compatible and complementary sides of the same coin<sup>113</sup>. Most scholars use this distinction, maybe phrased in different terms, and usually focus on either approach. In the literature reviewed, I found no definitive agreement on what perspective should be used in HRIA.

Some authors distinguish between ‘obligations of conduct’ and ‘obligations of result’: the former requires the duty-holder to act in accordance with its obligations, to secure rights by making social arrangement and is measured by ‘indicators of process’ that can capture incremental improvement of the status of the rights; the latter are concerned with the targets that the duty-holder should achieve and are associated with ‘indicators of outcomes’, that reflect the status of rights realisation<sup>114</sup>. Traditionally development studies tended to focus on indicators of outcomes of government policies, especially in the economic and social field.

I argue here that HRIA should focus on indicators of conduct since the human rights discourse is interested in monitoring states’ political will and commitment to abide by international human rights law<sup>115</sup>. This is not to say that indicators of result are wholly irrelevant, for they can be useful in measuring general developments of a given situation that may be linked to the enjoyment of human rights. For instance, much can be derived about a state’s conduct to fulfil the right to access to health if indicators concerning government allocation of resources to hospital beds are considered in the analysis<sup>116</sup>.

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<sup>111</sup> Tomasevski K., *Indicators*, in Eide, Krause, Rosas (Eds.), *Economic, Social and Cultural rights: a textbook*, Dordrecht, 2001, p. 534.

<sup>112</sup> Green 2001, p. 1086 and Raworth 2001, p. 116.

<sup>113</sup> Green 2001, p. 1086.

<sup>114</sup> *Ibidem*, p. 1075.

<sup>115</sup> This is the approach followed, for instance, in the Human Rights Commitment Index elaborated by the DIHR, Sano, Lindholt 2000, p. 65.

<sup>116</sup> Landmann 2002, p. 12.

As already mentioned, one of the key values added of the rights approach, when included in the development discourse, is the emphasis placed on the idea of accountability and responsibility for the negative consequences of certain activities. Accountability means assessing the fulfilment of obligations with clearly defined criteria of performance and identifying the primary duty-holders and the content of their duties. This, in turn, requires setting of measurement tools, such as impact assessment, indicators and benchmarks<sup>117</sup>. If the purpose of assessing human rights is to hold duty-bearers accountable for their actions, evaluate policy choices and eventually influence changes in human rights conditions, then HRIA should be constructed as to reveal the conduct of a government, give an indication of the actions required and be responsive to changes in that conduct<sup>118</sup>. It is true that accountability, defined by Tomaševski as “control over the exercise of power”<sup>119</sup>, can be measured by looking both at people’s enjoyment of the contents of their rights and at government’s compliance with the standards set forth in the International Bill of Rights. However, even if conceptually linked and often sharing alike indicators, the two perspectives approach the same phenomenon from different and complementary angles. The enjoyment approach reflects a confluence of factors, including availability of resources and socio-economic conditions and, therefore, risks to overlap in many cases with the assessment of human development, which focuses on human outcomes<sup>120</sup>. On the contrary, “in determining which actions or omissions amount to a violation of the right [to food] it is important to distinguish the inability from unwillingness of a State party to comply”<sup>121</sup>. Human rights assessment should be concerned with the ‘political will’ of governments, not with their limited resources and should expose disrespect for human rights, not poor economic performances<sup>122</sup>.

For these reasons, I believe that HRIA if adopted in development interventions could contribute more substantially to the “compliance” side of the discourse. Adopting such a perspective would distinguish HRIA from the traditional development measures of realization of outcomes or enjoyment of basic needs and would therefore make of HRIA a tool with significant value added. Conceived as such, HRIA is not just a plea for another

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<sup>117</sup> Fukuda-Parr S., *Indicators of human development and human rights – overlaps, differences ... and what about the Human Development Index?*, paper presented at IAOS Conference on Statistics, Development and Human Rights, Montreux, 2000, p. 4.

<sup>118</sup> Raworth 2001, p. 119.

<sup>119</sup> Tomaševski 1991, p. 22.

<sup>120</sup> Fukuda-Parr, 2000, p. 4.

<sup>121</sup> Committee on Economic, Social and Cultural Rights, *General Comment 12*, 1999, paragraph 17.

<sup>122</sup> Barsh 1993, p.115.

academic exercise of impact assessment but a useful instrument to reveal dimensions of development that have been, so far, neglected.

Having explained what, in my view, the focus of human rights assessment should be, I deem important to further define its scope with a brief analysis of the concepts of ‘democracy’ and ‘governance’ since donors, international organisations but also human rights practitioners increasingly associate these notions with human rights in an ambiguous flow. When planning development interventions, it is often assumed that human rights, democracy and governance move in the same direction and that improvement in one area will automatically lead to progress in others. This lack of distinctions makes it difficult to identify what to measure and, subsequently, to proceed to impact assessment. Moreover, different donors attach different meanings to these concepts and tend to be careless in their use, partly for deliberate political reasons of flexibility (and ambiguity), partly for their own institutional perspectives and priorities and partly for difficulties in conceptual clarifications<sup>123</sup>. Thus, I would clarify my understanding of democracy and governance and of their interrelationship with HRIA.

Attempts to measure democracy and governance have risen after the end of the Cold War. The International Centre for Human Rights and Democratic Development, for example, has elaborated a “democratic development framework” to assess countries’ performances based on criteria derived from the entire body of human rights and grouped in six categories: participation, security, well-being, non-discrimination, rights of collectivities and democratic institutions (subdivided into rule of law and state institutions)<sup>124</sup>. The Centre sees democracy as encompassing both the institutional aspects of governance and the exercise of effective citizen participation in public policy-making<sup>125</sup>.

In the “Handbook of Democracy and Governance Program Indicators” the US Development Agency (USAID) recognises that the promotion of democracy is a complex, dynamic process only partially understood and that much remains to be learned about how to capture changes in democratisation, so that indicators in this field cannot be considered definitive but only a work-in-progress<sup>126</sup>.

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<sup>123</sup> Sørbo, Tostensen 2000, p. 220.

<sup>124</sup> Thede N., *The democratic development exercise: terms of reference and analytical framework*, Rights and Democracy 1996, p. 6.

<sup>125</sup> *Ibidem*, p. 2

<sup>126</sup> USAID, *Handbook of democracy and governance program indicators*, Washington DC, 1998. It identifies four main objectives: 1) Strengthened Rule of Law and Respect for Human Rights; 2) More Genuine and

The UNDP advocated democratic governance for human development in the Human Development Report 2002, affirming that it is not only about making public institutions more effective and efficient but also about protecting and respecting people's human rights and fundamental freedoms, promoting wider participation in the institutions and being able to hold decision-makers accountable<sup>127</sup>. It linked the concepts of democracy and governance not only with political and civil rights but also with economic and social rights: democracy is seen as the only political regime consistent with respect and promotion of *all* human rights and political freedoms are a means to empower people to claim their economic and social rights<sup>128</sup>.

Such a blending of notions can be counterproductive in the efforts to assess the impact that development interventions, donor policies and governments activities have on each dimension. It is, therefore, important to identify the characteristics of democracy and governance and distinguish them from the realm of human rights norms. Democracy as a political system is difficult to evaluate and measure since it is not a state of affairs but rather an ideal to strive for, an ongoing process that can be assessed to the degree to which it is realised and, moreover, eludes precise definitions and cannot count on an internationally agreed normative framework<sup>129</sup>. Sørbø and Tostensen define democracy as “popular control over collective decision-making”, which is something more than simply putting in place procedural means that lead to legitimate decisions, as a free and fair electoral process or pluralism of parties<sup>130</sup>. As regards good governance, it has been conceptualised by Sano as a “general standard for democratic governance and power exertion” that ultimately relates to the way in which power holders deal with people and resources in their command<sup>131</sup>.

One of the assumptions in donor practice is that human rights, democratisation and good governance are mutually supportive and interdependent. However, this relationship is not automatic, on the contrary it can be demonstrated that promoting the latter does not

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Competitive Political Processes; 3) Increased Development of Politically Active Civil Society; and 4) More Accountable and Transparent Government Institutions. As regards human rights, only the dimension of respect is considered and included as a component of a wider objective.

<sup>127</sup> UNDP, *Human Development Report 2002*, pp. 55 and 51.

<sup>128</sup> *Ibidem*, p. 53.

<sup>129</sup> Sørbø, Tostensen 2000, p. 221.

<sup>130</sup> *Ibidem*, p. 221.

<sup>131</sup> Sano H-O, *Good Governance, Accountability and Human Rights*, in Sano, Alfredsson (Eds.), *Human Rights and Good Governance: building bridges*, The Hague 2002, p. 124.

result in any substantial improvement in human rights and *vice versa*<sup>132</sup>. Many conceptualisations of democratic governance presuppose also accountability of states and non-state actors to human rights. Governance may indeed relate with the concept of accountability, but in what way? International donors as the World Bank have usually associated good governance with institutional performance in terms of, i.e., public sector management, effective administration and efficient allocation of resources, audit, transparency and non-corruption. In this context indicators of accountability refer simply to the notion of good administration, and human rights are mere ordering principles with no role in the implementation of governance. However, another facet of governance is possible, that of empowerment in terms of societal controls, monitoring procedures, dialogue and participation in state-society relations. In this case, indicators of accountability relate to the notions of democratisation and participation and human rights may become instruments of the governance policy, therefore constituent criteria against which it should be assessed<sup>133</sup>.

The notions of democracy, governance and human rights can be, therefore, properly interrelated, depending on how they are conceptualised. However, in the attempt to elaborate human rights impact assessment I still prefer to keep them apart, so as to avoid the risk of losing the specificity and the value added of the human rights framework when assessing the impact of development interventions. As a matter of fact, human rights and governance derive from two different frameworks, the former explicitly normative and grounded in juridical obligations, and the latter primarily economic and managerial, based on recommendation on how the state should exercise power efficiently. These different departures explain why the two issues may be at odds: there is a difference between political recommendations that lead to improved human environment and legally binding rights that entitle right-holders to exercise control on the use of power by the government<sup>134</sup>.

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<sup>132</sup> Kjær and Kinnerup use the Ugandan case to show that good governance can be claimed successful at the same time as a government violates human rights, Kjær M., Kinnerup K., *Good Governance: How does it relate to Human rights?*, in Sano, Alfredsson (Eds.) 2002, pp. 13-15. Sano 2002, pp. 133-137, analyses the UNDP 'Humane Governance Index' and human rights records to conclude that respect and fulfilment of human rights are not directly associated with democratisation and governance agendas.

<sup>133</sup> Sano in Sano, Alfredsson 2002, pp. 132-133.

<sup>134</sup> Kjær, Kinnerup in Sano, Alfredsson 2002, p. 16.

This chapter showed that efforts to conceptualise and build up human rights measurement tools do not need to start from scratches but are backed by the human rights approach to development and a well-established framework of international human rights law. Existing practices of impact assessment in the environmental and social fields have proven to be possible, reliable and valuable instruments in development. I would argue that also HRIA is, at least in principle, feasible. Obviously it is not an easy task: it requires a sound theoretical basis, should be user-friendly and tailored to the needs of the specific intervention<sup>135</sup>. Its usefulness and value added, in terms of operationalisation of the principle of accountability in the development process, has also been pointed out. However, to overcome the practical difficulties that HRIA may encounter there is a need for further standardisation of the definitions used and measurement tools, statistics and indicators should also be formulated and developed so as to meet the characteristics of the human rights approach<sup>136</sup>. For this reason, a methodological analysis of how to measure human rights is required before moving to discuss the political obstacles that, so far, have made the operationalisation of the human rights approach to development so difficult.

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<sup>135</sup> Radstaake, Bronkhorst 2002, p. 17.

<sup>136</sup> Omar E., *Human rights and statistics*, paper presented at HURIDOCS International Conference, Gammarth, 1998, p. 7 and 12.



## **CHAPTER II      The Methodological Context**

### **II.1                      Mainstreaming Human Rights**

There is general consensus on the position that the enjoyment of human rights should be the ultimate goal of development and that development and democracy are neither sustainable nor desirable without respect for human rights<sup>137</sup>. Increasingly, efforts to link human rights to development cooperation search for proactive and preventive approaches rather than political conditionalities or sanctions. Many voices call for incorporation of all human rights into human development and for their protection and promotion throughout all development policies, programmes and projects<sup>138</sup>. These initiatives can be connected under the overexploited concept of “*mainstreaming*” human rights in development. But what is meant by mainstream? And, most of all, how to mainstream?

In fact, there is no clear, shared understanding of this concept. The mid-term review of the joint UNDP and OHCHR programme Human Rights Strengthening Programme (HURIST) found that: (I) mainstreaming human rights has major operational implications that are far from readily grasped and require specific efforts for their internalisation; (II) there should be a common understanding of what it is that the agencies are promoting when they take a rights-based approach to development; (III) there is no such common understanding about what difference it makes to adopt the mainstreaming of human rights—taking a rights-based approach rather than a needs-based approach<sup>139</sup>. The result is that, at the moment, when donors include human rights considerations in their development policy, they do it on an *ad hoc* and voluntary basis and consensus on the implementation of separate, small and relatively isolated human rights projects can be easily reached. Much more difficult is for donors to agree on systematic mainstreaming, based on effective strategies to promote and protect human rights in development cooperation<sup>140</sup>.

Mainstreaming human rights into development should be seen as a long-term process of integration of human rights concerns into development thinking, quite like the

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<sup>137</sup> Thoolen, H., in Helmich, Borghese 1998, p. 88.

<sup>138</sup> Helmich, Borghese 1998, p. 75.

<sup>139</sup> UNDP/OHCHR, *The Human Rights Strengthening Programme. Mid-Term Review*, August 2001, p. 2.

<sup>140</sup> Thoolen H., in Helmich, Borghese 1998, pp. 86-88.

evolution and integration of environmental standards into projects and programmes<sup>141</sup>. And quite like the use of environmental impact assessment, I would argue here that HRIA, if incorporated in development planning and in the project cycle, could contribute to a systematic operationalisation of mainstreaming. It is, in fact, a tool that compels planners to anticipate positive and negative effects of the intervention and evaluate and measure results according to human rights standards, from the outset to project completion<sup>142</sup>.

In this context, indicators are also very important since they are the criteria used to carry out the impact assessment. The discussion on the definition and identification of human rights indicators is an ongoing process. However, while the definition and inclusion of human rights indicators alone in the design of development interventions would force development actors to take human rights concerns into consideration on a sporadic base, the elaboration of a comprehensive framework of HRIA within which these indicators are used would result in systematic mainstreaming of human rights into all planning phases<sup>143</sup>. Before discussing such a framework of HRIA and how it can be put in place, a distinction between non-human rights interventions and human rights interventions is to be made, as it implies some differences in the nature of the assessment and monitoring required.

A sometimes-ignored reason for mainstreaming is that development interventions can potentially have an adverse impact on the people affected and they have, indeed, contributed to the denial of human rights in many circumstances. Structural adjustments or large infrastructural projects produced documented harms especially on the most vulnerable groups affected by the intervention. These harms, if left unredressed, constitute flagrant violation of basic human rights<sup>144</sup>. Take the example of dam-building projects: they have frequently led to the forcible displacement of local communities and, ignoring their claims to land rights, denying them access to traditional livelihood and undermining their culture, they had serious impact on the rights to food, to adequate housing and to cultural identity<sup>145</sup>. This trade off between development and human rights objectives needs to be reconciled and both governments and development organisations should assume their responsibility to prevent these harms or to remedy fully the damage done where it is necessary and unavoidable in order to produce a greater benefit for many. A “do no harm”

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<sup>141</sup> Paul J., in UNDP, *Report of the Oslo Symposium*, 1998, p. 72.

<sup>142</sup> Sano 2002, p. 1.

<sup>143</sup> *Ibidem*.

<sup>144</sup> Paul J., in UNDP, *Report of the Oslo Symposium*, 1998, p. 72.

<sup>145</sup> Häusermann 1998, p. 149.

standard might be considered the most basic human rights obligation, enshrined in the duty to respect and it should lead to measure overall benefits against harm<sup>146</sup>.

The consideration that development projects can bring negative impacts, that need to be mitigated or avoided, does not pertain only to human rights. The experience with environmental protection can be used by analogy: after a long evolution it has been recognised that environmental degradation should never be the end or the means of development; similarly, negation or violation of human rights contradicts the declared aim of development and should not be accepted as means of development. For this purpose, as environmental protection has been incorporated into development planning in the form of Environmental Impact Assessment, so human rights concerns should be integrated in the design and the implementation of development interventions<sup>147</sup>. The potential harms caused by the project need not be considered as externalities but internalised in the intervention logic.

Thus, mainstreaming human rights in non-human rights interventions should be done already at the outset of the project cycle, first analysing the actual context, assessing the general human rights situation in the country or the region and identifying critical areas of concern on the basis of criteria set forth in human rights law<sup>148</sup>. Subsequently, the relevant human rights risks that exist in the specific context of the intervention should be assessed according to a ‘do no harm’ principle with a twofold purpose: identification and prevention of potential and likely negative effects on the human rights situation and avoidance of a potential risk of complicity in human rights harm. This risks analysis is important also in terms of political decision-making and dialogue with the counterparts because it distinguishes between situations where governments are passively failing to address the human rights situation and discourage abuses, and situation where governments are actively perpetrating human rights violations. HRIA may highlight the risk complicity in sustaining or legitimising abuses and suggest policy changes in the planned intervention<sup>149</sup>.

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<sup>146</sup> Frankovits, Earle 2001, part II, p. 51.

<sup>147</sup> Tomasevski 1993, p. 215.

<sup>148</sup> Radstaake, Bronkhorst 2002, p. 11, Sano 2002, p. 4.

<sup>149</sup> Sano 2002, p. 4. For example, SIDA’s approach to development interventions (other than specific human rights and democracy programmes) includes their scrutiny during planning and implementation “with a view to identifying unintended and negative effects that may be harmful to democracy and human rights. In situations of armed conflict, SIDA’s minimum approach will be to seek to ‘Do No Harm’ with aid, i.e. to identify unintended effects that may fuel conflict”, 1997 policy document quoted in Poate D., Riddell R.,

In this approach, Human Rights Impact Assessment becomes mainly a “risk assessment” where human rights are a precondition in designing development assistance and a benchmark in assessing its impact<sup>150</sup>. Human rights indicators may be used but the entry point to mainstream human rights is the consideration of human rights risks already in the analytical phase.

This form of mainstreaming human rights through HRIA of non-human rights interventions focuses mainly on dimensions and indicators of *respect* and *protect*<sup>151</sup>. In principle, a systematic use of HRIA in mainstream development could, in the long term, follow a similar evolution path as EIA<sup>152</sup> and evolve from a preventive function of identification of potential impacts in order to mitigate the effects to a more active task, as the possibility to point out alternatives, suggest solutions that are human rights-compliant, thus including a dimension of *fulfilment* of human rights even in those projects which have a non-human rights objective. The exercise of HRIA, furthermore, should be conducted at the national as well as at the international level because even if the implementation of policies falls under the responsibility of governments, most of the times those harmful policies have been required or influenced by international financial organisations<sup>153</sup>.

The assessment of human rights impact in human rights and democracy interventions is of a different nature because in this case human rights are the overall goal of development, therefore the all project logic should be human rights oriented. In these cases identification of human rights deficits and risks constitutes a fundamental concern during the project cycle, from identification to planning, implementation and evaluation.

In a logical framework (logframe) approach, the project is structured by objectives in a vertical logic (activities  $\Rightarrow$  outputs  $\Rightarrow$  objective  $\Rightarrow$  goal) connected by means and ends relationship. The logframe identifies also risks and assumptions on which the various steps are based, indicators that specify the objectives and practical means of monitoring<sup>154</sup>. I will refer to this approach since it is widely used for planning and evaluation of development

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Chapman N., Curran T., *The evaluability of democracy and human rights: a logframe-related assessment*, SIDA, Stockholm 2000, p. 4 footnote 3.

<sup>150</sup> Helmich, Borghese 1998, p. 88.

<sup>151</sup> For instance, the state obligation to respect land rights securing them to indigenous people by means of legal action or the obligation to protect the right to food (production) if a multi-national company is dumping hazardous waste in the territory, NORAD, Oslo 2001, p. 15.

<sup>152</sup> See page 17 above.

<sup>153</sup> Häusermann 1998, p. 149.

<sup>154</sup> Poate et al., Stockholm 2000, p. viii.

interventions even if it has been recognised that it is not always suitable for human rights interventions, which include complex processes such as institutional change and democracy development, where the expected changes cannot be accurately predicted and measured<sup>155</sup>.

Impact assessment can be defined as “the systematic analysis of the lasting or significant change – positive or negative, intended or not – in people’s lives brought about by a given action or a series of actions” in one given socio-economic and political context<sup>156</sup>. HRIA, thus, should assess how human rights change is brought about by the intervention. Is it possible to measure human rights change? I agree with Sano and Andreassen that it is possible but also that a sound human rights impact assessment depends on at least three important factors: the quality and logic of project objectives, clear hypotheses on how human rights change comes about and key relevant indicators<sup>157</sup>.

The project intervention logic should be coherent, specific and realistic, the objectives clearly specified and the link between outputs and goals explicitly established<sup>158</sup>. One fundamental weakness in the design of human rights project of many organisations is exactly that they fail to define goals and objectives in human rights terms. This is often due to political sensitivity, which, in certain contexts, implies that the human rights agenda of these organisations is merged into objectives of democratisation so as to confuse the project objective and relative indicators. Hence, the human rights objectives, against which states performance is assessed, may be converted in organisational terms, such as capacity building and awareness raising, while the core rights-based approach is neglected as well as the overall goal of promotion and protection of human rights<sup>159</sup>.

When planning human rights interventions it should be made clear from the outset which types of change in the human rights situation are expected, how they come about and with which indicators they can be properly assessed. The contextual analysis should be carried out as to identify the human rights deficit and determine the project objectives in terms of expected positive change on the human rights situation. The vertical logic of the

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<sup>155</sup> Poate et al., Stockholm 2000, p. viii. A detailed analysis of the logical framework, its advantages and drawbacks falls beyond the scope of this thesis. I refer to Poate’s study on SIDA’s projects offers a comprehensive and critical evaluation of human rights and democratisation projects in a logframe approach.

<sup>156</sup> Roche 1999, p. 21.

<sup>157</sup> Sano H.-O., Andreassen B. A., *Planning and assessing human rights projects: goals, indicators and measurement*, Report for NORAD’s Technical Division, Oslo 2003, p. 1, on file with author.

<sup>158</sup> Poate et al., Stockholm 2000, p. x.

<sup>159</sup> Sano, Andreassen 2003, p. 7.

planned intervention should highlight the project contribution to the strategies of human rights promotion and protection<sup>160</sup>.

The focus on systematic analysis of long-term changes caused by development interventions is not without problems, for a number of reasons. It relies on judgements about which change is considered relevant for whom and by whom: these judgements are subjective and dependent on the context within which they are made. Change is therefore contingent on the specific situation and, furthermore, may be due to factors other than a managed development process<sup>161</sup>. A number of circumstances affect the ability of attributing observed changes to the project. One of the questions that HRIA should answer is, therefore, whether a development intervention has brought about results that would not have otherwise occurred in that given context. Yet, this problem of ‘causality’ or ‘attribution’ is one of the biggest difficulties in measuring human rights and is twofold. First, the observed change could be a consequence of external influences or projects other than the intervention assessed. Second, even within the same intervention it is difficult to attribute the change to a particular source, since many actors may have contributed to that project. There are different ways, usually very expensive, of dealing with the problem of attribution either through monitoring undertaken by the organisation itself or through external evaluation<sup>162</sup>.

Once the logic of the human rights project is made clear and the assumptions about change explicit, another crucial step in the process of impact assessment is the choice of a set of indicators specifically relevant and useful to measure the process of change and the actual impact. Indicators defined in a logframe will normally be contextual and reflect the kind of project undertaken, even if some general dimensions can be individuated which cut across human rights implementation and, therefore, are relevant in any HRIA, irrespective of the context.

I outline below three main types of change that can be promoted by human rights interventions<sup>163</sup>:

1. Change in institutional and legal behaviour. It involves change in government’s political will towards its obligations to respect, protect and fulfil human rights, in terms for example of change of policies such as legal reforms or practices of

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<sup>160</sup> Sano, Andreassen 2003, pp. 8.

<sup>161</sup> Roche 1999, pp. 24-28.

<sup>162</sup> Sano, Andreassen, Oslo 2003, pp. 5-8.

<sup>163</sup> *Ibidem*, pp. 11 and 23.

institutions. It can be assessed by indicators of conduct, which can measure, for example, changes in specific human rights violation or in state commitment by looking at resources allocation or legal, institutional and procedural reforms.

2. Change in social conditions, conducive to human rights norms. Interventions may facilitate social changes such as changes in gender or minority discrimination. In this case, the relevant indicators are indicators of result, because they need to assess the actual enjoyment of rights by the population (for example, measurement of standard of living or of access to education, housing, health...). At the same time, indicators of conduct may reveal state commitment towards changed social conditions.
3. Change in public awareness. Human rights promotion can be realised through the strengthening of civil society. Indicators should measure civil society capacity to monitor human rights, pursue litigation, networking, hold dialogue with the government and create advocacy. Also in this case a set of indicator of conduct could assess state commitment to change.

Hence, in human rights interventions HRIA should be systematically endorsed in the project cycle in order to monitor the process of change and ultimately evaluate the intervention to establish whether it has contributed to the realization of the rights-based objective. In non-human rights interventions, HRIA focuses on anticipating and avoiding potential negative consequences of those development projects which are human rights risk prone<sup>164</sup>. Thus, in order to contribute substantially to the integration of human rights into development, it should be systematically used in the earliest stages of any development intervention, while in the following phases it might be applied to different degrees depending on whether risks had been detected or not, thus reducing the burden in those interventions where it is not needed.

To operationalise the process of impact assessment throughout the project cycle, I outline a framework of four main procedural steps and relevant indicators that can be followed to elaborate a HRIA. This framework is an elaboration of the seven steps procedure individuated in the study carried out by Radstaake and Bronkhorst for the European Union and of a draft paper written by Sano for the DIHR<sup>165</sup>.

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<sup>164</sup> Lund Madsen 1991, p. 7.

<sup>165</sup> Radstaake, Bronkhorst 2002, pp. 11-13, Sano 2002, pp. 1-5. See table 1 for a schematic recap.

1. Before decision on development intervention. This step entails an analysis of the country profile of the human rights situation and the political situation. For human rights projects it is important to identify the human rights deficit or need that the intervention aims at fulfilling. There is an ongoing debate on which indicators can be included. Qualitative information can be drawn on the extensive monitoring of human rights violations undertaken by organisations such as Amnesty International, Human Rights Watch or the US State Department. The status of ratification and reservations to international human rights law represents another important information. Quantitative indices may also be used that measure commitment to human rights (DHIR Human Rights Commitment Index), Governance (World Bank governance indicators), Corruption (Transparency International) or the UN Common Country Assessment.
2. Planning. HRIA will be most useful if initiated at the earliest stage of project design to ensure from the outset that it is sound from a human rights perspective and linked with the overall assessment of the country situation. It should be distinguished between human rights projects and non-human rights projects. In the former, the logical framework should identify the vertical logic of the human rights intervention, that is project objectives, outputs and activities that contribute to the overall strategy of prevention and promotion of human rights. The relevant human rights indicators to assess how this logical sequence progresses should also be defined. In non-human rights interventions, this phase is particularly important because it endorses the core concept of mainstreaming: HRIA should assess the human rights implications of planned intervention of different nature, in terms of either a risk assessment or a complicity assessment. It is at this stage that HRIA should consider alternative project designs, mitigation measures or human rights safeguards. In this case human rights indicators maybe relevant.
3. Implementation and monitoring. During the implementation phase, monitoring is fundamental because facilitates accountability of project management in both human rights and non-human rights projects. In the former case, human rights monitoring requires the assessment of the progress of the intervention and of new developments in the project context, while in the latter case monitoring should focus on the situation of affected groups in areas of particular human rights concern. The assessment should be based on the indicators set before, so that the monitoring phase can shows whether they were useful and



appropriate or need to be updated or reformulated<sup>166</sup>. Since a human rights situation may go through major changes within a short period of time, any strategy and its indicators should be open for reconsideration and adaptation. In this phase, HRIA may reveal unforeseen aspects of an intervention, which may require introducing new indicators and dropping others.

4. Evaluation. Evaluation occurs near or after the end of a project in order to review its impact and inform future policies as a starting point for a new cycle. It can also be carried out within HRIA.

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<sup>166</sup> Mikkelsen B., *Methods for development work and research: a guide for practitioners*, London, 1995, p. 92.

### Tasks of HRIA in development interventions

Phases	<u>Non Human Rights Projects</u>	<u>Human Rights Projects</u>	<u>Indicators</u>
<b>Before decision on development intervention</b>	Contextual analysis: assessment of the actual human rights situation in the country (also information on the political situation or conflicts); in human rights projects, also identification of human rights demands		For example, formal and real Human Rights Commitment (DIHR), Governance indicators (WB), UNDAF-CCA.
<b>Planning</b>	Mainstreaming HR means: <ul style="list-style-type: none"> <li>• Risk Assessment (do no harm)</li> <li>• Complicity Assessment</li> </ul>	Definition of project goal and objectives in the log-frame. <ul style="list-style-type: none"> <li>• Strategies of prevention</li> <li>• Strategies of promotion</li> </ul>	<ul style="list-style-type: none"> <li>• Non-HR projects: indicators of risk prone areas (maybe HR indicators are relevant: HR respect, protect)</li> <li>• HR projects: human rights indicators indicated in the log-frame</li> </ul>
<b>Implementation and monitoring</b>	Monitoring framework to assess areas of concern where human rights respect or protection is endangered	Monitoring framework to assess the likelihood of achieving the planned project purposes. Monitoring of human rights support at any rate	Indicators to assess the extent of negative HR results (in non-HR projects) and progress in the achievement of HR purpose (in HR interventions). Indicators are revised and integrated.
<b>Evaluation</b>	Assessment of the impact (effectiveness, sustainability) on the base of baseline and monitoring data		Monitoring report and baseline data

**Table 1**

*Sources: Sano 2002, p. 3 and Radstaake, Bronkhorst 2002, pp. 11-13.*

## II.2 Indicators And Benchmarks

In the mainstreaming process the question of indicators is key in the analysis of how to measure human rights. However, there is a virtual agreement in impact assessment studies that indicators cannot, in and of themselves, provide assessment nor be used as policy parameters if not interpreted in the light of the context to which they are applied<sup>167</sup>.

Human rights indicators, in order to be a useful and valid tool, need to be well constructed and embedded in a comprehensive framework for mainstreaming human rights into development interventions. In the framework of HRIA described in the previous section, human rights indicators have a crucial role in the situational analysis, in the planning phase and in implementation, monitoring and evaluation<sup>168</sup>.

But what are indicators? And what human rights indicators?

In the development sphere much work has been done on indicators. A quite complete definition, for the purpose of this thesis, is provided by Danida:

Indicators are quantitative and qualitative statements that can be used to describe situations that exist and to measure changes or trends over a period of time.<sup>169</sup>

Usually indicators consist of measurements and are expressed in numbers but, according to this definition, they can be based on either quantitative or qualitative information, as long as the latter can be consistently measured and can be utilised to measure both a certain situation and its changes over time. In the human rights field, there is no universal definition or systematic work done on indicators. Many experts and scholars associate indicators to pure statistical information but there is no doubt that monitoring government's compliance with its human rights obligations requires information beyond the simply numerical<sup>170</sup>. HRIA needs indicators that are consistently measurable and exactly defined whether they are quantitative, i.e. created by counting events, or qualitative, i.e. created through assessment and quantification of observable characteristics (for example the standard of teaching in a school)<sup>171</sup>. However, there are numerous conceptual problems in translating rights into measurable data. For this reason many

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<sup>167</sup> Thede N., *Human Rights and Statistics - Some reflections on the No-Man's-Land between Concept and Indicator*, paper presented at the IAOS Conference on Statistics, Development and Human Rights. Montreux 2000, p. 10.

<sup>168</sup> Sano 2002, p. 4.

<sup>169</sup> Danida 1998 cited in Sano, Lindholt 2000, p. 55.

<sup>170</sup> Green 2001, pp. 1077-1079.

<sup>171</sup> Raworth 2001, p. 111.

scholars stand against the creation of human rights indicators, while others see the usefulness of a combination of descriptive analysis and quantified data, the latter being a useful complement to the former even if not able to stand on its own under any circumstances<sup>172</sup>.

The main problem has something to do with the very nature of statistics and indicators. Statistics give a signal, they do not provide an analysis; indicators are “pieces of information that may provide insight into matters of larger significance”, they could be compared to “small windows that provide a glimpse of a wider landscape”<sup>173</sup>. For this reason it is important to express some warnings on possible over-reliance on quantitative assessment, especially when subjective values are at stake. This is especially the case in the human rights dimension due to the difficulties in this area in developing adequate definitions, obtaining reliable quantitative data, interpreting data in their context, in a word making “intelligent assessments” of human rights impact, since it can come in so many forms<sup>174</sup>. Human rights statistics can, nonetheless, make a difference in development activities as a means of tracking progress or drawbacks, gauging the impact of governments’ actions, inspiring public policies, identifying groups affected by the intervention, helping people understand the extent of human rights violations and clarifying related responsibilities so as to hold governments accountable<sup>175</sup>.

It was Albert Einstein who once said: “Not everything that counts can be counted and not everything that can be counted counts”. That sums up the importance for measurement to be proportioned to the needs of the user and also points at another danger to be taken into account when talking about quantitative measures and statistics: the tension between needing to use the power of numbers to measure concepts, as to make them understandable and immediately apparent to policy-makers and the public, and, at the same time, making sure that those numbers are not misused or misleading and do not misrepresent the real situation<sup>176</sup>. Once a quantitative measure, even if faulty, is created, the apparent authority of numbers allows its use independently from the analysis that originally generated it. The statistic therefore becomes ‘autonomous’ and creates an illusion of precision’ that policy-makers find appealing.

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<sup>172</sup> Thede 2000, p. 14.

<sup>173</sup> Sano, Andreassen 2003, p. 10.

<sup>174</sup> Goldstain 1992, p. 49.

<sup>175</sup> Jabine, Claude 1992, p. 6.

<sup>176</sup> Raworth K., *The new future of human rights indicators. Interview with Kate Raworth*, in *Indicators* vol. 1, no. 4, 2002, p. 13.

The importance of the concepts underpinned by statistics has been stressed by Fukuda-Parr also with regards to human development, victim of the success of the Human Development Index. The Index has reinforced a narrow, oversimplified interpretation of human development as being only about expanding education, health and decent living conditions, thus obscuring the more complex concept of human development as “the expansion of capabilities that widen people’s choices to lead lives that they value”<sup>177</sup>. For this reason, whereas it is important to use statistics as policy tools also in the field of human rights, particular care must be given to ensuring transparency in the process of fabrication of quantitative measures and guaranteeing visibility and awareness of the contextual analysis and methodological constraints of those statistics<sup>178</sup>.

Given the variety and seriousness of problems attached to the creation and the definition of human rights indicators, none of the several systems and approaches proposed so far has gained common acceptance. Moreover, different features emerge depending on the function the indicators are called to perform and on the context in which they are applied. I found in the literature various conceptualisation of human rights indicators according to different situations and purposes.

A first classification deals with performance indicators vis-à-vis indicators of effect and impact. In development activities planning by objectives has accelerated the use of indicators, as witnessed in the log-frame approach, where indicators are the instruments by which assessments are made at the various stages of the project cycle<sup>179</sup>. HRIA can employ the log-frame methodology, especially in the case of specific human rights interventions. In this case there is a need for human rights indicators as specific and relevant measures of the results of the project. Without entering into the details of the logical framework, there is a general distinction between performance indicators and impact indicators. The former measure processes of implementation, that is the extent to which the project is measuring what it was intended to deliver<sup>180</sup>. Indicators of effect, impact and outcomes are log-frame tools employed to measure step by step the results realised by the intervention<sup>181</sup>.

In this context, indicators are yardstick to measure human rights change but to do so they need to be anchored to explicit and clear theories on how change comes about and

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<sup>177</sup> Fukuda-Parr in the UNDP *Human Development Report 2002*, p. 53.

<sup>178</sup> Thede 2000, p. 11.

<sup>179</sup> Mikkelsen 1995, p. 88.

<sup>180</sup> Sano 2002, p. 7.

<sup>181</sup> *Ibidem*, p. 8.

whether the realisation of specific outputs of the planned intervention has contributed to the wider human rights goal<sup>182</sup>. In the development field, planners and evaluators use the logical framework as a tool to sort out the rationale and the expected chain of causes and effects of a project and ensure that important assumptions about external factors are taken into account<sup>183</sup>.

A recent evaluation study carried out for SIDA found that in human rights and democracy projects the logical link between the project purpose and goals is frequently partial or not clearly established mainly because there is no agreed theory against which to measure progress<sup>184</sup>. Furthermore, this study revealed that these projects often do not specify adequately relevant risks and assumptions as, for example, the pace of political change that is a key and sensitive concern. However, because of this sensitivity, it is difficult for planners to be outspoken about intended project purposes or to mention explicitly a political risk. The study called for a more explicit identification of risks and assumptions in the project design and of how indicators contribute to the achievement of the project goal.<sup>185</sup>

In the human rights terminology indicators are usually defined as ‘indicators of conduct’, that measure government’s behaviour, and ‘indicators of result’, that measure individual enjoyment of rights. This distinction, that has been already tackled in section I.3, is employed in the assessment of state compliance with human rights, also beyond specific development interventions. Keeping in mind that either approach reflects only one facet at a time of a larger picture<sup>186</sup>, I would argue that indicators of conduct are more relevant in the discourse on governments’ accountability towards human rights, because they measure commitment of states. Some authors speak of ‘real’ commitment, measured in countries’ practices and implementation of human rights obligations, as opposed to ‘formal’ commitment<sup>187</sup>. Indicators of real commitment are of a dynamic nature and can suggest corrective measures in the course of the assessment if, for example, retrogression

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<sup>182</sup> Poate et al. 2000, p. 116.

<sup>183</sup> *Ibidem*, p. 12.

<sup>184</sup> *Ibidem*, p. 116.

<sup>185</sup> *Ibid.* pp. 52 and 80.

<sup>186</sup> Green 2001, p. 1086.

<sup>187</sup> Sano, Lindholt 2000, p. 66.

rather than progressive realization of human rights is found or a potential human rights harm detected<sup>188</sup>.

Formal commitment is usually measured in the ratification of international human rights law and also of regional instruments, in the incorporation of human rights norms in national constitutions and in the reservations taken by governments<sup>189</sup>. These indicators can translate legal qualitative information into quantitative information that can be used to compare the formal commitment of governments to rights protection with their actual practices<sup>190</sup>. These indicators can offer a significant measure of the willingness of governments to be bound by human rights instruments and an important picture of the, at least, formal human rights situation in a given country. Many studies have already been produced on commitment based on ratification of human rights law<sup>191</sup>. These measures can deliver useful baseline information in the first phase of HRIA, that analyses the context of the intervention, as shown in table 1, but in the following steps the focus shifts on “real commitment” of governments towards the progressive realization of human rights.

As a matter of fact, a government may ratify a treaty without costs and then ignore it: “the number of human rights treaties that a country has ratified is a notoriously weak indicator of human rights realization”<sup>192</sup>. Furthermore, it has also been demonstrated that there is no single treaty for which ratification seems to be reliably associated with better human rights practices. In a recent and complex study, Hathaway found that countries with worse human rights ratings often ratify treaties at higher degrees than those with better ratings and, more strikingly, human rights treaty ratification is often associated with worse ratings than otherwise expected<sup>193</sup>. She explains, in fact, that countries that take the relatively costless step of treaty ratification and, thus, express their commitment to treaty’s principles, may thereby counterbalance and relieve the pressure for changes in policy demanded by international actors. Because monitoring and enforcement of those treaties are minimal, there is little incentive for a ratifying country to be consistent with those principles in its actions<sup>194</sup>. This study highlights also the danger of rewarding countries for

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<sup>188</sup> Tomaševski 2001, p. 542.

<sup>189</sup> Sano, Lindholt 2000, p. 67.

<sup>190</sup> Landmann 2002, p. 6, who speaks about “rights in principle”.

<sup>191</sup> For example, formal commitment is one of the components of the Human Rights Commitment Index elaborated by the DIHR. For further references see Landmann 2002.

<sup>192</sup> Barry 2000, p. 3.

<sup>193</sup> Hathaway O., *Do Treaties make a difference? Human Rights Treaties and the Problem of Compliance*, in Yale law Journal vol. 111, 2002, pp. 2013-2014.

<sup>194</sup> *Ibidem*, p. 1941.

position rather than conduct, i.e. governments may take positions that they would not honour and also benefit from doing so.

When human rights assessment attempts to measure state compliance with substantive obligations outlined in international human rights norms, as I argue here, then the focus should be on states' actual practices rather than on formal acceptance of the requirements of a treaty. Yet this is not an easy task: to begin with, compliance is not an on-off switch but an elastic concept that allows for different gradations<sup>195</sup>.

This lack of clarity on human rights statistics and indicators encourages confusion with human development terminology and, more inaccurately, with human development indicators. In principle, they share the same characteristics of any kind of indicators, such as being relevant, valid, measurable over time and based on reliable information. However, human rights and human development rely on quite different, even if mutually reinforcing, conceptual frameworks that should be reflected in the elaboration of respective indicators. If human rights measurement is to be incorporated more thoroughly into the realm of development, it is important it provide something that the other lacks, that is a different perspective of the same problem that may complete an otherwise partial analysis and suggest alternative solutions<sup>196</sup>.

Human development indicators focus on human outcomes and associated socio-economic conditions; assess the status of people's capabilities; and capture results, attainments. They draw attention to the extent to which people enjoy access to basic needs and highlight unacceptable disparities<sup>197</sup>. Human rights indicators, instead, provide ways to assess whether states are respecting, protecting and fulfilling human rights and the extent to which they are complying with their obligations under international treaties. To do so, human rights indicators need to look not only at the results achieved through development interventions but also (I would say primarily) at the conduct of the duty-bearers in the process of development. Instruments that measure the socio-economic situation are at best proxies for the respect and fulfilment of rights<sup>198</sup>. Indicators of conduct need to assess the behaviour of duty-bearers and their accountability against clearly defined criteria of

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<sup>195</sup> Hathaway 2002, p. 1964.

<sup>196</sup> Green 2001, p. 1089.

<sup>197</sup> UNDP *Human Development Report 2000*, p. 91.

<sup>198</sup> Hamm B., *Empirical findings of background conditions of gross violations of human rights – some thoughts on the possibilities and limitations of quantitative analysis of human rights*, paper presented at the Seminar on Statistics and Human Rights, Brussels, 2002.



performance<sup>199</sup>. As a matter of fact, the focus placed on issues of conduct rather than results is exactly the way in which human rights enrich the development discourse: the two approaches are complementary since together they form the foundation of a framework of principles for assessing state compliance with international human rights law<sup>200</sup>. Development indicators alone, which have long played important roles in the analysis of development policy, reveal only one side of the coin. Human rights indicators, therefore, need be further developed and placed side by side with development indicators so as to complete the information on the human rights impact of development interventions.

Another important concern for human rights indicators is the principle of progress. Indicators for human rights assessment need to take into account that state compliance to human rights often demands ‘progressive realisation’ and should include benchmarks and time perspectives. The notion of progressive realisation has, for a long time, hampered measurement of economic, social and cultural rights and has allowed human rights to be overridden by states drives to meet development goals<sup>201</sup>. It has already been shown that such a distinction can no longer be maintained and that, whereas certain aspects of human rights require immediate implementation, in most cases the desired results associated with the realisation of any human right cannot be attained in one go<sup>202</sup>. Thus, human rights indicators should be conceived accordingly, as process indicators able to measure progressive realization over time and non-retrogression from the standards achieved<sup>203</sup>.

Progressive realisation requires that the selected indicators not only quantify the objectives in the temporal perspective but also in relation to corresponding ‘milestones’ along the path: these milestones or benchmarks, linked to a development strategy, can assess progress at periodic interval of time and against targets that are specific to the individual circumstances of each country<sup>204</sup>. Human rights benchmarks measure performance relative to individually defined standards and introduce a context-related corrective to human rights indicators, usually defined in absolute terms. As a matter of fact, the contextual relevance of indicators is a key consideration in their acceptability among stakeholders. Countries or regions differ in the level of realization of human rights,

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<sup>199</sup> Fukuda-Parr 2000, p. 4.

<sup>200</sup> Raworth 2001, p. 120.

<sup>201</sup> Cook T., in Carnegie Council on Ethics and International Affairs, *Efforts, East and West, to Improve Human Rights Assessments*, Human Rights Dialogue, Series 1, vol. 10, 1997.

<sup>202</sup> Malhotra 2002, p. 11.

<sup>203</sup> Green 2001, p. 1084.

<sup>204</sup> Malhotra 2002, p. 12.

in the policy mix chosen, in external circumstances, in resources available and so forth. These differences are invariably reflected in development priorities. Therefore, it may not be possible to use always the same standardised and universal set of indicators<sup>205</sup>. The principle of universality of human rights is, nonetheless, reflected in the measurement of human rights impact of development interventions not in the specific indicators chosen but in the principles underlying state obligations. The specific target and value that of the indicators chosen cannot be universally specified but should be grounded in the local context<sup>206</sup>.

Hence, the process of measuring progressive realization is quite complicated because it requires assessing a state's current performance for each right at stake and gauging whether it is moving, and at what pace, toward full implementation of the rights. This, in turn, requires a considerable volume of comparable and disaggregated data from several periods, which is rarely available to human rights monitors<sup>207</sup>. And, furthermore, it introduces another constraint of human rights impact assessment, namely the problem of sustainability, related to the time factor. Human rights protection requires prioritising long-term over short-term benefits because human rights changes, such as progresses in institutional behaviours, legal traditions and political commitment, need long-term perspectives while most of the interventions have a short-term horizon. Indicators should then measure both short- and long-term impact but the problem remains of how to make sure that what is being measured will be sustained<sup>208</sup>.

Another key feature of human rights measurement is 'disaggregation': in the context of HRIA, indicators should assess the human rights situation of groups that enjoy special protection under international law and that are likely to be affected by the intervention<sup>209</sup>. The principle of non-discrimination requires indicators to reveal potential disparities and their reasons in the distribution of the benefits of development and in the bearing of its negative effects. The level of disaggregation should go beyond the usual factors used in development, as gender and geography, in order to detect disparities also

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<sup>205</sup> Malhotra 2002, p. 3.

<sup>206</sup> Raworth 2001, p. 122.

<sup>207</sup> Chapman A.R., *Indicators and Standards for monitoring economic, social and cultural rights*, 2000, p. 5. To overcome some of these limitations, Chapman proposed a violation approach for monitoring economic, social and cultural rights, see *A "violation approach" for monitoring the International Covenant on Economic, Social and Cultural Rights*, in *Human Rights Quarterly* vol. 18, 1996, pp.23-66.

<sup>208</sup> Sano, Andreassen 2003, p. 6. The heavy resistance of states' practices and institutions' behaviour to human rights change requires time and continued conscious efforts and explains the difficulty of their measurement, Hathaway 2002, p. 2003.

<sup>209</sup> Green 2001, p. 1085.

with regard to race, religion, vulnerable groups, age etc. However, the nature of indicators is to describe general conditions, recognise trends and reflect average values and are not apt to measure the specific individual situation or to inform of the specific causes and contexts in which human rights violations and progress occur<sup>210</sup>.

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<sup>210</sup> Hamm 2002 p. 4.

### **II.3 The Pros And Cons Of HRIA**

The two sections above presented the main tools of human rights measurement that have been elaborated in the effort to give practical application to the human rights approach to development. In this section I would sketch some conclusive remarks on the feasibility and usefulness of applying these tools in development activities and on how human rights assessment can be conducted, before moving to the next chapter dedicated to the operationalisation of these instruments in donors policies.

The discussion so far has shown that HRIA can feasibly be conceived and designed and, as it has happened for other kinds of impact assessment, it could be integrated within the logic of development. The proposed framework of HRIA, in fact, allows for a systematic assessment of human rights risks involved in any development intervention, both human rights specific or with different objectives. It also presents the advantage of introducing such analysis and related indicators at a very early stage of the project cycle, when corrective measures or different strategies may be more effectively chosen to minimise the harm and maximise the benefit of the intervention.

The availability and systematic employment of human rights measurement devices all along development interventions benefit the realization of rights in a variety of ways: highlighting whether human rights risks are in place; measuring the extent to which human rights are realised in a given situation; assessing their progressive realisation, or lack thereof, over time; revealing difficulties encountered by states in fulfilling the rights; revealing the extent to which they are or are not enjoyed in practice by the affected groups; and providing yardsticks whereby countries may compare their own progress<sup>211</sup>.

The UNDP Human Development Report 2000 identified a number of important functions with regard to statistical indicators for human rights:

- Making better policies and monitoring progress.
- Identifying unintended impacts of laws, policies and practices.
- Identifying which actors are having an impact on the realization of rights.
- Revealing whether the obligations of these actors are being met.
- Giving early warning of potential violations, prompting preventive action.

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<sup>211</sup> Türk 1990, paragraph 7.

- Enhancing social consensus on difficult trade-offs to be made in the face of resource constraints.
- Exposing issues that had been neglected or silenced.<sup>212</sup>

The merits of human rights indicators are even better verified and enhanced, in my view, when they are included in human rights impact assessment, since it turns a statistical theory elaborated at the macro-political level into an operational instrument to be used in the real contexts of any intervention. HRIA offers a comprehensive and systematic framework for human rights indicators to become operative with the major advantage that it can be presented to donors and governments as a working tool to be put in place within their development practices.

Up to now, many practitioners, as human rights NGOs, research centres and national development agencies, especially in Nordic countries, consider that human rights measurement tools can be helpful for their work and can be adapted to different uses<sup>213</sup>. HRIA and indicators can in fact be used as tools for strategic planning and programming, because they identify problem areas and monitor the impact of planned interventions; they can be seen as policy tools, to develop and advocate proposals or alternative solutions in order to address problems identified through the impact assessment; and they can be used as political tools, to bring national and international attention or pressure to bear on a government that is demonstrated to be violating rights or neglecting its obligations. However, the actual use of those instruments is still incipient and there does not seem to be a “culture of indicators” neither at the local and national level nor at the international level<sup>214</sup>.

HRIA provides the required information to assess states performance and commitment towards effective realisation of the rights enumerated in the international treaties they committed to. Thus, it constitutes a tool to held states accountable for the implementation of rights and for their violations and, ultimately, to enhance state’s compliance with international human rights law throughout development activities.

That HRIA could become a powerful tool to mainstream human rights in development is evident; whether and to what extent it is to be actually employed is another, much more political, question.

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<sup>212</sup> UNDP, *Human Development Report 2000*, p. 89.

<sup>213</sup> Thede 2000, p. 12.

<sup>214</sup> *Ibidem*. Some NGOs, as Amnesty International and Human Rights Watch, have explicitly decided not to use indicators but descriptive analysis.

Especially when pioneering a new practice such as ‘human rights’ impact assessment, political limitations and methodological constraints are often encountered that render its acceptance and practical application even more difficult. I will briefly deal with the more technical issues and then move to the political discussion.

Some constraints of HRIA, such as the problems of attribution and of sustainability, have already been mentioned in the previous sections but few more aspects require special attention when measuring human rights impact.

First, in the elaboration of HRIA there should be a preference for a framework that is able to deliver a minimum but relevant understanding of human rights effects and impacts and that does not go beyond the capacities of the development agencies or governments to operationalise it<sup>215</sup>. This means that the design of HRIA should focus on few relevant dimensions, be straightforward and selective in its objectives and in the choice of applicable indicators. The identification of indicators, in fact, can be a very time-consuming and cumbersome exercise and the capacity to measure and monitor human rights impact is often limited<sup>216</sup>. Selecting a small number of relevant, clear indicators for which information can be obtained within the resources available and that do not require overly technical skills, will render the assessment more feasible than aiming at comprehensiveness and expending undue efforts on precision<sup>217</sup>.

Proponents of impact assessment generally argue that it is an important management tool for improving the long-term feasibility of many projects and often helps to avoid choices that could be expensive and damaging. The experience of EIA in World Bank projects, for example, shows that, usually, the cost of undertaking an impact assessment process amounts for a small proportion, often less than 1%, of the total project expenditures<sup>218</sup>. Needless to say, also HRIA will work with policy makers only if it can be economised<sup>219</sup>. HRIA, even if a costly and time-consuming exercise, can actually bring substantive savings to the project because it provides an opportunity to learn from

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<sup>215</sup> Oakley et al. 1998, p. 46.

<sup>216</sup> Mikkelsen 1995, p. 92. It should be noted that very detailed and complex sets of indicators have been developed, as the system elaborated by USAID for monitoring and evaluating democracy and governance programmes, which counts over 500 different indicators for four different objectives, see USAID 1998.

<sup>217</sup> Türk 1990, paragraph 88.

<sup>218</sup> Donnelly et al. 1998, p. 8.

<sup>219</sup> Sano 2002, p. 6.

experience, helps to avoid previous mistakes and improves the way in which resources are managed before, during and after the implementation of a project.

Another methodological concern in the assessment of states compliance with human rights obligations relates to the need to measure subjective factors. Judgements on human rights cannot escape subjectivity that is an important and constant element of international human rights law<sup>220</sup>. As pointed above, HRIA needs fair, clear, adequate and appropriate criteria on which to base judgements, along with resources to collect reliable and valid data, which must be as free as possible of any bias<sup>221</sup>. Thus, the identity of the individuals assessing rights is open to questioning, both of their subjectivity and of the incompleteness and partiality of the sources of information to which they had access. This problem must be explicit dealt with when conducting impact assessment so as to clarify from the outset methodology and data employed and to reduce the risk of subjectivity being used by the aggrieved government to divert attention from the judgement made and instead to attack the alleged political bias of the assessor<sup>222</sup>.

Rigorous adherence to the principles of quantitative research is necessary because much of the information available on human rights is not compiled according to any scientific criteria and is impossible to verify: even the term ‘violation’ reflects very often an individual choice rather than human rights criteria<sup>223</sup>. Three types of data are available for measuring human rights, depending on the method used for their collection: events-based data use reported acts of violation and numerical summaries of the events to monitor what happened, but their quality depends on the quality of the reporting of the events; standards-based data translate information on how often and to what degree violations occur into quantitative scales, as the Freedom House’s index of political freedom, thus sacrificing a degree of specificity; and survey-based data use random samples of population to ask standard questions on the perception of rights protection but are prone to cultural biases<sup>224</sup>. The methodological limits of these data should be clearly recognised by those measuring human rights.

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<sup>220</sup> For example, it is a necessary element in determining freedom and fairness of elections, Mokhiber C.G., *Toward a measure of dignity: Indicators for rights-based development*, paper presented at the IAOS Conference on Statistics, Development and Human Rights, Montreux, 2000, p. 7.

<sup>221</sup> Cook T., in Carnegie Council 1997.

<sup>222</sup> Raworth 2001, p. 114.

<sup>223</sup> Tomaševski 1991, p. 16.

<sup>224</sup> Landmann 2002, pp. 8-12.

Some of the most prominent sources of comprehensive cross-national time-series information on a broad spectrum of human rights practices are the United States Department of State Country Reports on Human Rights, that have been charged with political bias, Human Rights Watch's Reports and Amnesty International Country Reports, that are relatively short and do not cover all countries every year, and the Freedom House reports, which are the only one to provide quantifiable measure of human rights but have also been criticised for lack of replicability and reliability<sup>225</sup>.

Access to data and bias of the observer can be partly resolved in development interventions at the project level, also by means of HRIA: its application is an opportunity for more controlled and systematic research and data collection and for gathering relevant information on the effects of the intervention from the outset<sup>226</sup>.

Availability of information on human rights has also a political function since it is often a good indicator of the relative importance that a government attaches to human rights. Governments that ignore the importance of improving their efforts in measuring human rights are not serious about their commitments towards their people and the international community. Lack of human rights records is an indication of limited political will to promote human rights and, in some cases, of the intention to hide miserable facts on the ground<sup>227</sup>. There can be explanations for the lack of information on human rights situations in certain countries: the problem of affordability, scarce statistical capacity and resources, technical difficulties in measuring implementation of rights rather than socio-economic outcomes but also political bias in government presentation of human rights facts. A number of government give out data about social and economic problems hoping for international assistance, while they tend to suppress information about violations of civil and political rights<sup>228</sup>.

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<sup>225</sup> Hathaway 2002, p. 1964, footnote 114. Human Rights Watch, for example, "chooses the countries to address by the urgency of the human rights issue, whether the issues are ones that we can influence (our value added), organisational expertise and funding" and has been highly critical of the findings and policy of the US State Department, which as a government organ has its own agenda, Horowitz J., HRW Program Coordinator, on private mailing with author.

<sup>226</sup> Barsh 1993, p. 120.

<sup>227</sup> Omar 1998, p. 10.

<sup>228</sup> Hammarberg T., *Searching the Truth: the need to monitor human rights with relevant and reliable means*, paper presented at IAOS Conference on Statistics, Development and Human Rights, Montreux, 2000, p. 2.



The political reluctance in having human rights performances assessed and systematically monitored is, in my opinion, one of the strongest obstacles that HRIA need to overcome, before it could be universally implemented.

Human rights require accountability, namely explicit standards against which performance is measured and a mechanism for assuring that the standards are met<sup>229</sup>. Thus, credibility of human rights assessment depends on the utilization of internationally accepted human rights standards. However and despite the growth and proliferation of legal instruments, there is a continuing disparity between official proclamation and actual implementation of human rights protection. Such a gap has motivated scholars, human rights practitioners, NGOs and also some policy-makers to promote public and international policies that bring actual human rights practices more in line with the expectations laid out in the international human rights regime<sup>230</sup>.

Specific human rights projects and mainstream development programmes have, in fact, strengthened the relationship between human rights and development, that in turn has increased “the impact of development because human rights (i) empower communities, (ii) hold governments responsible and (iii) acknowledge the invaluable role of NGOs”<sup>231</sup>. However, few token human rights interventions or even a vague recognition that human rights objectives should be ‘mainstreamed’ in all development programmes are not enough in order to talk meaningfully of a systematic integration of human rights concerns within development. Governments and donors tend to solve this trade-off by affirming that development and democracy are neither sustainable nor desirable without human rights, which therefore constitute the overriding goal of development interventions. This position has been criticised because it risks regressing to the rhetoric that development is always human rights oriented and governments could claim that all their interventions are potentially supporting human rights, thus avoiding scrutiny and examination of responsibilities<sup>232</sup>. Mainstreaming, on the contrary, is not “a matter simply of the introduction of new human rights projects or of projects enhanced by the infusion of

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<sup>229</sup> Tomaševski 2001, p. 535.

<sup>230</sup> Landmann 2002, p. 1.

<sup>231</sup> Kjærsum M., as cited in Helmich, Borghese 1998, p. 76.

<sup>232</sup> Thoolen H., in Helmich, Borghese 1998, pp. 88-89. He expressed the quite farsighted opinion that “it will be only a matter of time before military aid is labelled as human rights aid when it is provided to implement the right to self-determination”...

human rights language, or by the addition of human rights components”<sup>233</sup>. It should be backed by a comprehensive strategy of promotion and protection of human rights into development within which all activities should specifically demonstrate how they address human rights concerns and should be provided with appropriate tools to assess such a commitment.

If development actors adopt such a perspective, then they also need to adopt a new *modus operandi*, change the focus of their work and the way that programmes are identified and documents designed. HRIA and human rights indicators may serve the scope but they also need not simply translate development objectives into human rights terminology but rather pinpoint their human rights dimensions. Taking the example of an employment project, HRIA should not only limit itself to assess if the intervention contribute to the realisation of the right to work but it should make sure that both in the identification and planning phases and in the course of project activities due regard is paid to the relevant human rights dimensions of the right to work, such as non discrimination, child labour, safety and health, right to organise and so forth<sup>234</sup>. HRIA should not, then, duplicate the monitoring of the fulfilment of development objectives but should distinguish between human rights and development problems and focus on the former. It means securing that the interventions do not neglect or violate the human rights of the affected groups and where possible contribute positively to them; assessing the conduct of duty-bearers in the development process and the extent to which rights-holders have the power to defend their rights and claim redress when they are harmed<sup>235</sup>.

Conceived as such, HRIA adds new perspectives to the assessment of development interventions and turns human rights concepts into policy parameters.

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<sup>233</sup> UNDO/OHCHR, *HURIST. Mid-Term Review*, 2001, p. 3.

<sup>234</sup> Lund Madsen 1991, p. 7. The relevant dimensions of the right to work may be drawn from article 23 of the UDHR and articles 6 to 8 of the ICESCR. See Annex 1.

<sup>235</sup> Lund Madsen 1991, p. 9.

## **CHAPTER III Processes of Operationalisation**

### **III.1 The Dimensions Of HRIA: A Possible Common Set Of Indicators**

The human rights approach to development must take account of the developmental elements of human rights and also fill some important gaps presented by traditional approaches in terms of neglected areas and corresponding indicators. Mainstreaming human rights in development means redesigning the conceptual framework for the process of human development integrating norms and standards of the international human rights system into the projects, policies and processes of development.

Human Rights Impact Assessment provides an instrument that forces systematic human rights-oriented thinking throughout the life of development interventions and as a crosscutting concern. It encourages and guides development planners to re-think the intervention from a different angle.

Mokhiber has identified some areas in particular need for further attention in the development process, related to both civil and political rights and economic, social and cultural rights: the administration of justice, including adequate redress for violations; personal security, including the failure of the State to respect, for example, the prohibition of torture and of arbitrary executions and to protect individual or communities from public and domestic violence; political participation, in terms of an effective exercise of political freedoms and rights to participate in the conduct of public affairs; cultural aspects of development; and finally existing socio-economic indicators should be interpreted and reformulated in the light of the 'rights element' as to measure the performance of the duty-holder and the effectiveness of mechanisms of redress and accountability<sup>236</sup>. Those areas have not been included in past approaches to development from a human rights perspective, therefore lack internationally agreed and tested indicators.

The OHCHR has many times called national and international development agencies, statistical institutions and human rights organisations to work toward filling the

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<sup>236</sup> Mokhiber 2000, p. 6.

gaps, as *condicio sine qua non* for the actual implementation of their policy commitments toward these rights-based approach<sup>237</sup>.

Existing human rights standards, goals and targets established in international treaties, conventions and conferences declarations provide an appropriate framework for measuring the progress made in human development and could already strengthen international efforts to develop indicators to measure compliance with human rights obligations<sup>238</sup>. Within international human rights law, universal principles according to which human rights performance can be assessed have been broadly set out.

The universality of human rights calls for universal applicability of measurement tools in policy evaluation. However, the concern with obligations of conduct and progress in human rights emphasizes the need for defining context-dependent benchmarks and standards and does not allow for universally applicable indicators to be used in the assessment of any specific development intervention. To reject the ‘one size fits all’ policy prescription for human progress, it should be accepted that obligations of conduct cannot be evaluated on the basis of a single set of indicators for all countries<sup>239</sup>. Given the contextual specificity of assessing human rights obligations and the detailed data required to do it, the assessment need be rooted in the national context<sup>240</sup>. In this respect, a systematic use of HRIA at the project level contributes to capture the local reality and convey its specificity into the assessment. The principle of universality of human rights may nonetheless be maintained in the principles underlying state obligations and through their incorporation into a common framework of ‘dimensions of human rights indicators’, i.e. a set of criteria that are universally relevant when assessing human rights<sup>241</sup>.

I would now elaborate on the principles of human rights obligations that should be incorporated in such a framework and thus become operational parameters to assess the conduct of states.

In order to develop a framework that could be universally accepted and mainstreamed in development interventions, I propose a “checklist” of minimum dimensions of human rights obligations on which international consensus has already been reached. This framework sets the minimum criteria against which governments’

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<sup>237</sup> *Ibidem*, p. 6-8.

<sup>238</sup> Häusermann 1998, p. 182.

<sup>239</sup> Fukuda-Parr 2000, p. 7.

<sup>240</sup> Raworth 2001, p. 128.

<sup>241</sup> Sano, Lindholt, p. 61.

commitment toward human rights should be monitored and reviewed, since it includes both aspects of state conduct and characteristics of the process of development. If operationalised into HRIA, it would represent the yardstick according to which the decision-making process prior to interventions, the monitoring and evaluation phases and the eventual reformulation of plans and policies can be conducted.

I believe that the framework should include the following dimensions<sup>242</sup>:

1. Respect. The government and its agents should themselves respect the right of the individuals, for example by refraining from arbitrary arrests or illegal forced housing eviction. Data on torture or forced housing evictions are powerful in assessing the accountability of those held responsible. However, those data are also very sensitive and politically biased, uncertain and often missing. Few states would voluntarily document and expose their failure in respecting rights. This difficulty in gathering the relevant information calls for caution when assessing the impact of development interventions on a given situation over time<sup>243</sup>. This dimension includes the fundamental “do no harm” principle but also consider the impact of development interventions on broader issues of “regressive measures”<sup>244</sup>.
2. Protect. The government and its agents should protect the individual against being violated by others actors, for example by corporations that, polluting, harm the health of the population or by domestic violence. This dimension requires measurement of state action to prevent or stop the harmful activity. It should consider mechanism to identify the actor involved and held him accountable<sup>245</sup>. It also implies that persons within state jurisdiction are provided a compliant mechanisms to defend their rights.
3. Fulfil. The state should take action – legislative, budgetary, judicial or other - to provide the best possible set of policies that pursue the realization of the right and secure access to them. This dimension is probably the most difficult to assess, since every country creates the social arrangements needed for fulfilling people’s rights. Thus, assessment of states’ conduct and performance need be rooted in the particular context<sup>246</sup>.

These three dimensions relate to state action and identify the need to assess state commitment towards the obligations to respect, protect and fulfil human rights.

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<sup>242</sup> I derived this framework from Sano, Lindholt 2000, pp. 61-62 on the seven dimensions of human rights indicators proposed in the Human Development Report 2000.

<sup>243</sup> UNDP, *Human Development Report 2000*, p. 93.

<sup>244</sup> Frankovits, Earle 2001, part II, p. 51.

<sup>245</sup> UNDP, *Human Development Report 2000*, p. 94.

<sup>246</sup> *Ibidem*, p. 95.

I would argue that these three dimensions cover other two dimensions identified in the Human Development Report, namely “effective remedy” and “adequate progress”. Effective remedy relates to the establishment of legal remedies and other channels of redress in the assertion of rights. I believe that it is already covered by the dimensions of respect, protect and fulfil human rights because, for its very nature, a right is a right only when the right-holder is entitled to enforce it against the duty-bearer with appropriate instruments, otherwise it would only be a declaration of right. Concerning adequate progress, if progressive realisation is a key characteristic of human rights obligations then this dimension is a cross-cutting concern for all the dimensions of HRIA and does not add any relevant indicators to the assessment framework<sup>247</sup>.

The following three dimensions relate to the process employed and entail obligations that must be met in official conduct.

4. Non-discrimination. Non-discrimination is a fundamental principle of human rights and an immediate obligation of states parties established by article 2 of the Universal Declaration and both Covenants. It requires that no one should be discriminated against in the enjoyment of his or her rights, including access to rights and to public resources<sup>248</sup>. Despite the importance given to this principle the aspirations of human rights law have been far from fully realised and inequities are still widespread. For this reason, this dimension deserves a special attention and HRIA should assess whether development activities meet this key principle. If non-discrimination is not defined as a specific variable that should be monitored in development, no data will be collected; hence no information on discriminatory effects of development will be available<sup>249</sup>. In particular, HRIA should monitor two forms of possible discrimination that need to be overcome to realise rights: *de iure* and *de facto*. The former is institutionalised discrimination, embedded in the legislation or expressed in government’s policies: change in legal and institutional behaviour can come about quite immediately with specific interventions. The latter is a result of policies or historical injustice within the society: it is rare that a single

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<sup>247</sup> Sano, Lindholt 2000, p. 62.

<sup>248</sup> I include under this dimension also gender equity, which I do not deal with in this thesis. For specific literature on the measurement of gender disparity and women’s achievement in human rights, see: Apodaca C., *Measuring women’s economic and social rights achievement*, in Human Rights Quarterly vol. 20, 1998, pp. 139-172, Poe S.C. et al., *Global Patterns in the Achievement of Women’s Human Rights to Equality*, in Human Rights Quarterly vol. 19, 1997, pp. 813-835, Bhatia R., *Measuring gender disparity using time use statistics*, in Economic and Political Weekly vol. XXXVII No. 33, 2002, pp. 3464-3469.

<sup>249</sup> Tomaševski 1991, p 6.

development intervention is able to eradicate structural discrimination<sup>250</sup>. Assessment of discrimination needs disaggregating data by gender, age, region and ethnic groups, for example, as to know the actual situation. To measure state commitment to the elimination of both forms of discrimination, HRIA should include indicators of conduct, such as indicators of resource allocation to the vulnerable groups or public spending in, say, education under apartheid. But also indicators of result are relevant since they can measure changes in gender or minority discrimination, through for example illiteracy rates between different groups or number of seats in parliament occupied by women.

5. Participation. The International Bill of Human Rights deals mainly with political participation in the conduct of public affairs and electoral requirements but, more generally, implies that the authority of government should be based on the will of the governed<sup>251</sup>. Even if they lack specific operational guidance, these provisions have been broadly interpreted as imposing a legal obligation on states to enable people to take part in the decisions that affect their welfare, thanks also to the supplementing principles set in the Declaration on the Right to Development<sup>252</sup>. HRIA and indicators are needed to assess whether this is taking place in any development intervention<sup>253</sup>. In the process of development, the keywords *democratic* and *participatory* are already increasingly used. The notion of ‘democratic development’ entails that formal requirements of representative governance, such as the number of political parties or periodicity of elections, should not be mistaken for human rights and cannot alone assess the degree of democratic and participatory decision-making process within development. ‘Participatory development’, as well, goes beyond policies of involvement and consultation of the affected groups in the design and implementation of the projects<sup>254</sup>. In a human rights perspective true participation is a human right in itself and also a key element of implementing other rights. This dimension would entail, first, a commitment of the government to raising awareness: HRIA needs to measure the extent to which individuals are made aware of their rights and informed that these rights are affected by the intervention. Second, it can assess the commitment of governments to accountability by measuring public availability of data on

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<sup>250</sup> UNDP, *Human Development Report 2000*, p. 96.

<sup>251</sup> Art. 21 UDHR and Art. 25 ICCPR. See Annex 1 for full texts.

<sup>252</sup> Art. 2, paragraph 3 of the Declaration on the Right to Development, General Assembly Resolution 41/128 of 4 December 1986 affirms that states have a duty to formulate appropriate national development policies based upon the active, free and meaningful participation of the entire population and all individuals.

<sup>253</sup> UNDP, *Human Development Report 2000*, p. 100.

<sup>254</sup> Tomaševski 1991, pp. 10-12.

human rights. In a specific intervention, HRIA can assess the extent to which relevant actors are willing to disclose data on their behaviour and impact on human rights. Third, this dimension measures government's attitude toward actively involving people in the protection of their rights and individuals' opportunity of expressing their view and influencing the decision-making<sup>255</sup>. Hence, from a human rights point of view, participation means something more than being involved in consultations during project design and implementation. It transforms consultation in the possibility of presenting individual claims and enables those who have been harmed by a development intervention to obtain redress, thus enhancing the accountability principle<sup>256</sup>. Conceived as such, this dimension includes indicators of conduct that measure change in institutional behaviour but also indicators of capacity building that measure, at least in part, change in civil society capacity.

6. Empowerment. The notions of accountability and empowerment have become the core terms in addressing human rights aspects of development<sup>257</sup>. This dimension entails that the process is empowering for the participants, it has to be directed at increasing opportunities for people to decide on issues that affect them, improving their individual capabilities and institutional capacities so as to benefit from the increasing opportunities<sup>258</sup>. The dimension of empowerment derives directly from the introduction of the concept of rights into development and the consequential shift from a focus on basic needs to entitlements that give rise to legal obligations on the part of others<sup>259</sup>. A rights-based approach renders development a legal obligation: the recognition of this approach by governments is the first step towards empowerment.

The framework outlined above suggests those principles that are essential in a human rights approach to development. Thus, they should represent the universal indicators dimensions to use when assessing the conduct of states and the process of their actions. However, they still meet many difficulties in being accepted by development actors.

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<sup>255</sup> NORAD 2001, p. 17 and pp. 26-30.

<sup>256</sup> Tomaševski 1991, p. 12.

<sup>257</sup> *Ibidem*, p. 23.

<sup>258</sup> Malhotra 2002, p. 5.

<sup>259</sup> UN OHCHR, *Draft Guidelines*, 2002, p. 1.



### III.2 Is It Possible To Reach Political Consensus? The Challenges Ahead

Human rights have become an important issue in international politics and, together with social and ecological standards, are part of a catalogue of international norms that are considered to be an essential framework for shaping the process of globalisation<sup>260</sup>. Yet the question is whether the role of human rights into development is being assessed and the impact of the development interventions on the rights of the people affected measured. I argued that Human Rights Impact Assessment and relative human rights indicators provide a means to turn “mainstreaming human rights” from a political slogan to an effective strategy of promotion and protection of human rights into development policies. These instruments have been individually produced by various national agencies, NGOs and, to a lesser extent, international organisations but always with scattered and not systematic efforts. Unlike environmental and social impact assessment, global consensus on their elaboration and conformity in their application have not been achieved. In this section, I outline some important development occurred within the UN system and briefly expose the position of the World Bank to grasp the actual possibility for human rights impact assessment to be put in place at the international level.

Today, virtually every development organization, multilateral and bilateral donors alike, including the Development Assistance Committee (DAC) of the OECD<sup>261</sup> and UN agencies, and the principal private and non-governmental aid organisations have publicly embraced, at least in principle, the integration of human rights in their work.

In 1997<sup>262</sup> and again in 2002<sup>263</sup>, in the context of the reform for the rationalisation and harmonisation of the UN activities at the country level, the Secretary-General called on all entities of the UN system to mainstream human rights into their various development activities and programmes. One element of that reform was the introduction in 1999 of a system-wide, integrated and collaborative planning process to development cooperation

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<sup>260</sup> Hamm 2002, p. 2.

<sup>261</sup> See for example *DAC Guidelines on Poverty Reduction*, OECD 2001.

<sup>262</sup> UN General Assembly, *Renewing the United Nations: a programme for reform*, 14 November 1997, Resolution A/RES/52/12.

<sup>263</sup> UN General Assembly, *Strengthening of the United Nations: an agenda for further change*, Report of the Secretary-General, 9 September 2002, A/57/387.

framed in the UN Development Assistance Framework (UNDAF) and the Common Country Assessment (CCA)<sup>264</sup>. These new instruments for the elaboration of development strategies stand for the challenge to introduce new approaches, to advocate new ideas, to enhance dialogue and consensus among the actors of development. The CCA process is envisaged as broadly participatory, undertaken by the UN system with the close involvement of the government, the civil society and multi- and bilateral donors, as well as the Bretton Woods Institutions<sup>265</sup>. In these circumstances it would represent an appropriate forum to discuss at a global level the possible operationalisation of the acclaimed principle of human rights mainstreaming into development by means of working tools such as Human Rights Impact Assessment.

As a matter of fact, the CCA Indicator Framework addressed the question of ‘mainstreaming human rights’ from its earliest elaborations. Initial drafts and proposals included human rights in the list of relevant indicators that should highlight potential major issues in a country: human rights constituted a separate and specific category, rather than being integrated throughout, and their measurement was to be limited to questions of treaty ratification<sup>266</sup>. In the final version of the CCA Guidelines, beside socio-economic and contextual indicators human rights found their place in the component of the indicator framework relating to governance and civil and political rights. However, the Guidelines distinguish very clearly between these indicators, of a “largely qualitative nature” and for which no internationally agreed standards of methodology and definitions might be found, and traditional quantitative socio-economic indicators<sup>267</sup>. The need to express all indicators in human rights terms was, at least, recognised<sup>268</sup>. Originating from the UN, this affirmation benefits from more authority and credibility than it would if coming from NGOs, academics, bilateral donors or single governments. However, the vagueness of the language used, the focus on the formal legal recognition of the rights as well as the lack of

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<sup>264</sup> United Nations, *Common Country Assessment (CCA) Guidelines*, April 1999. The CCA is a country-based review and analysis of the national development situation and identifies key development issues and priorities for action. It is the initial step in the UNDAF process, which constitutes the planning framework for the development operations of the UN system at country level and covers all commitments of participating organisations, the government and other development actors.

<sup>265</sup> UN, *CCA Guidelines*, April 1999, p. 2.

<sup>266</sup> Mokhiber 2000, p. 4.

<sup>267</sup> UN, *CCA Guidelines*, April 1999, p. 20.

<sup>268</sup> *Ibidem*, p. 16.

quantitative indicators, all due to a lack of consensus on human rights indicators, called already at the outset of the process for a deep revision<sup>269</sup>.

Moreover, a significant step for the advance of human development was taken in September 2000 when 189 Member States committed themselves to the Millennium Declaration and acknowledged that progress is based on sustainable economic growth with human rights at the centre<sup>270</sup>. The Declaration is particularly important in this context since it establishes goals, targets and standards for development, peace, security and human rights derived from the UN global conferences held in the 1990s and the human rights conventions adopted in the past 50 years. The United Nations Secretariat and the specialized agencies of the UN system, as well as representatives of IMF, the World Bank and OECD defined a set of time-bound and measurable goals for combating poverty, hunger, disease, illiteracy, environmental degradation and discrimination against women and indicated the full respect and protection of human rights for all as a cross-cutting strategy towards the implementation of the Declaration<sup>271</sup>. From those commitments the eight Millennium Development Goals (MDGs) have grown out and targets and indicators have been defined to track the progress in meeting the Goals<sup>272</sup>.

Thus, since the year 2000 the MDGs have driven the reforms within the international and national development agenda in order to move towards the achievement of the goals. Accordingly, the CCAs and UNDAFs frameworks have undergone major revision in 2002, as to accommodate the MDGs but also to approach development from the perspective of human rights. The commitments, goals and targets of the Millennium Declaration and international conferences, summits and conventions became the focus and one of the main guiding principles of these country programmes together with the systematic integration of human rights and gender equality<sup>273</sup>.

The new CCA Indicator Framework has incorporated the rights-based approach to development and selected indicators on the basis of the following principles:

- a) internationally agreed human rights norms and standards that determine what needs to be measured;
- b) a comprehensive human rights framework with sectors mirroring civil,

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<sup>269</sup> OHCHR, UNDP, *Workshop on Civil and Political Rights Indicators. Final Report*, Geneva 1999, p. 3.

<sup>270</sup> UN General Assembly, *United Nations Millennium Declaration*, 18 September 2000, Resolution A/RES/55/2.

<sup>271</sup> UN General Assembly, *Road map towards the implementation of the United Nations Millennium Declaration*, Report of the Secretary-General, 6 September 2001, A/56/326.

<sup>272</sup> For a presentation of the 8 goals, 18 targets, and 48 indicators see Annex II.

<sup>273</sup> United Nations, *CCA and UNDAF Integrated Guidelines*, May 2002, p. 5.

cultural, economic, political and social rights; c) integration of the 'rights element' into existing indicators by identifying (i) explicit standards and benchmarks against which to measure performance, (ii) specific actors or institutions responsible for performance, (iii) rights-holders to whom responsibility is owed, and (iv) mechanisms for delivery, accountability, and redress; d) measuring subjective elements, such as levels of public confidence in institutions of governance, including among vulnerable or marginalized groups.

All relevant indicators should be disaggregated, to the extent possible and where appropriate, by race, colour, sex, language, religion, nation, ethnic, or social origin, property and disability and other status such as woman or child head of household etc.<sup>274</sup>

As a result, the 2002 CCA Indicator Framework comprises now five components:

1. Indicators relating to goals and objectives set forth by the Millennium Declarations and other UN conferences, building on the established MDGs (including international legal commitments for human rights).
2. Indicators on governance, democracy, justice administration and security of person (the last three replaced civil and political rights).
3. Contextual indicators.
4. Indicators for monitoring MDG no. 8 “Develop a global partnership for development” which mainly relates to international governance.
5. Thematic indicators, to be added at country level for any specific themes reflecting national priorities and needs.<sup>275</sup>

However, assessing this framework at a glance, I noticed some major drawbacks. First, express mention of “indicators of civil and political rights”, that was integral in the second component in the 1999 Framework, has disappeared and has been replaced by a more blending reference to governance, democracy, justice administration and security, thus watering down the specific value added of human rights measurement, i.e. translating data into measures of government commitment and accountability. In addition, even in this form, the indicators of this component should be considered “as work in progress” since they “differ from the more traditional quantitative indicators” in that they are “largely qualitative in nature and have not yet been fully field-tested” and therefore “may be used to

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<sup>274</sup> UN, *CCA and UNDAF Integrated Guidelines*, May 2002, p. 30.

<sup>275</sup> *Ibidem*, p. 29.

the extent that data are already available in government and UN documents”<sup>276</sup>. Reference to human rights is now limited to the last sub-category of the first component that assesses the international legal commitment for human rights on the basis of the status of ratification and reservations to international treaties. The limitations of indicators of formal commitment have already been discussed in section II.2 and suggest that the choice of reducing human rights indicators to this dimension has something to do not only with practical difficulties of measuring effective human rights practices but also with the political reluctance to have the real commitment towards human rights exposed.

Hence, in practical terms, the implementation of a right-based approach remains a challenging area for the UN system especially when it comes to the use of human rights as indicators and benchmarks or as an assessment tool. The CCA/UNDAF Guidelines neither require nor particularly facilitate the adoption of the rights-based approach and many of their elements are still inadequately, imprecisely or implicitly reflected. The extremely uneven and unsatisfactory incorporation of the human rights approach in the CCAs and UNDAFs completed so far is itself evidence of the need to strengthen its operationalisation<sup>277</sup>.

Efforts to review the state of the art of human rights mainstreaming in the context of development policy and programmes aim at further implementing a harmonised human rights approach in the practice of UN agencies. The second Interagency Workshop on Human Rights held in May 2003 called for a number of adjustments of the guidelines aiming at: emphasizing the dimensions of participation, accountability and empowerment (“ensuring that strategies are included to enhance the capacities of right holders to make claims and realize rights and of duty bearers to meet their obligations”); including “explicit references to human rights standards and instrument of the UN system”; “assuring that a human rights based approach is articulated with the commitments of the Millennium Declaration”; finally, “supplementing the indicators framework to better reflect the human rights approach”, thus removing the distinction and separation between indicators of the components A and B<sup>278</sup>.

The ongoing process of revision of the CCA/UNDAF Guidelines seems, so far, to have considerably accepted the request of more explicit references to the human rights

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<sup>276</sup> *Ibidem*, p. 37.

<sup>277</sup> UN Interagency Workshop on *Implementing a Human Rights-Based Approach in the Context of UN Reform*, Final Report, Stamford, May 2003, p. 23.

<sup>278</sup> UN Interagency Workshop, Final Report, Stamford 2003, p. 24.

instrument of the UN system and to the rights-based approach. However, a part from these formal adjustments, not many other changes have been introduced up to now with regard to human rights and they are anyway of a very general and declaratory nature and do not seem to provide a substantive contribution to the operationalisation and mainstreaming of human rights into development practices<sup>279</sup>.

The lack of commitment within the UN system towards the adoption of systematic human rights monitoring is not encouraging: “failure to make mainstreaming effective in the CCA-UNDAF process would effectively amount to failure to mainstream human rights in UNDP”<sup>280</sup>. and in general at a global level. The CCA-UNDAF process could potentially have great strategic significance in supporting countries for modelling the mainstreaming of human rights. Failure of the UN system to deal explicitly and systematically with appropriate processes of operationalisation of human rights assessment is, in my view, a strong indication of the still existing political reluctance to accept international accountability towards human rights obligations.

Those efforts conducted within the UN system to operationalise mainstreaming human rights, even if still weak and not definitive, do not find any equivalent in the work of the World Bank. The World Bank has always been reluctant in opening up to human rights issues and even when describing its latest policies in terms of inclusion of human rights into its mandate, it still underlines that ‘some aspects of human rights do fall outside’, not to speak about human rights impact assessment and human rights indicators. In the words of a Programme Manager of the World Bank Institute they represent a “very poorly developed field of research, and the source of information are very limited, particularly on a global level. No one at the World Bank is working exclusively on this subject, though the need is recognised... I just do not think there is anyone with the particular expertise you are looking for. I recommend... to explore further with the UN organisations”<sup>281</sup>.

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<sup>279</sup> For example, “the selection of the most appropriate areas of cooperation has to be guided by the need for sharper focus, *clearer human rights analysis*, and better results in the efforts of the UN system to address national priorities within the framework of the MDGs and other commitments, goals and targets of the Millennium Declaration and international conferences, summits and *UN system human rights instrument*”, Part 3.3. The draft documents of the Working Group on CCA/UNDAF Guidelines are available at <http://www.dgo.org/documents.cfm?CategoryID=469&action=search>.

<sup>280</sup> UNDP/OHCHR, *HURIST Mid-Term Review*, 2001, p. 3.

<sup>281</sup> Mark Nielson, Programme Manager Europe, World Bank Institute, on e-mail correspondence with author.

Such reluctance has a strong impact on the rest of the donor community, being the World Bank a dominating actor in the aid community. It is the largest single source of public international development finance and through the negotiation and implementation of loans and credits exercises a significant and direct effect on the economic and social policies of developing countries, based on its conception of development. It also influences the decision-making of most other bilateral and multilateral donors<sup>282</sup>. Briefly, the World Bank sets the agenda of development<sup>283</sup>. It is true that the Bank has broadened its agenda in the last few years but while this has led to a more political approach toward the concept of governance, it has not substantially modified its position towards human rights. I think it is useful, in this context, to spend some more words on the focus that the World Bank places on governance since its being ‘at odds’ with human rights issues under certain perspectives may mislead the attempts of measuring human rights<sup>284</sup>.

The development of governance indicators has been a main issue on the World Bank agenda for the past few years<sup>285</sup> and governance is repeatedly mentioned in Bank’s documents as an area in which human rights and economic development can be promoted simultaneously<sup>286</sup>. While good governance is seen as a means to improving people’s possibilities to claim their human rights, these are not considered as an integral part of governance<sup>287</sup>. In fact, governance is defined as:

The traditions and institutions by which authority in a country is exercised, including: (1) the process by which governments are selected, held accountable, monitored, and replaced; (2) the capacity of governments to manage resources efficiently, and to formulate, implement, and enforce sound policies and regulations; (3) the respect of citizens and the state for the institutions that govern economic and social interactions among them<sup>288</sup>.

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<sup>282</sup> Kendal D-M., *Human Rights in World Bank’s work*, Copenhagen 1995, pp. 11-12.

<sup>283</sup> Kjær, Kinnerup, in Sano, Alfredsson (Eds.) 2002, p. 3. In a discussion with Hans-Otto Sano he pointed to me that research institutes, universities and scholars in the United Kingdom and, to a slight lesser extent, in the USA notably contribute to “setting the agenda of development”. Nordic development agencies, on their part, have also an important complementary role.

<sup>284</sup> *Ibidem*, p. 1.

<sup>285</sup> See <http://www.worldbank.org/wbi/governance/index.html>.

<sup>286</sup> Kendal 1995, p. 35. For an analysis of the relationship between human rights obligations and World Bank’s policies see also Moller N.H., *The World Bank: Human Rights, Democracy and Governance*, in Netherlands Quarterly of Human Rights 15, 1997, pp. 21-45, and De Feyter K., *The International Financial Institutions and human rights law and practice*, in Gomez Isa F., *La proteccion internacional de los derechos humanos en los alberos del siglo XXI*, Bilbao, 2003.

<sup>287</sup> Koch I.E., *Good governance and the implementation of Economic, Social and Cultural Rights*, in Sano H-O., Alfredsson G. (Eds.), *Human Rights and Good Governance: building bridges*, The Hague 2002, p. 85.

<sup>288</sup> Nelson M., *Capacity building in governance*, presentation for the seminar on Human Rights and Statistics held in Brussels in November 2002, on file with author.

For measurement and analysis, these three dimensions have been further unbundled to construct six aggregate governance indicators or clusters: *voice and external accountability* (i.e., the government's preparedness to be externally accountable through citizen feedback, democratic institutions and a competitive press); *political stability and lack of violence, crime, and terrorism* (that is, likelihood of destabilization of the government); *government effectiveness* (including quality of policymaking, bureaucracy, and public service delivery); *regulatory quality* (especially burdens imposed by excessive regulation); *rule of law* (protection of property rights, judiciary independence, and so on); and finally *control of corruption* (that measures perception of corruption, defined as the exercise of public power for private gain)<sup>289</sup>.

World Bank's practices in governance programmes have evidenced a weak conceptualisation of human rights, that have been reduced to general values and vague principles rather than obligations to respect, protect and fulfil that require states' compliance<sup>290</sup>. The operationalisation of governance has emphasized institutional capacity building and performances, rather than state-society relations, monitoring procedures and participation, in a word, empowerment. Sano is however optimistic that a rights-based approach to governance be feasible: a shift of the governance agenda from management to empowerment would allow for a greater role of human rights and, in turn, expand the concept of human rights accountability not only to governments but also to global institutions and actors<sup>291</sup>.

The risk existing in actual Bank's position is twofold: on the one hand, the focus on this concept and measurement of governance may divert international attention from a clear assessment of the impacts of development policies on human rights<sup>292</sup>; on the other, it does not secure that the good governance demands of the Bank upon recipient governments were fulfilled by the institution itself. A review of the Inspection Panel cases shows that the Bank has great difficulty in coping with the impact of the domestic human rights situation on projects it supports, and in dealing with governments that are hostile to human rights<sup>293</sup>. The introduction of HRIA in the Bank's work would be instrumental for

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<sup>289</sup> Kaufmann D., Kraay A., Mastruzzi M., *Governance Matters III: Governance Indicators for 1996-2002*, Draft May 2003, p. 2.

<sup>290</sup> Kjær, Kinnerup 2002, p. 16, Sano 2002, p. 142.

<sup>291</sup> Sano 2002, p. 132 and p. 142.

<sup>292</sup> It has been noted above how the 2002 CCA Indicators Framework has replaced indicators of 'civil and political rights' with indicators of 'democracy, justice administration and security of person' beside the dimension of governance. I presume that international trends played a role in such a shift.

<sup>293</sup> De Feyter 2002, p. 24.



the Bank to assess positive and negative human rights implications of the development intervention it supports, and it would force the Bank to respond to the violations identified and, ultimately, to be accountable for its work relevant for human rights<sup>294</sup>.

The World Bank analysis, in particular the voice and accountability index, has been used also by the UNDP in the Human Development Report of 2002, centred on the issues of democracy and governance.

It recognises that when indicators of democracy and participation are considered alongside the Human Development Index a clearer picture of the country situation may emerge but there is no automatic link between democracy and development. It also acknowledges that elaborating indicators to measure the extent of democracy or political and civil rights, such as its own human and political freedom indices of 1991 and 1992, is a very complex exercise and “unlike for income, health and education there is no unambiguous, uncontroversial measure”<sup>295</sup>. While encouraging indicators of these dimensions, the UNDP is somewhat cautious and suggests two possible sets of indicators of governance. The first one relies on the use of objective measure, as voter turnout, latest elections and ratification of the ICCPR. Again, these indicators measure the formal commitment of governments toward human rights and are not valid measures of real compliance: for example, “date of the most recent elections” does not capture substantial aspects of democratic governance, as realisation of the right to participation and accountability of the power holders<sup>296</sup>. The second one is a set of subjective indicators based on expert opinions about countries’ degree of democracy, as those elaborated by Freedom House or the World Bank. They should, in principle, capture more elements of the concept of democratic governance but at the same time they are open to disagreement and perception biases; therefore the UNDP presents them as a general indication of progress and not as authoritative indices<sup>297</sup>.

The Report 2002 explicates also that, while democracy can promote equitable development, the goals of democracy and income equalities should be considered

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<sup>294</sup> Kendal 1995, p. 51.

<sup>295</sup> UNDP, *Human Development Report 2002*, p. 36.

<sup>296</sup> An emblematic example of contradiction between procedures and substantive principles of democracy occurred in Bosnia and Herzegovina, where free and fair elections were held early to create a legitimate government but strong ethnic nationalists who had conducted the war were voted into office with the task of conducting the peace process. Holding elections in that context, where democratic principles and institutions were still very weak, was at odds with a true democratisation process. Sørbø, Tostensen 2000, p. 230.

<sup>297</sup> UNDP 2002, pp. 36-45.

independent and both require targeted consideration, committed efforts and political will. It adds that democracy has strong links to political and civil liberties and can contribute to social and economic development, but these links are not automatic and strengthening them should be the challenge for democratic governance<sup>298</sup>. This analysis, thus, confirms the dangers of confusing the dimensions of democracy, development and human rights and assuming their mutual reinforcement when proceeding assessing the impact of development interventions on a given context. Furthermore, it seems dangerous to me also subsuming indicators of human rights in a wider flow of indicators of democracy, rule of law and government effectiveness and corruption, to the detriment of the specificity of the human rights discourse that had been indeed emphasised in the Report 2000.

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<sup>298</sup> UNDP 2002, pp. 60-61.

## **CONCLUSION**

The issue of human rights impact assessment is not uncontroversial, especially when it comes to its practical and actual implementation. However, in the analysis conducted so far I believe that HRIA has proven to be a conceptually feasible tool to measure states commitment and performance towards human rights. I have also highlighted the value added of its application to development interventions. The overall merit of human rights measurement tools is to ensure accountability for the work of development actors relevant for human rights. This, in turn, is made possible because HRIA monitors progress in human rights realization over time; identifies human rights change in the conduct of institutions and individuals; identifies in advance which policies are likely to lead to progress in the rights situation and which may cause human rights harm; and identifies whether the duty-bearers with respect to a right have fulfilled their obligations<sup>299</sup>.

The feasibility and usefulness of HRIA have also been showed in the methodological analysis: impact assessment and indicators offer an instrument for operative mainstream human rights, even if technical difficulties and constraints need be acknowledged, as to be aware of the real capacity of these tools.

Six major dimensions, or criteria, have been individuate that may constitute a general and universal framework of HRIA to be applied in the specific context of different development interventions. Such a framework is based on universally established principles, thus it could be accepted at the international level and implemented in donors' policies. However this step has not been taken so far, I believe more for political reluctance than for practical difficulties.

The purpose of thesis was to contribute to the up-to-date debate on human rights measurement from the point of view of international human rights law. Certainly, conceptual, political and practical difficulties still need to be addressed and require a joint effort of human rights scholars and activists on the one hand, especially for what concerns the ultimate elaboration of the contents of human rights obligations, and of statisticians and economists on the other, for what concerns the elaboration of acceptable indicators and the collection of detailed and disaggregated data<sup>300</sup>.

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<sup>299</sup> Barry 2000, p. 2.

<sup>300</sup> Raworth 2001, p. 131.

## **ANNEX 1**

### **Relevant Legal Provisions\***

#### ***Article 2 ICCPR***

1. Each State Party to the present Covenant *undertakes to respect and to ensure* to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, *without distinction of any kind*, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an *effective remedy*, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

#### ***Article 2 ICESCR***

1. Each State Party to the present Covenant *undertakes to take steps*, individually and *through international assistance and co-operation*, especially economic and technical, *to the maximum of its available resources*, with a view to *achieving progressively the full realization* of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised *without discrimination of any kind* as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

### ***Article 2 UDHR***

Everyone is entitled to all the rights and freedoms set forth in this Declaration, *without distinction of any kind*, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

### ***Article 21 UDHR***

1. Everyone has *the right to take part in the government* of his country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.

3. *The will of the people shall be the basis of the authority of government*; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

### ***Article 25 ICCPR***

Every citizen shall have *the right and the opportunity*, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) *To take part in the conduct of public affairs*, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

### ***Article 23 UDHR***

1. Everyone has the *right to work*, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, *without any discrimination*, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the *right to form and to join trade unions* for the protection of his interests.

### ***Article 6 ICESCR***

1. The States Parties to the present Covenant recognize *the right to work*, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

### ***Article 7 ICESCR***

The States Parties to the present Covenant recognize the *right of everyone to the enjoyment of just and favourable conditions of work* which ensure, in particular:

(a) Remuneration which *provides all workers, as a minimum*, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

### ***Article 8 ICESCR***

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone *to form trade unions* and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

*\* All italics are mine.*

## ANNEX 2

### Millennium Development Goals

The eight Millennium Development Goals constitute an ambitious agenda to significantly improve the human condition by 2015. The Goals set clear targets for reducing poverty, hunger, disease, illiteracy, environmental degradation, and discrimination against women. For each Goal a set of Targets and Indicators have been defined and are used to track the progress in meeting the Goals.

- Goal 1: Eradicate extreme poverty and hunger**
- Goal 2: Achieve universal primary education**
- Goal 3: Promote gender equality and empower women**
- Goal 4: Reduce child mortality**
- Goal 5: Improve maternal health**
- Goal 6: Combat HIV/AIDS, malaria and other diseases**
- Goal 7: Ensure environmental sustainability**
- Goal 8: Develop a Global Partnership for Development**

<b><u>Goal 1: Eradicate extreme poverty and hunger</u></b>	
<b>Target 1</b>	<b>Halve, between 1990 and 2015, the proportion of people whose income is less than one dollar a day</b>
Indicator 1	Proportion of population below \$1 per day (PPP values)
Indicator 2	Poverty gap ratio [incidence x depth of poverty]
Indicator 3	Share of poorest quintile in national consumption
<b>Target 2</b>	<b>Halve, between 1990 and 2015, the proportion of people who suffer from hunger</b>
Indicator 4	Prevalence of underweight children under five years of age
Indicator 5	Proportion of population below minimum level of dietary energy consumption
<b><u>Goal 2: Achieve universal primary education</u></b>	
<b>Target 3</b>	<b>Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling</b>
Indicator 6	Net enrolment ratio in primary education
Indicator 7	Proportion of pupils starting grade 1 who reach grade 5



Indicator 8	Literacy rate of 15-24 year olds
<b>Goal 3: Promote gender equality and empower women</b>	
<b>Target 4</b>	<b>Eliminate gender disparity in primary and secondary education, preferably by 2005, and to all levels of education no later than 2015</b>
Indicator 9	Ratios of girls to boys in primary, secondary and tertiary education
Indicator 10	Ratio of literate females to males 15-24 years old
Indicator 11	Share of women in wage employment in the non-agricultural sector
Indicator 12	Proportion of seats held by women in national parliament
<b><u>Goal 4: Reduce child mortality</u></b>	
<b>Target 5</b>	<b>Reduce by two-thirds, between 1990 and 2015, the under-five mortality rate</b>
Indicator 13	Under-five mortality rate
Indicator 14	Infant mortality rate
Indicator 15	Proportion of 1-year-old children immunised against measles
<b><u>Goal 5: Improve maternal health</u></b>	
<b>Target 6</b>	<b>Reduce by three-quarters, between 1990 and 2015, the maternal mortality ratio</b>
Indicator 16	Maternal mortality ratio
Indicator 17	Proportion of births attended by skilled health personnel
<b><u>Goal 6: Combat HIV/AIDS, malaria and other diseases</u></b>	
<b>Target 7</b>	<b>Have halted by 2015 and begun to reverse the spread of HIV/AIDS</b>
Indicator 18	HIV prevalence among 15-24-year-old pregnant women
Indicator 19	Condom use rate of the contraceptive prevalence rate
Indicator 20	Number of children orphaned by HIV/AIDS
<b>Target 8</b>	<b>Have halted by 2015 and begun to reverse the incidence of malaria and other major diseases</b>
Indicator 21	Prevalence and death rates associated with malaria
Indicator 22	Proportion of population in malaria risk areas using effective malaria prevention and treatment measures
Indicator 23	Prevalence and death rates associated with tuberculosis

Indicator 24	Proportion of tuberculosis cases detected and cured under DOTS (Directly Observed Treatment Short Course)
<b>Goal 7: Ensure environmental sustainability</b>	
<b>Target 9</b>	<b>Integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources</b>
Indicator 25	Proportion of land area covered by forest
Indicator 26	Ratio of area protected to maintain biological diversity to surface area
Indicator 27	Energy use (metric ton oil equivalent) per \$1 GDP (PPP)
Indicator 28	Carbon dioxide emissions (per capita) and consumption of ozone-depleting CFCs (ODP tons)
Indicator 29	Proportion of population using solid fuels
<b>Target 10</b>	<b>Halve, by 2015, the proportion of people without sustainable access to safe drinking water</b>
Indicator 30	Proportion of population with sustainable access to an improved water source, urban and rural
<b>Target 11</b>	<b>By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers</b>
Indicator 31	Proportion of urban population with access to improved sanitation
Indicator 32	Proportion of households with access to secure tenure (owned or rented)
<b>Goal 8: Develop a Global Partnership for Development</b>	
<b>Target 12</b>	<b>Develop further an open, rule-based, predictable, non-discriminatory trading and financial system [Includes a commitment to good governance, development, and poverty reduction – both nationally and internationally]</b>
<b>Target 13</b>	<b>Address the Special Needs of the Least Developed Countries [Includes: tariff and quota free access for LDC exports; enhanced programme of debt relief for HIPC and cancellation of official bilateral debt; and more generous ODA for countries committed to poverty reduction]</b>
Indicator 33	Net ODA, total and to LDCs, as percentage of OECD/DAC donors' GNI
Indicator 34	Proportion of total bilateral, sector-allocable ODA of OECD/DAC donors to basic social services (basic education, primary health care, nutrition, safe water and sanitation)
Indicator 35	Proportion of bilateral ODA of OECD/DAC donors that is untied
<b>Target 14</b>	<b>Address the Special Needs of landlocked countries and small island developing States (through the Programme of Action for the Sustainable Development of Small Island Developing States and the outcome of the 22nd special session of the General Assembly)</b>

Indicator 36	ODA received in landlocked countries as proportion of their GNIs
Indicator 37	ODA received in small island developing States as proportion of their GNIs
<b>Target 15</b>	<b>Deal comprehensively with the debt problems of developing countries through national and international measures in order to make debt sustainable in the long term</b>
Indicator 38	Proportion of total developed country imports (by value and excluding arms) from developing countries and from LDCs, admitted free of duties
Indicator 39	Average tariffs imposed by developed countries on agricultural products and textiles and clothing from developing countries
Indicator 40	Agricultural support estimate for OECD countries as percentage of their GDP
Indicator 41	Proportion of ODA provided to help build trade capacity
Indicator 42	Total number of countries that have reached their HIPC decision points and number that have reached their HIPC completion points (cumulative)
Indicator 43	Debt relief committed under HIPC initiative, US\$
Indicator 44	Debt service as a percentage of exports of goods and services
<b>Target 16</b>	<b>In co-operation with developing countries, develop and implement strategies for decent and productive work for youth</b>
Indicator 45	Unemployment rate of 15-to-24-year-olds, each sex and total
<b>Target 17</b>	<b>In co-operation with pharmaceutical companies, provide access to affordable, essential drugs in developing countries</b>
Indicator 46	Proportion of population with access to affordable essential drugs on a sustainable basis
<b>Target 18</b>	<b>In co-operation with the private sector, make available the benefits of new technologies, especially information and communications</b>
Indicator 47	Telephone lines and cellular subscribers per 100 population
Indicator 48	Personal computers in use per 100 population and Internet users per 100 population

Source: UN Millennium Project <http://www.unmillenniumproject.org>

## **ANNEX 3**

### **Sources**

This study is based on desk and documentary work. The reading material has been mostly retrieved in Denmark. There is an extensive literature about the statistical measurement of human rights and conceptualisation of models and instruments of human rights assessment for development assistance. The point of departure of my research has been the discussion on human rights indicators in the UNDP Human Development Report 2000, followed by several international initiatives<sup>301</sup>. Other important sources have been regional and national initiatives, as the Human Rights Commitment Index of the DIHR and the Human Rights Impact Assessment elaborated by HOM for EU policies, besides relevant contributions of scholars and academics<sup>302</sup>.

The Internet has provided a consistent source of information: many data and reports were found on the websites of several international and national institutions and many NGOs that are working on human rights or governance indicators<sup>303</sup>.

Direct contacts with experts (human rights activists, development specialists and statisticians) working on this topic within International Organisations, NGOs and national institutions have been very important for the research to be a living and update instrument<sup>304</sup>. The material received and the opinions collected helped me:

- Finding explanations and gathering information on the conceptual and practical attempts toward human rights measurement carried out so far, their political implications and the position of different actors.
- Addressing the problems of data and quality of information, in particular the methodology for data collection and verification of information used by the major organisations (in particular Human Rights Watch).
- Delineating the possible way forward and next steps.

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<sup>301</sup> Among others, the discussion within the revision of the UN Common Country Assessment Guidelines, the Conference on Development and Human Rights indicators organised by the International Association for Official Statistics in Montreux in September 2000 and the Seminar on Statistics and Human Rights organized by the EU in Brussels in November 2002.

<sup>302</sup> See Reading List.

<sup>303</sup> See List of Internet pages.

<sup>304</sup> I have established e-mail contacts with: Mr Nelson, WB; Mr. Malhotra, OHCHR, Mr. Barry, Carnegie Council; Mr Suarez, Swiss Federal Statistical Office; Mr. Horowitz, HRW; Mr Griffin, UNDP UK. I have also interviewed Mr. Iacos, IRCT.

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UN Special Session on Children (<http://www.unicef.org/specialsession/about/followup-data-collection.htm>)

UNDP - United Nations Development Programme (<http://www.undp.org/>)

United Nations Resident Coordinators Network (<http://www.dgo.org/> )

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Millennium Development Goals (<http://www.developmentgoals.org/>)

[New Public Sector Governance Homepage](http://www1.worldbank.org/publicsector/index.cfm)  
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[World Bank Institute governance](http://www.worldbank.org/wbi/governance/pubs/mca.html)  
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**Other links:**

AAAS Science and Human Rights Program <http://shr.aaas.org/>

Amnesty International ([www.amnesty.org](http://www.amnesty.org))

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# Study on a possible approach to human rights impact assessement in development policies

D'Arcangelo, Roberta

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