

Implementing Human Rights Through Impact Assessments

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Introduction & Overview

Federal, state, local and tribal govt are obligated to respect and protect human rights under int'l law and ratified treaties

No federal, state, or local agency is currently directly mandated and responsible for ensuring these obligations are met

Some federal, state and local agencies conduct regular impact assessments

Human Rights Impact Assessment (“HRIA”) framework would enable the government to evaluate the human rights implications of current and proposed policies.

10 Human Rights Treaties

- International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”)

- International Covenant on Civil and Political Rights (“ICCPR”)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”)
- International Covenant on Economic, Social and Cultural Rights (“ICESCR”)
- Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”)
- Convention on the Rights of the Child (“CRC”)
- Convention on the Rights of Persons with Disabilities (“CRPD”)
- International Convention on the Protection of All Migrant Workers and Members of Their Families (“ICRMW”)
- International Convention for the Protection of All Persons from Enforced Disappearance
- Convention on the Prevention and Punishment of the Crime of Genocide

Human Rights Treaties Ratified by the U.S.

- Convention on the Prevention and Punishment of the Crime of Genocide – ratified in 1988
- International Covenant on Civil and Political Rights (“ICCPR”) – ratified in 1992
- International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”) – ratified in 1994
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) – ratified in 1994

The United States is also the ONLY COUNTRY IN THE WORLD to not have ratified the Convention on the Rights of the Child (“CRC”). In 2002, the United States ratified the optional protocols to the CRC:

- ☐ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- ☐ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

Core *Ratified* Human Rights Treaties

International Covenant on Civil and Political Rights (1992)

International Convention on the Elimination of All Forms of Racial Discrimination (1994)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1994)

U.S. Reservations, Understandings, and Declarations (“RUDs”)

- *Understandings* included:
 - The treaty **“shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered”** by the treaty, **“and otherwise by the state and local governments”** but with support from the Federal Government for the fulfillment of the Covenant.

Purposes of Human Rights Impact Assessments

Human Rights Impact Assessments (“HRIAs”) predict and measure the impact of government policies, programs, and practices on human rights.

The general objective of all HRIAs is to inform decision-makers and the people likely to be affected by a new policy, so decision-makers can improve the proposal to end or reduce potential negative effects and increase positive ones.

HRIAs help governments adopt and implement policies, programs, and projects that best meet their human rights treaty obligations.

3 Purposes of Human Rights Impact Assessments

1. HRIAs can both prevent human rights violations from occurring and identify ways in which existing laws may violate treaty obligations.

- Used *ex ante* before a policy or program is formally adopted, HRIAs can be an effective means of determining whether the proposal will violate human rights law if implemented.
- Used *ex post*, HRIAs can be used to determine whether a policy or law is being applied or impacts certain population groups, in practice, in a way that is inconsistent with international human rights standards.

3 Purposes of Human Rights Impact Assessments

2. HRIAs can facilitate a government's integration of human rights norms into its policy agenda by providing both a framework within which to discuss the human rights at stake and benchmarks to assess progress towards meeting international human rights obligations.

3 Purposes of Human Rights Impact Assessments

3. By providing a mechanism for consultation with impacted communities, the HRIA process itself encourages transparency and public participation in decision-making, thereby increasing legitimacy and ownership in policy making.

Core Components of a Human Rights Impact Assessment

There are seven key principles of rights-based assessments:

1. The assessment should be grounded in a human rights framework
2. The HRIA should aim to help fulfill govt. obligations to realize human rights as expeditiously and effectively as possible;
3. The design of the HRIA should promote equality and non-discrimination;
4. All stakeholders should have the opportunity to participate meaningfully and effectively in the HRIA process;

Core Components of a Human Rights Impact Assessment

5. Information gathered in the HRIA process should be available to all stakeholders to promote free discussion and enable stakeholders to hold the government accountable;

6. Stakeholders must be made aware of their rights and the government's obligations, and accessible, transparent and effective accountability mechanisms must be put in place; and

7. The HRIA should recognize and consider the interdependence of human rights.

Determining the human rights impact of a government policy or program requires a systematic assessment of both quantitative and qualitative objective indicators, which would vary according to the subject matter of the assessment and the methodology used.

Disaggregated quantitative data is necessary to determine the impact of a policy, program or service on different populations and should include categories such as age, race, sex, income level, language, sexual orientation and gender identity, disability, religion, place of residence and nationality.

Qualitative data collection is also important to determine the historical, social, cultural and political context, including the impacted community's relationship to governmental and political bodies, and its ability to access power structures.

HRIsAs can either be incorporated into existing policy impact assessments or conducted in a standalone manner by a governmental oversight body or a standalone independent entity, such as local and state human rights commissions.

3 Core Phases of HRIAs

HRIAs will involve three core phases:

1. An analytical phase involving an assessment of the current human rights context and the program or policy at issue,
2. a deliberative phase in which policy options are discussed, and decisions are made, and
3. A monitoring and evaluation phase to examine the policy's actual human rights impact.

HRIAs and Analogous Assessments in the Domestic Context

CEDAW Ordinances Across the United States

In 1998, San Francisco approved Municipal Ordinance 128-98, committing local government to implementing key human rights principles based on the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”).

Although the U.S. government has not ratified CEDAW, the Ordinance offers a glimpse at the types of reform that can occur when human rights are fully integrated into government processes.

The CEDAW Ordinance required the City and County of San Francisco to take concrete steps toward “integrating gender equity and human rights principles into all of its operations,” including policies, programs, employment, budget and services.

CEDAW Ordinance

San Francisco's CEDAW race and gender analysis tool is one U.S.-based example of the positive impact that the domestic application of an international human rights framework through assessment can have.

Within the city, seven agencies and departments conducted assessments, which led to reform of their policies and outcomes that they found benefited not only women and girls, but people involved in their work as a whole.

Building on the existing framework, the most recent annual report from Cities for CEDAW highlights valuable insights and showcases examples of cities actively implementing and advancing human rights.

CEDAW Ordinances and Resolutions have been adopted in 55 U.S. cities and 14 counties, with numerous campaigns and initiatives underway in many others across the country.

HRIAs and Analogous Assessments in the Domestic Context

U.S. Racial Equity Impact Assessments

Racial Equity Impact Assessments (“REIAs”) offer a focused examination of how proposed policies, actions, or decisions may affect different racial and ethnic groups.

REIAs function as a proactive tool to identify and address racial disparities before the implementation of a policy.

REIAs are increasingly utilized in U.S. policymaking, particularly at the state and local levels.

Iowa was the first state to implement a REIA requirement in 2008, establishing a model that has influenced similar laws in other states.

U.S. Racial Equity Impact Assessments

In 2021, Virginia enacted legislation allowing for the preparation of REIAs for criminal justice legislation, like Iowa's approach. The state assigned its Joint Legislative Audit and Review Commission with the responsibility of preparing these impact statements.

In 2021 New York City passed a law requiring private developers to submit “racial equity reports” for specific land use and development applications.

Despite the growing use of REIAs, their implementation varies widely across jurisdictions.

HRIAs and Analogous Assessments in the Domestic Context

U.S. Environmental Impact Assessments

The National Environmental Policy Act of 1969 (NEPA) set up procedural requirements for all U.S. federal agencies to conduct Environmental Assessments (EAs) and Environmental Impact Statements (EISs) to examine the possible impacts that a proposed project may have on the environment, including natural, social and economic aspects.

Environmental law is limited however, in requiring proof of both intent to discriminate as well as discriminatory effect. Human Rights Impact Assessments, on the other hand, are based on outcomes, whereby discrimination in effect is enough to show that a human rights violation has occurred.

Conclusion

HRIAs can be a critical mechanism for ensuring that human rights obligations are fully implemented and incorporated into federal, state and local policies, programs, and services.

Without a clear and systematic means of assessment, international human rights treaties will fail to take full effect in the United States.

HRIAs will enhance compliance with human rights obligations, integrate human rights in policymaking, and serve larger purposes such as meaningful consultation with affected communities, accountability, and empowerment.