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HUMAN RIGHTS INCORPORATION THROUGH IMPACT ASSESSMENTS AT FEDERAL, STATE, AND LOCAL LEVELS

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The United States is obligated to respect and protect human rights by customary international law and international human rights treaties. Currently, no governmental agency is responsible for ensuring these obligations are met, and the government has not yet adopted a comprehensive framework to assess the impact of federal policies and programs on human rights. While various U.S. agencies conduct regular impact assessments in areas including social, economic, and environmental contexts, a similar Human Rights Impact Assessment (HRIA) framework could be valuable. If applied systematically, HRIAs would enable the government to evaluate the human rights implications of current and proposed policies. This article provides an introduction to HRIAs and examples of their use at sub-national, national, and international levels, with the hope that these models will support federal, state, and local government officials in fulfilling their human rights obligations.

I. 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, as laid out in international human rights law and instruments. While HRIAs can differ according to the subject matter and timing of the assessment, the general objective of all HRIAs is to “inform decision-makers and the people likely to be affected [by a new policy] so that they can improve the proposal to reduce potential negative effects and increase positive ones.”² As such, HRIAs help governments adopt and implement policies, programs, and projects that best meet their human rights treaty obligations.

HRIAs can serve a number of important purposes. First, HRIAs can both prevent human rights violations from occurring and identify ways in which existing laws may violate a country's treaty obligations. Used *ex ante*,

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2. Paul Hunt & Gillian MacNaughton, *Impact Assessments, Poverty and Human Rights: A Case Study Using The Right to the Highest Attainable Standard of Health* (Health & Hum. Rts., Working Paper Series No. 6, 2006).

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. For example, an HRIA could reveal that a proposed policy would have a discriminatory or disparate impact on a particular social group in violation of international human rights law's commitment to equality and non-discrimination; once identified, this discriminatory effect could be remedied before the policy is adopted and the discriminatory impact is felt. 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. For example, an HRIA might reveal that the implementation of a particular penal law, or the adoption of new interrogation manual, violates the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), an existing election law violates the International Covenant on Civil and Political Rights ("ICCPR"), or an airport screening method violates the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).³ Once violations have been identified, the policy at issue can be amended to remedy the violation in accordance with the state's international law obligations.

Second, 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. In addition, by ensuring that the same minimum human rights standards are applied across sectors and in all government agencies and departments, HRIAs promote coherence in government policy which can help ensure more effective and efficient policy-making.

Third, 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. This, in turn, can increase citizen participation in decision-making and lead to greater governmental accountability to historically marginalized social groups. Moreover, because HRIAs must involve a variety of actors (including policy makers, human rights experts, civil society representatives, and representatives from affected communities), HRIAs can raise awareness of the rights to public information, free expression, effective political participation, and free association and assembly. This awareness can foster greater "rights empowerment" by demonstrating that citizens, even in historically marginalized social groups, have the capacity and resources to

3. The United States has ratified ICCPR, CAT and ICERD (with reservations).

influence policy decisions, raise issues for public debate, and negotiate values and interests.⁴

II. Core Components of a Human Rights Impact Assessment

HRIAs “measure concrete human rights impacts through some form of evidence-based analysis.”⁵ Specific assessment components vary according to the national legal context, the target of the assessment (ie., whether the target is a government program, policy, or legislative initiative), and whether the assessment is done *ex ante* or *ex post*. Nonetheless, some core components of HRIAs can be identified.

For example, in a report funded by the United Nations Educational Social and Cultural Organization (“UNESCO”), the United Nations Special Rapporteur on the Right to the Highest Attainable Standard of Health identified seven key principles of rights-based assessments. First, the assessment should be grounded in a human rights framework and explicitly reference the State’s treaty and other human rights obligations. Second, the HRIA should aim to help the State fulfill its obligations to realize human rights as expeditiously and effectively as possible. Third, the design of the HRIA should promote equality and non-discrimination. Fourth, all stakeholders should have the opportunity to participate meaningfully and effectively in the HRIA process. Fifth, information gathered in the HRIA process should be available to all stakeholders to promote free discussion and enable stakeholders to hold the government accountable. Sixth, 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. Seventh, the HRIA should recognize and take into consideration the interdependence of human rights.⁶

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. For example, when assessing the impact of a particular policy on the human right to education, indicators could include the net primary enrollment ratio by target group, the proportion of children getting an education in their mother tongue, and the public expenditure on

4. *Handbook in Human Rights Assessment: State Obligations, Awareness and Empowerment*, THE NORWEGIAN AGENCY FOR DEVELOPMENT COOPERATION (NORAD) (Feb. 2001). NORAD is an agency of the Norwegian Ministry of Foreign Affairs.

5. James Harrison, *Conducting a Human Rights Impact Assessment of the Canada-Colombia Free Trade Agreement: Key Issues*, CCIC (Feb. 2009), <https://wrap.warwick.ac.uk/72152/>.

6. Hunt & MacNaughton, *supra* note 1, at 32–34.

education as a proportion of the overall budget.⁷ By contrast, when assessing the impact of a particular policy on the human right to adequate housing, indicators could include the proportion of the population with sufficient living space, the proportion of households living in permanent structures, and the average amount of time taken to settle housing and land rights disputes.⁸

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. For example, an HRIA of a policy to improve high school graduation rates should compile data for relevant protected classes including race, sex and gender identity. The quantitative data studied should also include both socioeconomic indicators compiled by the state and events-based data consisting primarily of data on alleged or reported cases of human rights abuses.⁹ Qualitative data collection is also important in order 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.

HRIAs can either be incorporated into existing policy impact assessments or conducted in a stand-alone manner by a governmental oversight body or a stand-alone independent entity such as a National Human Rights Commission. Either way, a comprehensive HRIA would likely involve a number of overlapping but distinct phases. While methodologies will differ according to context, at a minimum all HRIAs will involve three core phases: an analytical phase involving an assessment of the current human rights context and the program or policy at issue, a deliberative phase in which policy options are discussed, and decisions are made, and a monitoring and evaluation phase to examine the policy's actual human rights impact.¹⁰

Different studies have proposed different steps for conducting HRIAs. In 2011, the United Nations Special Rapporteur on the Right to Food outlined a comprehensive six-step process.¹¹ Those steps are: (1) conducting a preliminary check to identify which human rights are most likely to be affected and which population groups could be impacted by the proposed policy or agreement; (2) developing a detailed plan in the scoping phase, outlining the

7. Off. Of the High Comm'r for Hum. Rts. ("OHCHR"), *Report on Indicators for Monitoring Compliance with International Human Rights Instruments*, at 28, U.N. Doc. HRI/MC/2008/3 (June 6, 2008), <https://docs.un.org/en/HRI/MC/2008/3>. The right to education is protected by Article 26 of the Universal Declaration of Human Rights ("UDHR").

8. *Id.* at 29. The right to adequate housing is protected by Article 25 of the UDHR.

9. *Id.*

10. Gauthier de Beco, *Human Rights Impact Assessments*, 27 NETH. Q. HUM. RTS. 139, 154 (2009).

11. U.N. Hum. Rts. Council, *Report of the Special Rapporteur on the Right to Food, Addendum: Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements*, U.N. Doc. A/HRC/19/59/Add.5 (Dec. 19, 2011), <https://docs.un.org/es/A/HRC/19/59/Add.5>.

questions to be addressed and the methodology to be used; (3) gathering quantitative and qualitative data, ensuring that the information reflects the impact on vulnerable groups and is disaggregated by key factors such as gender, region, and age; (4) linking the data to the State's obligations under international human rights law, assessing potential trade-offs, and ensuring no group's rights are disproportionately affected; (5) drawing conclusions and making recommendations, engaging stakeholders in discussing options such as modifying the agreement, implementing mitigation measures, or offering reparations; and (6) establishing an evaluation mechanism to follow up regularly, ensuring human rights concerns are addressed during implementation and adjustments are made when necessary.¹²

Similarly, in 2020, the Danish Institute for Human Rights (DIHR) identified five key phases of an HRIA.¹³ These phases are: (1) defining the scope and objectives of the HRIA while identifying relevant stakeholders; (2) gathering qualitative and quantitative data to establish a baseline for assessing potential human rights impacts; (3) assessing the scale, scope, and severity of both actual and potential human rights impacts; (4) developing measures to mitigate or remediate the identified impacts, including creating an impact management plan; and (5) documenting the results, and monitoring and evaluating the implementation over time.¹⁴ Other groups have developed different procedural frameworks, and determining the most appropriate process requires consideration of the subject matter and timing of the HRIA, as well as the methodology employed.

A. Incorporating HRIAs Into Policy-Making

The most effective HRIAs involve a cyclical timeframe that includes both *ex ante* and *ex post* HRIAs. If carried out in the planning phases of a project, HRIAs can be useful policy-making tools as they can provide a framework for analysis which can enable governments to identify the necessary preconditions to the protection of human rights, define policy options accordingly, and shape appropriate strategies to prevent human rights violations before they occur. In particular, *ex ante* analysis of a proposed policy would include analysis of the relevant human rights standards implicated as well as the historical, social, and political contexts at issue. In addition, the initial study would provide a benchmark to measure progress and articulate a timeframe for ongoing monitoring and evaluation of the actual impact of any policies adopted.

12. *Id.*

13. *Human Rights Impact Assessment Guidance and Toolbox*, DANISH INST. FOR HUM. RTS. (Aug. 25, 2020), <https://www.humanrights.dk/tools/human-rights-impact-assessment-guidance-toolbox>.

14. *Id.*

B. Using HRIAs to Analyze Current Policies

An *ex post* HRIA is used to determine the actual human rights impact of a policy as implemented. It must therefore be carried out regularly over the course of a policy's lifespan to properly capture the project's short-, medium-, and long-term impact. If an HRIA indicates that a human rights violation has in fact resulted from a particular government action taken, that policy can be amended to conform with human rights law and prevent future violations.

III. Selected HRIAs in the International Context

HRIAs have been used in a number of different international, national, and sub-national contexts by both governmental and non-governmental actors. The examples below are intended to illuminate various applications of HRIAs by international actors and the methodologies they have used or recommended. As such, the section's primary focus is on the approach of governmental and intergovernmental organizations and not the various excellent examples of HRIAs that have been undertaken by civil society actors to assess the human rights impacts of a variety of government policies and other programs around the world.¹⁵

A. Governmental HRIAs at the National and Local Level

A number of national and local governments have already undertaken to assess the human rights impact of new policy initiatives *ex ante*. In the United Kingdom, for example, Section 19 of the Human Rights Act requires that every piece of legislation introduced, the Minister in charge must make a statement that the legislation's provisions are compatible with the European Convention on Human Rights ("ECHR").¹⁶ Similarly, in Northern Ireland, Section 75 of the Northern Ireland Act requires policy-makers submit an equality scheme to the national Equality Commission as evidence they have considered the effect of proposed policies on equality.¹⁷ Additionally, several European countries have national human rights institutions responsible for analyzing draft legislation to ensure its compliance with human rights law. These institutions include the Joint Committee on Human Rights in the UK, the Irish Human

15. See Chris Albin-Lackey, "Chop Fine": *The Human Rights Impact of Local Government Corruption and Mismanagement in River States, Nigeria*, HUM. RTS. WATCH (Jan. 31, 2007), <https://www.hrw.org/report/2007/01/31/chop-fine/human-rights-impact-local-government-corruption-and-mismanagement-rivers>.

16. De Beco, *supra* note 9, at 142.

17. *Id.*

Rights Commission, the *Commission nationale consultative des droits de l'homme* in France, the Danish Institute for Human Rights, and the Norwegian Centre for Human Rights.¹⁸

The trend towards conducting HRIAs of policy proposals is also taking root at the very local level. In Aberdeen, Scotland, for example, the City Council introduced a policy requiring its own policy-makers to carry out Equality and Human Rights Impact Assessments (EHRIAs) on all new functions, policies, and procedures in 2008. Viewed as an integral part of the Council's policy development process, EHRIAs are designed to determine whether the proposed activity will unlawfully discriminate or negatively impact human rights as set out in the ECHR and Scottish human rights law.¹⁹ Their stated purpose is "to help ensure that the Council does not discriminate, and utilizes opportunities to promote equality, human rights and social cohesion."²⁰

Canada has effectively incorporated essential elements of Human Rights Impact Assessments (HRIAs) into its policy framework through the Impact Assessment Act (IAA) of 2019.²¹ This Act serves as a planning and decision-making tool designed to evaluate the potential impacts of major projects, particularly those undertaken on federal lands or outside Canada. The purposes of the IAA align closely with the core objectives of HRIAs. The Act aims to foster sustainability and ensure respect for the rights of Indigenous Peoples, recognizing that development initiatives must honor the commitments made by the government to these communities.²² This alignment underscores the significance of Indigenous rights within the broader context of human rights. The IAA mandates the assessment of positive and negative environmental, economic, health, and social effects of proposed projects. By including these factors, the Act reflects an approach that mirrors the comprehensive evaluations characteristic of HRIAs. The assessments specifically consider the impacts to Indigenous groups and the rights of Indigenous Peoples, ensuring that their voices and concerns are integral to the decision-making process. Key features of the IAA include:

- A fair, predictable, and efficient assessment process that enhances Canada's competitiveness and promotes innovation;

18. *Id.* at 145.

19. Aberdeen City Council, *How to do an Equality and Human Rights Impact Assessment: The Guide* (Sep. 15, 2008), https://online.aberdeencity.gov.uk/Files/EqualityHumanRight/5c_Regeneration%20Masterplanning%20Update_17-07-08.pdf.

20. *Id.* at 22.

21. Impact Assessment Agency of Canada, *Overview of the Impact Assessment Act*, CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY (2019), <https://www.canada.ca/content/dam/iaac-acei/documents/mandate/president-transition-book-2019/overview-impact-assessment-act.pdf>.

22. *Id.*

- Early, inclusive, and meaningful public engagement, which allows for broader community participation and feedback, aligning with HRIA principles of transparency and accountability;
- The promotion of nation-to-nation, Inuit-Crown, and government-to-government partnerships with Indigenous Peoples, fostering collaboration and mutual respect;
- An emphasis on evidence-based decision-making, integrating scientific data and Indigenous knowledge into the assessment process.²³

Furthermore, the IAA requires the evaluation of cumulative effects within a region, acknowledging that the impacts of multiple projects can significantly affect communities and their rights over time. By assessing both the positive and adverse effects of projects, the IAA ensures that human rights considerations are woven into Canada's approach to major project development.

B. Human Rights Instruments and Treaty Bodies Require HRIAs

Various human rights treaties require governments to review current law and policies and bring them into compliance with human rights norms. For example, ICERD requires states to "take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists."²⁴ Similarly, the Convention on the Rights of the Child ("CRC") obliges states to carry out "a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the Convention."²⁵ Indeed, the CRC "demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation)" which must be "built into government at all levels and as early as possible in the development of policy."²⁶

In addition, numerous human rights treaties have built-in monitoring obligations such that state parties are required to regularly assess and submit reports detailing their progress in implementing the treaty rights to the relevant treaty body. The Office of the High Commissioner for Human Rights has issued guidelines highlighting a wide variety of quantitative indicators, broken down by protected rights, that states can use when assessing their compliance

23. *Id.* at 4.

24. G.A. Res. 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination, at Art. 2(1)© (Dec. 21, 1965).

25. Comm. On the Rts. Of the Child, *General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child*, at 18, 45, U.N. Doc. CRC/GC/2003/5 (Nov. 27, 2003).

26. *Id.*

with human rights instruments.²⁷ All states party to the ICCPR, for example, are obliged to submit regular reports detailing their progress implementing that treaty to the Human Rights Committee.²⁸ Similarly, the Convention on the Rights of Persons with Disabilities (“CRPD”), signed by the United States on July 30, 2009, requires state parties to “maintain, strengthen, designate or establish . . . a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor [its] implementation.”²⁹ States party to the CRPD are also required to provide regular reports on progress towards implementation to the Committee on the Rights of Persons with Disabilities.³⁰

Various UN agencies have also either conducted human rights assessments of their programs or provided guidelines to enable others to conduct their own assessments. The Food and Agriculture Organization of the United Nations (“FAO”), for example, has published practical guidelines and methodologies for states to use when establishing priorities and implementing national measures to protect the right to adequate food.³¹ Similarly, the United Nations Development Fund for Women (“UNIFEM”) has published a report to assist with monitoring compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), specifically through an analysis of governmental budgets.³²

Finally, a number of Special Rapporteurs and Representatives have taken steps to provide guidelines for HRIAs in their areas of expertise. For example, the United Nations Special Rapporteur on the Right to the Highest Attainable Standard of Health issued HRIA guidelines to assess the impact of government policies on the right to health.³³ Similarly, in his capacity as the UN

27. OHCHR, *supra* note 6.

28. Off. Of the High Comm’r for Hum. Rts. (“OHCHR”), *Reporting compliance by State parties to the human rights treaty bodies* (May 15, 2020), <https://www.ohchr.org/sites/default/files/Documents/Issues/HRIndicators/MetadataReportingCompliance.pdf>.

29. Convention on the Rights of Persons with Disabilities, Art. 33(2) (Dec. 13, 2006).

30. *Id.* at Art. 35. Similar reporting is required of states party to the International Covenant on Economic, Social and Cultural Rights (with regular reporting required to the Committee on Economic, Social and Cultural Rights), the Convention on the Elimination of All Forms of Discrimination against Women (with regular reporting required to the Committee on the Elimination of Discrimination Against Women), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (with regular reporting required to the Committee on Migrant Workers).

31. Frank Mischler, *Guide to Conducting a Right to Food Assessment*, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (2009), https://www.fao.org/fileadmin/templates/righttofood/documents/RTF_publications/EN/3_toolbox_Assessment_guide.pdf.

32. U.N. Dev. Fund for Women, *Budgeting for Women’s Rights: Monitoring Government Budgets for Compliance with CEDAW*, UNWOMEN.ORG (Dec. 2008), <https://www.unwomen.org/sites/default/files/Headquarters/Media/Publications/UNIFEM/BudgetingForWomensRightsSummaryGuideen.pdf>.

33. Hunt & MacNaughton, *supra* note 1.

Special Representative for Business and Human Rights, Harvard's Kennedy School of Government Professor John Ruggie worked to develop standards and frameworks for HRIAs by private corporate actors, and his efforts have complemented and encouraged similar initiatives by other intergovernmental and non-governmental bodies.³⁴ This work has been well-received by various governmental, non-governmental, and business organizations.

C. HRIAs in the Context of International Trade Agreements

There is international consensus about the need for HRIAs to assess the human rights impact of international trade agreements. The demand for HRIAs of trade policies and agreements has been made by human rights treaty bodies, non-governmental organizations, academics, and at least one national parliament.

In 2006, the Thai National Human Rights Commission, a governmental body established under Thailand's 1997 Constitution with members elected by the Senate, conducted an HRIA of the Free Trade Agreement then being negotiated with the United States.³⁵ The human rights standards applied by the Commission included both international and domestic human rights law, including the ICCPR, the International Covenant on Economic, Social and Cultural Rights, and applicable provisions of the Thai Constitution. The Commission's report raised concerns about the impact of the Agreement on human rights, socio-economic and cultural rights, community rights, the right to access resource bases, and the right to access drugs and public health services.³⁶ For example, the Commission expressed concerns that the proposed deregulation of the tourism industry could lead to various problems associated with sex tourism, including problems related to sexual crimes and the spread of sexually-transmitted diseases.³⁷ Similarly, the Commission feared that the proposed agreement on intellectual property rights could have a negative impact on access to drugs in violation of the Thai constitution's grant of a fundamental right to healthcare.³⁸

In June 2008, while the Canadian government was mulling the possibility of a Free Trade Agreement with the Republic of Colombia, the Canadian House of Commons' Standing Committee on International Trade

34. See BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE, <https://www.business-humanrights.org> (last visited Dec. 2, 2025).

35. Negotiations over the Free Trade Association were suspended in 2006 following the dissolution of the Thai Parliament.

36. National Human Rights Commission, *Report on Results of Examination of Human Rights Violations* (2006).

37. *Id.* at 39–40.

38. *Id.* at 58.

issued a report analyzing the human rights and environmental issues implicated by such an Agreement. A key recommendation of the Committee report was that before signing a free trade agreement with Colombia, “an independent, impartial, and comprehensive human rights impact assessment should be carried out by a competent body, which is subject to levels of independent scrutiny and validation.”³⁹ The Committee further recommended that its calls for an HRIA “should be addressed before Canada considers signing, ratifying, and implementing an agreement with Colombia.”⁴⁰

Although the Parliamentary committee recommended an *ex ante* HRIA, progress towards implementation of the Free Trade Agreement has continued without one.⁴¹ Nonetheless, the Parliamentary Committee's recommendation echoed and lent credence to civil society demands for a governmental HRIA. Following the Committee's recommendation, the Canada Council for International Cooperation (“CCIC”), a national membership organization dedicated to monitoring and analyzing federal policies on a number of foreign affairs matters, commissioned an independent human rights expert to provide recommendations for such an HRIA.⁴² The resulting CCIC report stresses that the HRIA should focus on particular violations that might occur as a result of specific aspects of trade-related policy—how agricultural liberalization requirements might affect local communities' right to food, for example. It suggested that the methodology adopted include consultation with both Colombians and Canadians to establish the baseline human rights situation in both countries as well as with people in third countries affected by similar trade agreements already in force. It also cautioned that a robust methodological framework, encompassing a range of different mechanisms, would be needed to avoid the appearance of a study driven by ideology.

More recently, in March 2020, the New Zealand Ministry of Foreign Affairs and Trade (MFAT) commissioned PublicVoice, an independent research organization, to analyze and report on the written views received during the initial stage of public consultation regarding the proposed Free Trade

39. Lee Richardson, *Human Rights, The Environment and Free Trade with Columbia, Report of the Standing Committee on International Trade*, HOUSE OF COMMONS OF CANADA: STANDING COMMITTEE ON INTERNATIONAL TRADE, 5-CIIT-39-2 (2008), <https://www.ourcommons.ca/DocumentViewer/en/39-2/CIIT/report-5/>.

40. *Id.*

41. The Canada-Colombia Free Trade Agreement was signed on November 21, 2008. *See Canada Signs Free Trade Agreement with Colombia*, OFFICE OF THE PRIME MINISTER (Nov. 28, 2008), <https://canada.ca/en/news/archive/2008/11/canada-signs-free-trade-agreement-colombia.html>.

42. Harrison, *supra* note 4.

Agreement (FTA) with the United Kingdom.⁴³ This document summarizes the written responses and feedback collected during this pre-negotiation consultation process, reflecting a commitment to transparency and stakeholder engagement. The consultation process underscored the importance of dialogue, particularly with marginalized communities, including the Māori people. Feedback from these consultations played a role in shaping the negotiating framework and ensuring that diverse perspectives, especially those concerning Indigenous rights and environmental sustainability, were considered from the outset.

Although this analysis did not constitute a formal HRIA, it incorporated key elements that highlight the increasing recognition among governments of the need to evaluate the impact on rights during the development of economic agreements. By actively soliciting and considering public input, particularly regarding the implications of agricultural liberalization and food security, the New Zealand government aimed to address concerns of potential violations of rights and foster a more equitable trade framework. This approach exemplifies how pre-negotiation consultations can serve as a valuable mechanism for integrating human rights considerations into trade discussions, ensuring that the rights of marginalized communities are prioritized in the decision-making process.

D. HRIAs in the Private Sector

Numerous stakeholders and organizations have encouraged private sector actors to consider the human rights impact of their business transactions.⁴⁴ These efforts have been complemented by the work of the United Nations Secretary General's Special Representative for Business and Human Rights, whose mandate included responsibility for identifying and clarifying standards of corporate responsibility and accountability related to human rights and developing methodologies for HRIAs in the business world.

Perhaps the best evidence of the early recognition of the need for private sector actors to consider the human rights implications of their work, however, is the International Finance Corporation's ("IFC") Guide to Human Rights

43. *Summary of Public Consultations on a UK-New Zealand Free Trade Agreement*, PUBLIC VOICE (2020), <https://www.mfat.govt.nz/assets/Trade-agreements/UK-NZ-FTA/Public-Voice-Report-June-2020.pdf>.

44. See Olga Lenzen & Marina d'Engelbronner, *Guide to Corporate Human Rights and Impact Assessment Tools*, AIM FOR HUMAN RIGHTS (Jan. 20, 2009), <https://commdev.org/publications/human-rights-in-business-guide-to-corporate-human-rights-impact-assessment-tools>; *Methodology for Human Rights Impact Assessment*, NOMOGAIA (Sep. 2013), <https://nomogaia.org/human-rights-impact-assessment-hria/methodology/>.

Impact Assessment and Management.⁴⁵ Developed in partnership with the International Business Leaders Forum and the UN Global Compact, the IFC Guide presents corporations interested in incorporating HRIAs into their due diligence analysis with a comprehensive methodology to do so.

The IFC's suggested framework is designed to help companies determine whose rights may be impacted by a project, the nature of the impact on those rights, the degree of control the corporation can exercise over its impacts, and whether there are alternatives to eliminate or otherwise respond to the human rights issues raised by the HRIA. The Guide lists numerous human rights indicators that capture potential concerns related to civil, political, economic, social, and cultural rights as well as regional or local governance issues. It also suggests possible company responses to identified issues of concern. For example, in a country with well-documented torture, an HRIA might draw attention to the possibility that employees will be abused because of their connection with the company's operations. A company aware of that potential human rights impact could respond by developing internal processes to protect employees, making clear and verifiable agreements as necessary, and giving employees access to legal counsel.⁴⁶ The Guide also breaks down particular human rights considerations that arise in different business sectors (such as the Oil, Gas and Mining, or Food and Beverage sectors) and provides summaries of key human rights issues a corporation might need to assess (such as international labor standards and the rights of indigenous peoples).

And in 2013, the Nordic Trust Fund and World Bank commissioned and published a report titled "*Human Rights Impact Assessments: A Review of the Literature, Differences with Other Forms of Assessments, and Relevance for Development.*" This report aimed to explore the concept of Human Rights Impact Assessments (HRIAs), examining their distinct characteristics compared to other assessment forms and their significance in the context of development initiatives.⁴⁷

IV. U.S. Human Rights Obligations

The human rights treaties to which the U.S. is a party include the ICCPR, ICERD, the Convention against Torture and Other Cruel, Inhuman

45. Désirée Abrahams & Yann Wyss, Guide to Human Rights Impact Assessment and Management (HRIAM), THE INTERNATIONAL BUSINESS LEADERS FORUM & INTERNATIONAL FINANCE CORPORATION (2011), https://www.globalgovernancewatch.org/docLib/20140206_hriam-guide-092011.pdf.

46. *Id.* at 22.

47. *Human Rights Impact Assessments: A Review of the Literature, Differences with Other Forms of Assessments, and Relevance for Development*, WORLD BANK (2013), https://documents1.worldbank.org/curated/en/834611524474505865/pdf/125557-WP-PUBLIC-HRIA-Web.pdf?_gl=1*1fwphtm*_gcl_au*MTAxNDMxNjM4LjE3MjY2NzYxOTM.

or Degrading Treatment or Punishment (CAT), the Convention on the Prevention and Punishment of the Crime of Genocide, the Optional Protocol to the Convention on the Rights of the Child on Children in Armed Conflict, and the Optional Protocol to the Convention on the Rights of the Child on Child Prostitution.⁴⁸ Additionally, as a member of the Organization of American States (OAS), the United States has duties and obligations under the Inter-American Human Rights System.

Core human rights obligations that play a central role in HRIAs are the right to equality and non-discrimination and the right to seek redress and effective remedy found in Article 2 of the ICCPR and other core human rights treaties. These obligations require the United States to take both negative and positive measures to fulfill protected rights.⁴⁹

V. HRIAs and Analogous Assessments in the Domestic Context

A. CEDAW Ordinances Across the United States

In April 1998, the city of San Francisco approved Municipal Ordinance 128-98,⁵⁰ committing local government to implementing key human rights principles based on the U.N. Convention on the Elimination of Discrimination Against Women (CEDAW). The initiative was spearheaded by the Women's Institute for Leadership Development (WILD) for Human Rights and was inspired by the approach to race and sex discrimination put forth at the UN Fourth World Conference on Women in Beijing in 1995.⁵¹ Despite the fact that 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

48. Including the right to self-determination; the right to non-discrimination; the right to life; the prohibition of torture and slavery; the right to liberty and security of person; due process; freedom of thought, conscience and religion; freedom of association; the right to enjoyment of one's culture; the right to non-refoulement (or, to not be returned to a country where one may be subject to torture); the right to be free from torture or cruel, inhuman or degrading treatment; the obligation to make torture a criminal offense, and to prosecute or extradite persons charged with torture; and the right to a remedy.

49. G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, at Art. 2(1) (Dec. 16, 1966).

50. CITY & COUNTY OF SAN FRANCISCO, CA., ORDINANCE ch. 12K 128-98 (1998). This ordinance was revised in 2000 by Ordinance 325-000, “SF CEDAW Ordinance, City and County of San Francisco, Local Implementation of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women”; See Debra Liebowitz, *Respect, Protect, Fulfill: Raising the Bar on Women's Rights in San Francisco*, WILD FOR HUMAN RIGHTS (2008).

51. *Close to Home: Case Studies of Human Rights Work in the United States*, FORD FOUNDATION (2004), https://www.fordfoundation.org/wp-content/uploads/2015/03/2004-close_to_home.pdf.

rights principles into all of its operations,” including policies, programs, employment, budget, and services.⁵² A CEDAW Task Force was created through the San Francisco Commission on the Status of Women to spearhead implementation of the Ordinance, which required the city government to assess its policies and practices on an ongoing basis to ensure that they were non-discriminatory, relevant, gender-appropriate, and that they fully served communities of women and girls. They developed a race and gender analysis tool that provided a comprehensive framework for analyzing the cultural, economic, social, civil, legal, and political relations between men and women, while also taking into account the intersectionality of gender with other identity categories such as race, sexual orientation, immigration status, class, age, ability, and language.⁵³

San Francisco’s CEDAW race and gender analysis tool is one U.S.-based example of the positive impact that the application of an international human rights framework through assessment can have domestically. 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. The Department of Environment created a spreadsheet to map the race and gender distribution of employees across programs and job categories, which they now refer to in the hiring process. They have found that it enhances their ability to recruit from a diverse applicant pool. The review process also led to the implementation of a flexible work policy, which they found important for women who had caretaking duties inside their homes. This flexible work option has become widely used by all employees.⁵⁴

The Women’s Institute for Leadership Development for Human Rights states in their report ‘Respect, Protect, Fulfill: Raising the Bar on Women’s Rights in San Francisco,’ Changes occurred because CEDAW, and the international human rights system as a whole, is based on the idea that rights evolve and must be progressively realized over time. Realizing people’s human rights requires proactive identification of barriers to the exercise of those rights since responding to policies or actions deemed overtly discriminatory is not enough to ensure that all people – regardless of their economic status, race, gender,

52. CITY & COUNTY OF SAN FRANCISCO, CA., ORDINANCE ch. 12K 128-98 § 12K.4(a) (1998).

53. Liebowitz, *supra* note 49.

54. *Id.* at 7.

ethnicity, ability, sexual orientation and language skills – can enjoy their rights.⁵⁵

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.⁵⁶ Currently, CEDAW Ordinances and Resolutions have been signed in 55 U.S. cities and 14 counties, with numerous campaigns and initiatives underway in many other places across the country.⁵⁷ The report underscored that the implementation of CEDAW's principles can be achieved through several key requirements highlighted in San Francisco's Cities for CEDAW Fact Sheet.⁵⁸ First, gender analysis is essential for assessing workforce demographics, services, and city budgets, allowing for the integration of gender considerations into local government operations and promoting equitable resource distribution. This analysis also considers various demographic factors, including race, disability, immigration status, and sexual orientation. Second, establishing an oversight body is crucial, as it ensures community and government leaders actively monitor the implementation of action plans. Lastly, municipalities are encouraged to allocate between \$0.10 and \$0.25 per woman resident to support the necessary program and policy reforms outlined by CEDAW.

B. U.S. Racial Equity Impact Assessments

In the broader context of HRIAs, Racial Equity Impact Assessments (REIAs) offer a focused examination of how proposed policies, actions, or decisions may affect different racial and ethnic groups.⁵⁹ Similar to HRIAs, which evaluate the impact of policies on human rights, REIAs function as a proactive tool to identify and address racial disparities before the implementation of a policy.⁶⁰ By providing a structured analysis, REIAs ensure that racial equity considerations are incorporated into the policymaking process, helping to prevent or mitigate harm to historically marginalized communities.⁶¹

REIAs are increasingly utilized in U.S. policymaking, particularly at the state and local levels. They operate in a manner akin to fiscal impact notes, giving

55. *Id.* at 10.

56. *Cities for CEDAW: 2022-23 Annual Report*, CEDAW (2023), https://citiesforcedaw.org/wp-content/uploads/2023/09/CEDAW-22_23-Annual-Report-Final.pdf.

57. *Id.* at 10.

58. *Id.* at 9.

59. Terry Keleher, *Racial Equity Impact Assessment*, RACE FORWARD (2009), https://www.raceforward.org/sites/default/files/RacialJusticeImpactAssessment_v5.pdf.

60. Nicole D. Porter, *Racial Impact Statements*, THE SENTENCING PROJECT (June 16, 2021), <https://www.sentencingproject.org/reports/racial-impact-statements/>.

61. *See Racial Equity Impact Assessments*, COUNCIL OFFICE OF RACIAL EQUITY (CORE), <https://www.dcraciaequity.org/racial-equity-impact-assessments>.

legislators insights into the racial implications of a policy during the legislative process.⁶² This allows for the potential modification or reconsideration of policies that may perpetuate inequities. While REIAs are primarily designed to prevent laws that disproportionately harm Black, Indigenous, and other people of color, they are also employed to highlight the positive equity outcomes of policies intended to rectify systemic injustices.

Iowa was the first state to implement an REIA requirement in 2008, establishing a model that has influenced similar laws in other states.⁶³ The Minority Impact Statement Bill, signed into law by Governor Chester Culver, mandates that a “correctional impact statement” accompany any bill affecting public offenses, sentencing, parole, or probation procedures.⁶⁴ Key components of Iowa’s REIA process include an automatic trigger, where proposed criminal justice legislation requires the preparation of an impact statement.⁶⁵ This statement is incorporated into the bill’s fiscal note and must be revised if amendments alter the predicted impact. The Iowa Legislative Services Agency is responsible for conducting the research and drafting the statements, using data from a prison population forecasting model.⁶⁶ Additionally, the agency can request cooperation from other state departments in preparing these statements. Finally, applicants for state grant funding are required to submit minority impact statements detailing any anticipated disproportionate impacts on minority populations, along with evidence of consultations with affected communities.

In 2021, Virginia enacted legislation allowing for the preparation of REIAs for criminal justice legislation, similar to Iowa’s approach.⁶⁷ The state assigned its Joint Legislative Audit and Review Commission with the responsibility of preparing these impact statements. Another notable local example is New York City, which in 2021 passed a law requiring private developers to submit “racial equity reports” for specific land use and development applications.⁶⁸

Despite the growing use of REIAs, their implementation varies widely across jurisdictions. This variability highlights the need for more standardized frameworks, similar to those seen in HRIAs, to ensure that racial equity is

62. Porter, *supra* note 59.

63. Vesna Jaksic, *Iowa Passes Law Requiring Examination of Racial Impact of All New Sentencing*, NAT’L L.J. (Apr. 18, 2008), <https://www.legis.iowa.gov/docs/publications/SD/8726.pdf>.

64. IOWA CODE ANN. § 2.56 (West 2008).

65. *Id.*

66. *Id.*

67. VA. CODE ANN. § 30-19.1:13 (West 2021).

68. N.Y.C. ADMIN. CODE §25-118(b) (2021); see Julia Fiore, *Opinion: Racial Equity Reports Are a New and Valuable Resource for Developing Affordable Housing*, CITY & STATE N.Y. (Feb. 2, 2023), <https://www.cityandstateny.com/opinion/2023/02/opinion-racial-equityreports-are-new-and-valuable-resource-developing-affordable-housing/382480/>.

systematically assessed in public policies and that human rights principles are upheld in addressing racial disparities.

C. U.S. Environmental Impact Assessments

One area of U.S. federal law that may be informative in considering the implementation of HRIAs is in the area of environmental law. The National Environmental Policy Act of 1969 (NEPA)⁶⁹ set up procedural requirements for all U.S. federal agencies to conduct Environmental Assessments (EAs) and Environmental Impact Statements (EISs)⁷⁰ to examine the possible impacts that a proposed project may have on the environment, including natural, social, and economic aspects.⁷¹ Section 309 of the Clean Air Act requires a policy review of all proposed federal legislation, newly authorized federal projects, and proposed regulations pertaining to any department or agency of the federal government. Written comments must be made public, including unsatisfactory findings with regard to public health or welfare or environmental quality.⁷² On February 11, 1994, President Clinton issued Executive Order 12898, "Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations." The Presidential memorandum accompanying this Order directs federal agencies to use Title VI of the Civil Rights Act of 1964 (Title VI)⁷³ or the National Environmental Policy Act of 1969 (NEPA) to implement the Order. In 1998 the EPA produced guidelines for incorporating environmental justice concerns into the EPA's NEPA Compliance Analyses.

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.

D. HRIAs and the Inter-Agency Working Group on Human Rights

In 1998, President Bill Clinton issued Executive Order 13107 ("Human Rights EO") titled "Implementation of Human Rights Treaties." The Human

69. National Environmental Policy Act, Pub. L. No. 91-190, 42 U.S.C. §§ 4321-4347 (January 1, 1970), as amended by Pub. L. No. 94-52, (July 3, 1975), Pub. L. No. 94-83, (Aug. 9, 1975), and Pub. L. No. 97-258, § 4(b), (Sept. 13, 1982).

70. 42 U.S.C. § 4332.

71. *National Environmental Policy Act (NEPA) Policies & Guidance*, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/nepa/national-environmental-policy-act-policies-and-guidance>.

72. Clean Air Act, Pub. L. No. 84-159, § 109, 69 Stat. 322 (July 14, 1955), as amended by Pub. L. No. 91-604, § 12(a), 84 Stat. 1706 (Dec. 31, 1970); 42 U.S.C. § 7609 (1970).

73. 42 U.S.C. § 2000d (2018). Under Title VI, § 601, both discriminatory intent and discriminatory effect must be found to constitute a finding of discrimination.

Rights EO declared that “[i]t shall be the policy and practice of the Government of the United States, being committed to the protection and promotion of human rights and fundamental freedoms, fully to respect and implement its obligations under the international human rights treaties to which it is a party, including the ICCPR, the CAT, and the CERD.” It further proclaimed that “[i]t shall also be the policy and practice of the Government of the United States to promote respect for international human rights.” While the Human Rights EO has not been rescinded it has never been implemented and followed by subsequent administrations. Among other things, the Human Rights EO established an Interagency Working Group on Human Rights Treaties. The Inter-Agency was tasked with coordinating the implementation of United States human rights obligations and engagement with international and regional human rights bodies. One of the principal functions of the Inter-Agency Working Group was “developing effective mechanisms to ensure that legislation proposed by the Administration is reviewed for conformity with international human rights obligations and that these obligations are taken into account in reviewing legislation under consideration by the Congress as well.”

The federal government should be incorporating HRIAs into existing U.S. government structure including by updating and reinvigorating the Human Rights EO. For example, the Domestic Policy Council (and the National Economic Council) would be responsible for conducting HRIAs over new policies and creating a self-standing system for HRIAs in the form a National Office on Human Rights Monitoring and Implementation (headed by a human rights ombudsman or national coordinator) which would oversee more generally national efforts on human rights matters. As the national face for human rights implementation efforts, the “focal point” should be based in the Executive Office of the President and led by a person of recognized competence and expertise in the field of human rights.⁷⁴ The National Office on Human Rights Monitoring and Implementation would work closely with the revitalized Inter-Agency Working Group on Human Rights, state and local governments, and actors such as human rights commissions (as well as with the federal U.S. Commission on Civil Rights) to ensure that federal human rights policy is being implemented consistently with U.S. treaty obligations at all levels of government. And finally, Congress should pass legislation to create a National Human Rights Institution (NHRI) that would among other things incorporate HRIAs into its functions and mandate.

74. For further development of the need for this kind of national focal point on human rights implementation in the United States, see Tara J. Melish, *From Paradox to Subsidiarity: The United States and Human Rights Treaty Bodies*, 34 *Yale J. INT'L.* 389, at 456-58 (2009).

Conclusion

Human Rights Impact Assessments are a critical mechanism for ensuring that U.S. 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 quite simply fail to take full effect in the United States. As noted above, international examples as well as U.S. federal law and local ordinances can provide considerable guidance when considering how HRIAs could be implemented. HRIAs will enhance compliance with human rights obligations, integrate human rights in policymaking, and will serve larger purposes such as meaningful consultation with affected communities, accountability, and empowerment.