

# Human Rights Impact Assessment: A Method for Healthy Policymaking

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## Abstract

Two decades ago, Lawrence Gostin and Jonathan Mann developed a methodology for human rights impact assessment (HRIA) of proposed public health policies. This article looks back over the last 20 years to examine the development of HRIA in the health field and consider the progress that has been made since Gostin and Mann published their pioneering article. Health-related HRIA has advanced substantially in three ways. First, the content of the right to health has been delineated in greater detail through domestic and international laws and policies. Second, the UN human rights mechanisms have recommended that governments undertake HRIAs and have issued guidelines and methodologies for doing so. Third, non-governmental organizations and international organizations have developed HRIA tools and carried out case studies to demonstrate their feasibility. In this light, the article concludes by recognizing the substantial progress that has been made in HRIA over the last 20 years and by considering some challenges that remain for health-related HRIA.

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## Introduction

IN 1994, LAWRENCE Gostin and Jonathan Mann proposed using human rights impact assessment (HRIA) as a tool to evaluate the effects of public health policies on human rights and dignity.<sup>1</sup> At that time, they noted, few public health officials were familiar with human rights doctrines or had the skills necessary to assess a policy from a human rights perspective.<sup>2</sup> Moreover, the human rights community had written little about public health, and crucially, had not yet elaborated on the content of the right to health.<sup>3</sup> Today, the content of the right to health is detailed in numerous documents issued by international human rights bodies as well as in domestic court decisions, and there is a rich scholarly literature on health and human rights.<sup>4</sup> Additionally, the human rights community has developed an array of methodologies for integrating human rights into policymaking and programming that impact on health. One method is HRIA.

In general, impact assessment is a process used to predict the future consequences of a proposed policy, program, or project and thereby provide the opportunity to improve it—or abandon it—before it is adopted and implemented. Originally, environmental impact assessment (EIA) developed in the 1960s and social impact assessment (SIA), often integrated into environmental impact assessment, soon followed. Today, EIA and SIA are routinely carried out in many countries.<sup>5</sup> Health impact assessment (HIA), which originated from concerns in environmental health, the social determinants of health, and health equity, is also becoming more common.<sup>6</sup> Human rights impact assessment draws upon the theory and methodology of these other types of impact assessments. Like other types of impact assessment, HRIA promotes transparency and participation and provides an evidentiary basis for decision-making.

HRIA is a relatively recent concept. Although the idea was raised as early as 1979 by the Secretary General of the United Nations, it was not until after 2000 that it was given serious attention.<sup>7</sup> Recent

literature discusses a variety of contexts for HRIA, including international trade negotiations, foreign direct investment, international development planning, and domestic public policymaking at national, local, and institutional levels.<sup>8</sup> Additionally, the literature presents a variety of methodological approaches, including mainstreaming human rights into other forms of impact assessment and stand-alone HRIA.<sup>9</sup> Further, there are now several tools available to aid businesses, governments, and nongovernmental organizations (NGOs) in carrying out HRIA, and case studies of completed HRIAs that focus on a range of human rights, including the right to health, have been published. Nonetheless, there remains much to do to raise HRIA to a routinely required process worldwide, to develop HRIA methodology for various sectors, and to build a network of HRIA professionals, as exists for EIA, SIA, and more recently, HIA.

In 1994, Gostin and Mann published an article in which they introduced HRIA into the field of public health.<sup>10</sup> This paper examines the development of health-related HRIA to consider the progress that has been made since Gostin and Mann published their pioneering article. Following this introduction, I provide a brief background on impact assessment, and then consider the legal obligation to carry out HRIA, outlining the progress made since 1994. I then focus on HRIA in health policymaking by examining three case studies. Finally, I consider the major achievements for HRIA in the past 20 years, as well as the current challenges.

### Some basics on impact assessment

Impact assessment can be defined simply as “the process of identifying the future consequences of a current or proposed action.”<sup>11</sup> The International Association of Impact Assessment identifies four objectives of an impact assessment: (1) to provide information as the basis for decision-making, (2) to promote transparency and participation of affected

populations in decision-making, (3) to identify procedures for mitigation or compensation for negative consequences, and (4) to contribute to sound sustainable development.<sup>12</sup> In addition to EIA, SIA, and HIA, the International Association of Impact Assessment identifies more than 50 types of impact assessment. Among these types, SIA, HIA, gender impact assessment, equality impact assessment, and poverty impact assessment are particularly relevant to developments in HRIA.

Each type of impact assessment has its own definition, methodologies, and constituencies. The World Health Organization defines health impact assessment as “A combination of procedures, methods and tools by which a policy, programme or project may be judged as to its potential effects on the health of a population, and the distribution of those effects within the population.”<sup>13</sup> Although there are many definitions of HIA, two essential elements are “that it seeks to predict the future consequences for health of possible decisions; and that it seeks to inform decision-making.”<sup>14</sup> These elements also appear in definitions of most other forms of impact assessment. Thus, impact assessment is prospective. As John Kemm explains, concurrent or retrospective assessments, although also important activities, are properly characterized as monitoring, surveillance, or evaluation, and are not technically “impact assessments.”<sup>15</sup>

The process of impact assessment usually includes at least the following steps: (1) defining the policy, program, or project to assess, (2) identifying the people likely to be affected by the policy, program, or project, (3) gathering and analyzing evidence about the potential effects of the policy, program, or project on people, communities, and/or the environment, (4) providing decision-makers and people who may be affected with information about the potential effects, and (5) evaluating the proposal and considering alternatives to reduce potential problems for people, communities, and/or the environment. It is important that the impact assessment feeds into the decision-making process and therefore it should be done at the earliest possible stage in policy development or project planning.

Compared to EIA, SIA, or even HIA, HRIA is in its infancy. At this point, there is no consensus on a definition of HRIA and no widely accepted methodology.<sup>16</sup> In 2007, Paul Hunt, then UN Special Rapporteur on the right to health, defined human rights impact assessment as “the process of predicting the potential consequences of a proposed policy, programme or project on the enjoyment of human rights.”<sup>17</sup> The objective of the assessment, he continued, “is to inform decision makers and the people likely to be affected so that they can improve the proposal to reduce potential negative effects and increase positive ones.”<sup>18</sup> In this respect, HRIA, much like SIA and HIA, seeks not simply to reduce or mitigate potential negative effects, but also to promote positive ones. Thus, HRIA is an evidence-based method for governments to ensure that they are respecting, protecting, and fulfilling their human rights obligations, particularly the obligation to progressively realize economic and social rights.<sup>19</sup> Businesses and NGOs also use HRIA, but they do not have the same legal obligations as governments, which are obliged to “promote and encourage respect for human rights.”<sup>20</sup>

Although there is no consensus on HRIA methodology, many people in the field agree upon several common features.<sup>21</sup> First, HRIA is based upon an explicit human rights normative framework.<sup>22</sup> Measuring the potential impacts of the proposed intervention against human rights standards, rather than against the status quo, is the key difference between HRIA and other types of impact assessment.<sup>23</sup> As Simon Walker notes, without explicit reference to human rights standards, HRIA would offer no significant value over other types of impact assessment. The particular human rights framework used for each HRIA will depend upon the context. For example, many HRIAs in the UK have been based upon the Human Rights Act, a domestic law incorporating the European Convention of Human Rights.<sup>24</sup> NGOs working on health rights typically use international human rights law, such as the right to health as enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR). UNICEF conducts

HRIA on the basis of the Convention on the Rights of the Child (CRC).<sup>25</sup>

Second, the process of the impact assessment must respect and promote human rights. In particular, the process should comply with five human rights principles:

1. *Information:* All stakeholders must have access to information about the proposal, the impact assessment process, and the human rights likely to be affected.
2. *Participation:* The people likely to be affected by the intervention must have opportunities for meaningful participation in the impact assessment and in decision-making concerning the proposal.
3. *Equality and nondiscrimination:* The assessment process and the proposal adopted must ensure nondiscrimination and promote equality.
4. *Monitoring and accountability:* The assessment must include mechanisms for monitoring and accountability of the assessment process as well as of the proposal implementation.
5. *Interdependence of rights:* The assessment process must recognize the interdependence of all human rights, and thus, the understanding that a proposed intervention in one sector will likely have human rights consequences beyond that sector.<sup>26</sup>

Although other types of impact assessment, particularly HIA, may also involve participation by the people likely to be affected and concern for inequity of health consequences on different populations, HRIA is distinctive in that these principles and norms are elaborated in a body of international and domestic laws and recommendations. Thus, what is required by the rights to nondiscrimination and equality, for example, is not decided by the assessment team, but rather by bodies authorized to establish standards that apply to all levels of government and across all sectors, as well as to monitor compliance with them. Human rights thereby provides greater coherence and stronger mechanisms of accountability than

other forms of impact assessment.

Third, HRIA must contribute to the capacity of the rights-holders to claim their rights and the duty-bearers to meet their obligations.<sup>27</sup> Often, this means that human rights education for both rights-holders and duty-bearers is part of the assessment process. Human rights education empowers rights-holders with knowledge of their rights, which encourages participation in the assessment, as well as in future human rights causes. Human rights education for duty-bearers is on the standards they are responsible for meeting and the processes of providing information to the public, encouraging participation, promoting equality and nondiscrimination, and integrating accountability mechanisms into government decision-making. In this way, the HRIA serves as a model and an opportunity for rights-holders and duty-bearers to practice human rights-based governance.

In addition to these three common features, which align with the elements of a human rights-based approach set out in the UN Common Understanding, Walker adds a fourth element of HRIA: the impact assessment must involve human rights actors and mechanisms.<sup>28</sup> This means that HRIA should make use of the mechanisms that have been established to monitor implementation of and accountability for human rights norms and standards, such as the UN treaty bodies and the UN Special Procedures. For example, the HRIA could result from a recommendation by the Committee on Economic, Social and Cultural Rights (CESCR) with a requirement that the final assessment be sent to the Committee for further follow-up when the State next reports. Alternatively, the HRIA could engage domestic human rights mechanisms, such as the National Human Rights Institute, in a similar fashion. Involving human rights actors in the HRIA strengthens the methodology and builds the knowledge of human rights actors on HRIA and on the policies, programs, and projects that best promote human rights.<sup>29</sup>

In general, the steps in HRIA are similar to those in other types of impact assessment. These steps are described in detail with examples in other publications.<sup>30</sup> Briefly, they include:

1. *Screening*: The first step is a preliminary check to determine whether or not the proposed intervention is likely to impact on any human rights. This is often a desktop exercise to decide whether a full-scale HRIA of the proposal is necessary. If it is deemed necessary, the process proceeds.
2. *Scoping*: This step involves preparing the assessment plan, including establishing the assessment team, drafting a work plan and timetable, identifying the stakeholders, identifying the human rights likely to be affected, and identifying the likely sources of information. Additionally, at this step all of this information is provided to the public, and in particular, to the people most likely to be affected by the proposed intervention. The information should also include a variety of opportunities for people to participate in the assessment process.
3. *Data collection*: This step involves collecting data, both quantitative and qualitative, on the potential effects of the proposed intervention. Information should be collected from official publications of international organizations and governments, academic literature, reports by human rights organizations, experts in the field, interviews with rights-holders, focus groups, and questionnaires that are widely distributed in the communities likely to be affected.
4. *Rights analysis*: This step is the core of the assessment process. It involves performing the human rights analysis by comparing the information collected on potential human rights impacts of the proposal against human rights standards and norms. Based on this comparison, the assessment team must determine how the proposal could be improved to enhance the enjoyment of human rights, and whether mitigating measures or compensation might be necessary. At this step, the team prepares and presents to the public a draft report with the findings on the data collection, the rights analysis, and recommendations concerning the proposal that would best ensure and promote human rights.
5. *Debating the options*: At this step, all stakeholders discuss the draft report, including the various options. It is key that the people most likely to be affected are included in this step, rather than simply as sources of information at step 3. They must have a meaningful opportunity to influence the decision on which an alternative, if any, is adopted. Human rights standards and norms provide a framework for this discussion, as the alternatives must be evaluated in terms of their human rights impacts.
6. *Final report*: Decision-makers adopt the best alternative from a human rights perspective. This decision and its human rights rationale are published and disseminated in a final report, along with a plan for implementation that includes mechanisms for continued monitoring and assessment at the domestic level, as well as by UN human rights monitoring bodies.

HRIA methodologies may include additional steps beyond the six basic steps. For example, HRIA carried out by NGOs may include an additional step for advocacy based on the final report.<sup>31</sup> The six (or more) steps of the HRIA are similar to those taken in other types of impact assessment. Indeed, a recent and comprehensive report on HIA presents the same six steps.<sup>32</sup> The main difference is that human rights standards are integrated into each step of the HRIA. Thus, the initial screening requires determining the human rights obligations of the State, scoping requires informing stakeholders about their human rights and how the proposal might impact on them, and data collection should be done in response to human rights-based indicators. At steps 4, 5, and 6, HRIA requires a human rights-based analysis of the options and a human rights-based justification for the policy adopted. It is this human rights framework that makes the HRIA unique.

## The legal obligation to carry out human rights impact assessment

The United Nations Charter establishes that one of the four purposes of the organization is to promote and encourage respect for human rights, and all member States pledge to promote “universal respect for, and observance of, human rights.”<sup>33</sup> The obligation of States to carry out HRIA, as one means for promoting universal observation of human rights, is at this point set out in international policy documents and “soft law”: that is, instruments that are not strictly legally binding but yet have legal significance. In 1979, the UN Secretary-General recommended to the Commission on Human Rights that it consider “the practicability of requiring ‘a human rights impact statement,’ which might be similar in concept to an environmental impact statement, to be undertaken prior to the commencement of specific development projects or in connexion with the preparation of an overall development plan or programme.”<sup>34</sup>

At that time, there was no CESC. In 1990, shortly after the CESC began its work, however, it issued General Comment 2 on international technical assistance measures which recommended that UN agencies consider the Secretary-General’s proposal “that a human rights impact statement be required in connection with all major development activities.”<sup>35</sup> Since then, the CESC has recommended that States perform HRIAs of proposals in a variety of contexts. For example, the CESC encouraged Germany, Japan, and the UK to introduce HRIAs, comparable to environmental impact assessments, to ensure that the rights in the ICESCR are taken into account in legislative and administrative policy decision-making processes.<sup>36</sup> The Committee has also recommended to Switzerland and the Dominican Republic that they perform impact assessments of international trade policies and agreements to determine the possible consequences for enjoyment of economic, social, and cultural rights.<sup>37</sup>

Although the CESC has recommended and encouraged States to carry out HRIAs, it has not declared that States are required to carry out human rights impact assessments to meet their

obligations under the ICESCR. Article 2 of the Covenant provides, however, that State parties are obliged to take steps to achieve “progressively the full realization of the rights recognized in the present Covenant by *all appropriate means*.” In view of the Committee’s repeated recommendations over several years urging States to employ HRIA, HRIA must now be considered an “appropriate means” to make progress in realizing economic and social rights.

The CRC has similarly declared that ensuring “that all the provisions of the Convention are respected in legislation and policy development at all levels of government demands a continuous process of child impact assessment.”<sup>38</sup> According to the CRC, child rights impact assessment of any proposed law, policy, or budget that affects children’s rights must be built into the policy processes as early as possible at all levels of government. The CRC has also recommended to particular States that they undertake child rights impact assessments of all proposed laws, policies, and budgets that affect children’s rights, as well as rights-based environmental and social impact assessments in certain circumstances.<sup>39</sup> In a recent General Comment on the right of the child to the enjoyment of the highest attainable standard of health, the CRC has also recommended child rights impact assessment on investments in the health sector.<sup>40</sup>

In addition to the treaty bodies, the UN Special Procedures have also called on States to perform HRIAs. In 1998, for example, Katarina Tomasevski, Special Rapporteur on the right to education, argued that HRIAs of macroeconomic policies should be carried out before such policies are developed and implemented.<sup>41</sup> Since then, three mandates have taken a particular interest in HRIAs. John Ruggie, the Special Representative on Human Rights and Businesses, and Paul Hunt, the Special Rapporteur on the right to health, both issued reports in 2007 on HRIA in their respective fields.<sup>42</sup> Additionally, in 2011, Olivier De Schutter, Special Rapporteur on the right to food, issued *Guiding Principles on Human Rights Impact Assessment of Trade and Investment Agreements*.<sup>43</sup>

These three areas—human rights and business, right to health, and trade agreements—have seen

the greatest activity in HRIAs. Although all three areas are closely related to health, the mandate on the right to health is particularly relevant here. In his 2007 report, Hunt writes that “human rights impact assessments are an aid to equitable, inclusive, robust and sustainable policymaking” and from a right-to-health perspective, a “key feature of a health system.”<sup>44</sup> According to Hunt, HRIA is also a method to determine whether a proposal is consistent with the State’s “existing national and international legal obligations, including those relating to human rights.”<sup>45</sup> Importantly, Hunt continues:

Without such a methodology, a Government cannot know whether its proposed policies, programmes and projects are on target to progressively realize the right to the highest attainable standard of health, as required by international human rights law.<sup>46</sup>

In sum, HRIA is necessary to determine whether a proposal is consistent with a State’s existing national and international legal obligations, including obligations for the right to health.<sup>47</sup> It is also an important means of informing public debate and thereby enhancing the right to take part in the conduct of public affairs recognized under Article 25 of the International Covenant on Civil and Political Rights.<sup>48</sup> Although Hunt and De Schutter view HRIA as a legal obligation of States, the CESCR has not yet drawn the same conclusion. Moreover, no State yet requires HRIA by law in the manner that EIA is required in many countries. The case for HRIA has been building since the UN Secretary-General’s 1979 report, and the soft law recommendations of the human rights bodies and HRIA guidelines of the Special Procedures are bridging the way to bring HRIA into hard law.

### The practice of human rights impact assessments in healthy policymaking

#### *The launch of human rights impacts assessments in public health*

The first health-related HRIA methodology was developed by Gostin and Mann in 1994.<sup>49</sup> Their

methodology was “designed to balance the public health benefits of a policy against its human rights burdens.”<sup>50</sup> It is composed of seven steps, which they illustrate by applying them to proposed policies on sexually transmitted diseases, HIV infection, and tuberculosis. The steps of their assessment methodology are:

1. Clarify the public health purpose
2. Evaluate likely policy effectiveness
3. Determine whether the public health policy is well-targeted
4. Examine each policy for possible human rights burdens
5. Determine whether the policy is the least restrictive alternative that can achieve the public health objective
6. If a coercive public health measure is truly the most effective, least restrictive alternative, base it on the “significant risk” standard
7. If a coercive measure is truly necessary to avert a significant risk, guarantee fair procedures to persons affected.<sup>51</sup>

At the outset, it is clear that the HRIA process is carefully tailored to the health issues that they were addressing. Nonetheless, their methodology includes several features that appear generally in HRIA methodology today. For example, Gostin and Mann note that the assessment requires careful gathering of relevant information through “broad-based consultations with international agencies, non-profit organizations, public health or other professional associations, community-based or advocacy groups, and community leaders who can provide invaluable perspective regarding how health policies affect human rights in their communities.”<sup>52</sup> They also explain that it is particularly important to hold consultations with individuals likely to be affected by the policy and their advocates.<sup>53</sup> Further, they promote public debate through the assessment process by providing information on the intervention and its purpose. In particular, they note that clearly articulated and narrowly defined public health goals “help to identify the true purpose of the intervention; facilitate public

understanding and debate around legitimate health purposes; and reveal prejudice, stereotypical attitudes, or irrational fear.”<sup>54</sup> In these respects, their methodology includes the human rights principles of participation and access to information that are now core principles of HRIA.

On the other hand, the HRIA methodology balances public health benefits against human rights burdens—and the human rights in the balance are civil rights, including the right to security of the person, and the principle of informed consent. In this regard, the methodology overlooks the collective right to health spelled out in ICESCR Article 12(2)(c), which obliges State parties to take steps for “the prevention, treatment and control of epidemic, endemic and occupational and other diseases.” Thus, the public health benefits side of the equation is also a human right. Although the article mentions the right to health twice, as the authors note, it had not yet been operationally defined.<sup>55</sup> This may be the reason that the right to health played no role in their HRIA methodology on public health policies. Today, balancing public health goals and human rights might be more properly described as balancing the collective aspects of the right to health with the individual aspects.

*Aim for human rights: Obstetrical care for undocumented women in Amsterdam*

Since Gostin and Mann’s first use of HRIA in public health, there has been progress in several areas for using HRIA for healthy policymaking. One example is the Health Rights of Women Assessment Instrument (HeRWAI) developed by Aim for Human Rights.<sup>56</sup> This tool was developed for NGOs to gather credible evidence as a basis for lobbying activities. NGOs around the world have used it to influence policy outcomes.<sup>57</sup> For example, the Women’s Global Network for Reproductive Rights (WGNRR) used HeRWAI to carry out an HRIA of a proposal in Amsterdam to modify the health care insurance law and its potential consequences for obstetrical care for undocumented pregnant women.<sup>58</sup> For this assessment, WGNRR followed the six steps set out in HeRWAI: (1) identify the policy, (2) identify the government commitments,

(3) describe the capacity for implementation, (4) assess the impact on health rights, (5) draw links between step 2 commitments and step 4 impacts, and (6) generate recommendations and the action plan for advocacy.<sup>59</sup>

The first steps of the assessment indicated that most undocumented women seek care too late in their pregnancies, generally due to the cost, which heightens their risk of complications during and after birth.<sup>60</sup> Although a law passed in 2000 entitled undocumented people to “medically necessary care,” in practice, this did not secure access to preventative care or maternity care. In 2008, a new bill was proposed to address the deficiencies. It would have provided 80% compensation for all directly accessible health care providers and established a uniform system with payments from a single fund. On the other hand, the bill required undocumented women to visit specifically designated clinics to receive health care during pregnancy, and there was concern that the women might not be able to locate the relevant clinics. Moreover, the partial compensation scheme was expected to negatively impact midwives’ ability to treat undocumented women, negatively impacting access to obstetrical care.<sup>61</sup>

During the preliminary stages of the HRIA of the proposed bill, the NGO received notice that the Dutch government was to vote on the bill. At this point, the researchers had carried out only steps 1 through 3 of the HRIA. Based on the information gathered and the preliminary analysis, WGNRR quickly prepared a report with recommendations, obtained the signatures of five other NGOs, and lobbied the government. Together, the NGOs urged the government to review that draft bill and to provide 100% compensation, rather than 80%, to obstetrical care providers.<sup>62</sup> Remarkably, their lobby was successful in that the House of Commons accepted the recommendation that obstetrical care be covered at 100%. At the completion of the full assessment, WGNRR also recommended that implementation of the bill be monitored using a rights-based approach and that midwives in Amsterdam receive training and support for working with undocumented women.<sup>63</sup>



Importantly, the HeRWAI methodology developed by Aim for Human Rights has been employed by NGOs in numerous case studies, including in Kenya (labor law provisions for maternity leave), Nepal (reproductive health) and Pakistan (gender action plan).<sup>64</sup> It has also been used by the People's Health Movement to develop an assessment tool to evaluate the right to health at the country level. One of the strengths of the HeRWAI methodology is that it is presented in a manner to be easily accessed by a wide variety of users and makes it possible for even smaller NGOs without large budgets to carry out HRIAs. Another strength is that it is intended to be used by NGOs to gather evidence for lobbying. Thus, step 6 of the HeRWAI methodology is not monitoring and evaluation, as it is for governments carrying out HRIAs, but preparing a lobbying plan based on the results of the assessment.<sup>65</sup>

*UNICEF: Privatization of electrical utilities in Bosnia and Herzegovina*

Another example is the Child Impact Assessment tool, created by UNICEF and the EU as part of a Child Rights Toolkit published in 2014.<sup>66</sup> To prepare this tool, UNICEF carried out several case studies, including an assessment with Save the Children UK on the impacts of the privatization of the energy sector in Bosnia and Herzegovina (BiH) upon the rights of the child.<sup>67</sup> Although privatization was expected to result in a 15-50% increase in the cost of electricity, BiH was required to privatize in preparation for joining the European Union.

The child rights impact assessment focused on two avenues in which the expected increases in electricity costs would impact on children: (1) through institutions that provide services to children, and (2) through household coping strategies. The assessment was based on a mixed methodology, including (1) a review of existing literature and quantitative data on child poverty in BiH, (2) qualitative research involving focus groups with households and separately with children, (3) structured interviews with key informants in public institutions responsible for children, (4) a quantitative survey, and (5) iterative analysis by

cross-referencing findings from qualitative and quantitative research.<sup>68</sup>

The assessment indicated that the proposed privatization would result in reduced quality of and access to education, health care, and social protection. With regard to education, the study showed that increased electricity expenses would cause a reduction in teaching time, staff, and extracurricular activities. If electricity costs were to rise by 50%, some schools would close. In health care, the impacts were likely to be increased fees for health services, leading to a reduction in service use and the possibility that specialized services would close. In regard to social work, there would be fewer client visits, coupled with greater need and therefore the likelihood that people entitled to benefits would not receive them. Children's homes would save on textbooks, transportation, and extracurricular activities, but at a 50% cost increase, children's living standards would be drastically lowered. Finally, some children's leisure activities would be cancelled, opening hours at activity centers would shorten and prices would increase, resulting in more opportunity for young people to get involved in anti-social activities. All of these impacts would have the greatest effect on vulnerable and marginalized children.<sup>69</sup>

The assessment also indicated many negative impacts from household coping strategies. Overall, household coping strategies would (1) increase children's engagement in paid and household work, (2) reduce education spending and evening study time, (3) reduce use of hot water, heating, and washing while increasing use of solid fuels and shifting to consume less nutritious foods, and (4) put children's safety at risk by creating the potential for illegal connections and reduced street lighting. Household coping strategies would thereby adversely impact on child labor, education, health, and safety.<sup>70</sup>

Two recommendations were made based on these findings. The first was to reduce tariffs for public service providers working with children. The second was to institute "lifeline tariffs" to cushion the impact on vulnerable households, providing the electricity for basic needs at a discounted

level and using higher tariffs beyond this level of usage.<sup>71</sup> Despite the rigorous methodology and comprehensive report, there were challenges in leveraging the results of the HRIA to influence the energy policy.<sup>72</sup> Nonetheless, the assessment team believed that the child rights impact assessment might have long-term benefits, such as helping to gradually raise awareness of both human rights and evidence-based policymaking. They acknowledge that perhaps the greatest shortcoming of the assessment was that the methodology included no time or resources for lobbying based on the HRIA results.<sup>73</sup>

Notably, the 2014 UNICEF-EU Child Impact Assessment methodology includes additional steps to address this need. In step 6 of the methodology, the new tool states: “It is essential to publish assessment results, disseminate them and, when possible, explain them to key decision makers and stakeholders.”<sup>74</sup> Further, step 7 requires follow up to ensure that the recommendations of the child impact assessment are adopted in the proposed policy, and a mechanism is in place to monitor the actual impacts of the policy, once implemented, on the rights of the child.<sup>75</sup>

## Progress and challenges for human rights impact assessment

### *Wider recognition of HRIA*

Over the past two decades, HRIA, particularly in the area of health, has gained greater recognition. The UN human rights treaty bodies regularly recommend that State parties undertake HRIAs, the Special Rapporteurs have published reports on HRIA, and academics have engaged in collaboration and debate in the field. Moreover, NGOs, such as Aim for Human Rights, and international organizations, such as UNICEF and the EU, have carried out case studies which have contributed to the development of HRIA methodology. In 1994, when Gostin and Mann published their HRIA methodology, it was a novelty. Today, HRIA is widely recognized as a key tool in the human rights toolkit.<sup>76</sup>

### *Wider recognition of the right to health*

Another significant development is that there is now greater recognition of the right to health, as well as other economic and social rights. Moreover, during the last 20 years, the content of this right has been detailed in the reports and general comments of the human rights treaty bodies and the Special Rapporteurs, as well as in a vast number of regional and domestic court decisions. As the parameters of the right to health have become clearer, HRIAs related to health now regularly consider the potential right to health impacts of policy, program, and project proposals. The HeRWAI and UNICEF-EU tools are two examples that spell out the specific content of the right to health (availability, accessibility, acceptability, and quality) as a framework for analyzing human rights impacts. In sum, it is now widely accepted that economic and social rights, including the right to health, must be considered along with civil and political rights, and this principle of the interdependence of rights is recognized in most HRIA methodologies.<sup>77</sup>

### *Focus on progressive realization of the right to health*

A third advancement in HRIA is that it now tends to focus on considering the best policy formulation to progressively realize the right to health, rather than simply proposing modifications or compensation for adverse impacts. This has been a trend overall in impact assessment, which originally focused on preventing unintended adverse impacts of projects. As part of the policymaking process, impact assessment has become a method to engage stakeholders, to provide an evidence base upon which to predict the potential impacts of a variety of options, to openly debate alternatives, and to select the policy option that will lead to the greatest positive impacts. This “positive approach” in impact assessment correlates well with the obligation of governments to progressively realize the right to health. Thus, today the aim of an HRIA related to health is to identify the policy option that will lead to the greatest enjoyment of the right to health.

### *Entrenchment in law*

Finally, there is an emerging “soft law” of HRIA that is developing as a result of the work of the UN

human rights mechanisms. Certainly, the treaty bodies highly recommend HRIA. Additionally, the Special Rapporteurs have indicated that HRIA is necessary for governments to know whether proposed policies conflict with their pre-existing human rights obligations, including to progressively realize the right to health, and they have issued guidelines and outlined methodologies for carrying out HRIA in various contexts in which proposals have the potential to impact on the right to health. As in other areas of human rights, this proliferation of soft law on HRIA has the potential, with time and further development, to turn into hard law. There is no doubt that the entrenchment of HRIA in domestic law, just as EIA is entrenched in domestic law, will be necessary before HRIA is carried out routinely as part of the policymaking process.

### Challenges

While there has been great progress for health-related HRIA, numerous challenges remain. First, while international organizations and NGOs have contributed substantially to the development of HRIA, governments, which have the primary responsibility for human rights, have not played a major role. It is time for governments to routinely carry out HRIAs of proposals that have the potential to impact on the right to health, as recommended by the UN human rights mechanisms. In this regard, the CESCR could explicitly require HRIAs as one “appropriate means” for States to implement the right to health and challenge States that have not carried them out in advance of adopting policies that impact on health. Additionally, there is tremendous need for public health professionals to advocate for and participate in HRIAs; however, in general, they have not recognized the potential value of the right to health and HRIA to their goals of improving public health and ensuring equitable policies.<sup>78</sup> In this regard, human rights education in more public health schools would be helpful. Finally, there is a huge need for funding to carry out HRIAs related to health in order to evaluate the methodologies, the influence of HRIAs on policies and on the policymaking process, and the bearing of HRIAs on health and human rights.

### Conclusion

There have been remarkable advances in HRIA related to health since Gostin and Mann’s 1994 article. Governments can no longer claim that the right to health is too vague to implement, nor can they maintain that the methods and tools for monitoring and assessment of the right to health are not available. A wide range of methods and tools are now available for governments and NGOs to carry out HRIAs, including those related to health. HRIA for healthy policymaking is now a feasible endeavor at the local, national, and international levels. Moreover, HRIA is now highly recommended, perhaps even legally required, by the CESCR and the CRC, as well as the UN Special Rapporteurs on the right to education, the right to health, and the right to food. Even if not yet legally required by human rights bodies or by domestic legislation, HRIA simply makes sense as it leads to improved decision-making processes, healthier policies, and greater respect for human rights.

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